

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2021/CLE/gen/01043**

**IN THE MATTER of the trusts of the Declaration of Trust dated 23rd February 2001 and designated as The Coral Ridge Trust and of the trusts of the Declaration of Trust dated 23rd February 2001 and designated as The Hightree Trust
AND IN THE MATTER OF an application under Section 3 of the Judicial Trustees Act and/or under the inherent jurisdiction of the Court**

BETWEEN:

CHERYL HAMERSMITH-STEWART

Claimant

AND

CROMWELL TRUST COMPANY LIMITED

First Defendant

ADAM STEWART

(acting in his capacity as the Enforcer, a member of the Advisory Board and personal capacity)

Second Defendant

JAIME STEWART-McCONNELL

(acting in her capacity as a member of the Advisory Board and personal capacity)

Third Defendant

BRIAN JARDIM

Fourth Defendant

GORDON STEWART

Fifth Defendant

KELLY STEWART

Sixth Defendant

SABRINA STEWART

Seventh Defendant

ASTON JONATHAN STEWART, SLOANE SARAH STEWART, CAMDEN JAIME STEWART, PENELOPE SKY McCONNELL, ISLA JAMES McCONNELL, FINLEY COLLINS McCONNELL, STELLAN JONATHAN McCONNELL AND THE UNBORN ISSUE OF ADAM STEWART AND JAIME McCONNELL

(acting by JOHANN GORDON EPSTEIN as their Guardian ad litem)

Eighth Defendant

ROBERT STEWART

Ninth Defendant

Before: Hon. Chief Justice Sir Ian R. Winder

Appearances: Simon Taube, KC with John Wilson, KC and Vanessa Smith for the Claimant

Elsbeth Talbot Rice, KC with Wilfred Ferguson for the First Defendant

Richard Wilson, KC with John Minns for the Second, Third and Fourth Defendants

Nicholas Le Poidevin, KC with Terry North for the Fifth, Sixth and Seventh Defendants

John Delaney, KC with Lena Bonaby for the Eight Defendant

David Brownbill, KC with Dwana Davis-Gibson and Gia Lockhart for the Ninth Defendant

On the papers

DECISION ON COSTS FOR THE JUDICIAL CO-TRUSTEE APPLICATION

WINDER, CJ

This is my decision on costs arising from my written judgment dated 17 October 2025, in relation to the application of the Claimant (Cheryl) for the appointment of a judicial co-trustee of the two Bahamian Trusts established by the late Gordon Arthur Stewart O.J. (the Founder).

[1.] I will not repeat the background to the action which was extensively set out in my written decision. I also adopt the references utilized in that judgment.

[2.] Cheryl had applied, pursuant to section 3 of the **Judicial Trustees Act (JTA)** or the Court's inherent jurisdiction, to appoint The Private Trust Company, to serve with Cromwell as trustee of the Coral Ridge Trust on an interim basis, on the basis of facts which she said came to light arising from a forensic accounting report into the dealings of UTC, a company in the Sandals structure.

[3.] Cheryl's children (Gordon, Kelly and Sabrina) as well as Robert, supported Cheryl's application.

[4.] Cromwell, Adam, Jaimie and Brian opposed the application for the appointment of a judicial co-trustee. Epstein did not support the application and said that it was not in the interests

of the minor and unborn beneficiaries for there to be unnecessary delay in the ongoing administration of the Trusts.

[5.] The Court dismissed Cheryl's application and invited submissions as to the proper order for costs.

[6.] Cheryl acknowledges that she is liable to pay the costs of the First and Second through Fourth Defendants on a standard basis. She objects to an order that the costs are to be paid on an indemnity basis.

[7.] Cromwell says that it is entitled to its costs in the action. It also says that it is entitled to be indemnified out of the assets of the Trusts for any sums which are not recoverable in the action.

[8.] Adam, Jaime and Brian seek an order that Cheryl, Gordon, Kelly, Sabrina and Robert pay their costs on an indemnity basis.

[9.] Gordon, Kelly and Sabrina (the Fifth through Seventh Defendants) seek an order that there be no order for costs against them and that their costs for participation be paid out of the trust fund.

[10.] Epstein seeks an order that Cheryl, Gordon, Kelly, Sabrina and Robert (i.e. those who made/supported the Application ("the Supporting Parties")) shall be liable on a joint and several basis to pay the other parties' and the Guardian's costs of the Application on the indemnity basis, to be assessed if not agreed and certified as fit for two counsel.

[11.] I have read and considered all of the submissions of the parties.

[12.] Adam, Jaime, Brian and Epstein seek an order for indemnity costs against Cheryl and the defendants which supported the application. They say that Cheryl's conduct of the Judicial Trustee Application gives rise to a situation that is *outside of the norm* and clearly justifies an award of costs on an indemnity basis.

[13.] The issue of indemnity costs was recently considered by the Court of Appeal in the case of **Ngumi v Bethel BS** [2021] CA 143. I accept Cheryl's summary of the principles to be considered on the issue of indemnity costs which emanated from **Ngumi**, which were as follows:

(a) The test for the award of indemnity costs is “*exceptional circumstances*” and “*the presence of factors that take the case outside the run of normal litigation*” (emphasis added).

(b) It is not “*the policy of the courts in hostile litigation to give the successful party an indemnity against the expense to which he has been put and, therefore, to compensate him for the loss which he has inevitably suffered, save in very special cases*” (emphasis added).

(c) Where “*there are circumstances of a party behaving in litigation in a way which can be properly categorized as disgraceful, or deserving of moral condemnation, in such cases an order for indemnity costs may be appropriate*” (emphasis added), although that is not a threshold requirement. Rather, the threshold is “*some conduct which can be properly categorized as unreasonable, and I would add to that in a way which the Court is satisfied constitutes unreasonableness of such a high degree that it can be categorized as exceptional. There are varying ways in which [in] the course of litigation, parties to it could be categorized as having behaved unreasonably, but one would not, simply as a result of that, decide that they should pay costs on an indemnity basis*” (emphasis added).

(d) “*Usually, an award for costs on an indemnity basis can be made in exceptional cases where the conduct of a party can be considered egregious or where the conduct of a party can be properly categorized as disgraceful or deserving of moral condemnation*”.

(e) There should be culpability or abuse of process such as “*(a) deceit or underhandedness by a party; (b) abuse of the courts [sic.] procedure; (c) failure to come to court with open hands; (d) the making of tenuous claims; (e) reliance on utterly unjustified defences; (f) the introduction and reliance upon voluminous and unnecessary evidence; or (g) extraneous motives for litigation*”

(f) The “*concept of unreasonableness*” requires “*conduct which was outside the norm*” (emphasis added).

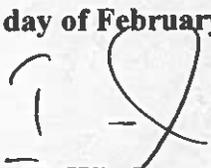
(g) The Court was “*not inclined to award costs on an indemnity basis as the conduct of the Defendants was in no way egregious or contumacious*”.

[14.] Notwithstanding the complaints of Cromwell, Adam, Jaime and Brian, I am not satisfied that the conduct was so extraordinary, egregious or contumacious so as to justify an award of indemnity costs in this case. I will therefore not make an order for indemnity costs.

[15.] I am satisfied that the appropriate order for costs is that:

- (1) Cheryl pays the costs of Cromwell, Adam, Jaime and Brian on the standard party-party basis.
- (2) Cromwell is entitled to be indemnified out of the assets of the Trusts for any sums which are not recoverable in the action.
- (3) There shall be no order for costs in relation to Epstein, Gordon, Kelly, Sabrina or Robert. None of these parties filed any evidence in support of the application and merely made written submissions. In every case their participation in the proceedings was minimal or duplicative. (See **Weisfisch v. Weisfisch and others; Weisfisch and others** [2011] 1 BHS J. No. 103 at paragraphs 56-57). Further, Epstein's position was carefully stated as, not in opposition to Cheryl although not supporting Cheryl.
- (4) I am satisfied however that Epstein may recover his costs for participation in the application out of the Trusts.

Dated this 11th day of February 2026



Sir Ian R. Winder
Chief Justice