

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMON LAW AND EQUITY DIVISION**

**Claim No. 2024/CLE/gen/00093**

**BETWEEN**

**HOLMES COMPANY LIMITED**

**CLAIMANT**

**AND**

**ERIC MORLEY**

**DEFENDANT**

**DECISION ON COSTS**

**Lockhart Charles J (Acting)**

**Appearances: Viola Major and Camille Cleare for the Claimant  
Lessiah Rolle for the Defendant**

**Introduction**

1. This is the Court's costs ruling and assessment further to the Order of Mr. Justice Darron Ellis dated 15<sup>th</sup> October 2025 ("the Order").
2. The Order is in the following terms:

**UPON the Claimant's Notice of Application filed herein on 17<sup>th</sup> July 2025 seeking relief from sanctions and an extension of time being heard on the papers;**

**AND UPON READING:**

- 1) **the Third Affidavit of Lakeisha Hanna filed herein on 17<sup>th</sup> July 2025;**
- 2) **The Submissions of the Claimant and the Defendant submitted via email on the 16<sup>th</sup> July 2025;**
- 3) **The Supplemental Submissions of the Defendant and response of the Claimant both submitted via email on 9<sup>th</sup> October 2025**

**THIS COURT ORDERS that:**

- 1. Leave is hereby granted to extend the time limited by the Rules for filing a Notice of Motion on application for committal under the Order dated 26th June 2025 to seven (7) days from the date hereof;**
- 2. Costs are to be summarily assessed on the papers, the Defendant has leave to make submissions on costs within fourteen (14) days from the date hereof and, where necessary, the Claimant has a right of reply within seven (7) days of receipt of the Defendant's submissions on costs.**

**Background**

3. The underlying application to which this costs ruling relates was an application by the Claimant/applicant for relief from sanctions and an extension of time.
4. The Third Affidavit of Lakeisha Hanna sets out the reason why an extension of time was required as follows at paragraphs 4 and 5:

4. I am informed by Ms Cleare and verily believe that she went on vacation the day after the Order was pronounced ( 27th June 2025 ) and neglected by oversight to ensure that the Notice of Motion was filed in her absence within the time stipulated by the CPR

5. Ms Cleare returned to office on the 14th July 2025 more than fourteen days after the said Order was pronounced, and immediately realized her oversight when following up on the draft to be perfected...

5. The extension of time and relief from sanctions were granted on the papers and the Court invited submissions on costs.

**The Defendant's Submissions on Costs**

6. The Defendant has provided written submissions on costs supported by a detailed Bill of Costs.
7. The Defendant submits, relying on the authority of *Andrew and Sophia Smith and Sophia Smith v First Caribbean International Bank Bahamas Limited and Insurance Management (Bahamas) Limited* 2020/CLE/gen/00662, that it was entitled to object to the Claimant's said Notice of application and it is entitled to recover costs occasioned thereby.

8. With regard to the amount of costs, the Defendant relies on his detailed Bill of Costs in the amount of \$37,400.00 and submits that the Court should “allow at least 77% of the sum claimed and tax off [no more than] 33% if any from the sum claimed by the Defendant...”

#### **The Claimant’s Submissions on Costs**

9. The Claimant, for its part, submits by e-mail to the Court dated 6 November, 2025:

“We have considered the written submissions and detailed Bill of Costs of the Defendant and are of the view that the written submissions in support of and in addition to a detailed Bill of Costs were completely unnecessary and not within the spirit of a summary assessment. The amount of \$38,000 is simply ludicrous.

We have no further reply to the summary assessment of costs for the EOT other than to reiterate that a fixed sum of \$500.00 remains in our view adequate for such a minor administrative matter that required **no** written submissions or case authorities to be supplied by the Claimant and one email line responses to the Defendant’s multiple written submissions throughout the application for it to be *successful*...

We humbly await the Court’s assessment”

#### **Entitlement to Costs**

10. Rule 26.8 (3) prohibits the Court from making an award of costs against the respondent to a relief from sanctions application save in exceptional circumstances. Rule 26.8 (3) reads as follows: “The Court may not order the respondent to pay the applicant’s costs in relation to any application for relief unless exceptional circumstances are shown.”
11. In the present case, the Claimant was successful on the relief from sanctions application; however, I do not find that there were any exceptional circumstances in the present case; therefore the respondent/Defendant may not be ordered to pay the Claimant’s costs.
12. But that is not the end of the matter.
13. The respondent/Defendant maintains that the applicant/Claimant should pay his costs. The position is supported by Civil Procedure (Amendment) Rules 72.26 (3)(C) which provides that the respondent must receive their costs on an application for relief from sanctions or an extension of time unless there are special circumstances. See as follows:

#### **72.26 Assessed costs – procedural applications.**

- (1) On determining any interlocutory application except at a case management conference, pre-trial review or the trial, the court must —
- (a) decide which party, if any, should pay the costs of that application;
  - (b) assess the amount of such costs; and
  - (c) direct when such costs are to be paid.
- (2) In deciding which party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.
- (3) The court must however take into account all the circumstances including the factors set out in rule 71.11 **but where the application is —**
- (a) an application to amend a statement of case;
  - (b) an application to extend the time specified for doing any act under these Rules or an order or direction of the Court;**
  - (c) an application for relief under rule 26.8; or**
  - (d) one that could reasonably have been made at a case management conference or pre-trial review;
  - (e) the Court must order the applicant to pay the costs of the respondent unless there are special circumstances.**
- (emphasis supplied)

14. In my view, it was entirely reasonable for the respondent to seek to defend against the extension of time and relief from sanctions application having regard to what was at stake (i.e. potential committal to prison), and I can see no special circumstances in the present case why the applicant should not be ordered to pay the costs of the respondent in relation to that application. I am fortified in this view by the Ruling of the Hon. Chief Justice Sir Ian Winder in *Andrew and Sophia Smith and Sophia Smith v First Caribbean International Bank Bahamas Limited and Insurance Management (Bahamas) Limited* 2020/CLE/gen/00662 citing *Marcus Smith J Swivel UK Limited v Tecnolumen GmbH* [2022] EWHC 825 (Ch) as follows:

[149.] in *Swivel UK Limited v Tecnolumen GmbH* [2022] EWHC 825 (Ch), Marcus Smith J said at para 15:

15 Rules exist for a reason, and the relief from sanctions jurisdiction exists both to buttress those rules and to ensure that overall justice is done in those cases where the rules are breached. A party is perfectly entitled to oppose an application for relief from sanctions - and the court will often be assisted by such opposition where it is considered proportionate and not opportunistic. In such cases in general terms the costs so incurred by the respondent ought in the usual case, be paid for by the party seeking relief even if relief is granted in the face of the respondent's resistance.

[Emphasis added]

15. I therefore agree with the submissions of the Defendant and find that the Claimant, as the party seeking relief from sanctions and an extension of time, should pay the reasonable costs incurred by the Defendant, even though the relief was granted in the face of the Defendant's resistance.

**Assessment of Costs**

16. Having decided that the Defendant is entitled to his costs, I now turn to the Assessment of those costs.

17. In exercising its discretion as to costs, the Court must ensure that costs awarded are reasonable and proportionate, consistent with the overriding objective of dealing with cases justly and at proportionate cost (CPR 1.1(1)).

18. Additionally, Civil Procedure (Amendment) Rules 72.26 (4) lays down the following requirement which the Court must follow in assessing costs:

(4) In assessing the amount of costs to be paid by any party, the Court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair, and reasonable.

19. In considering what is fair and reasonable, the Court must have regard to the nature and complexity of the application and the work reasonably required to respond.

20. The Claimant's application sought a short extension of time within which to file a Notice of Motion. The application was supported by a brief affidavit comprising approximately two and one-half pages, which explained in a forthright and unembellished manner that the deadline had been missed due to counsel's oversight arising from departure on vacation immediately after the order was pronounced.

21. The matter was determined on the papers. There was no oral hearing, no cross-examination, and no extensive evidential contest. The Court accepted the explanation provided and saw fit to grant the extension sought.

22. The Defendant has now submitted a Bill of Costs in the total sum of \$37,400.00. The Bill reflects charges calculated at an hourly rate of \$600.00 and includes claims for 35 hours of drafting skeleton and supplemental skeleton arguments, and a further 10 hours for drafting the submissions on costs in addition to various charges for review of emails and related documents. The allocation of 45 hours (more than a full working week) to the preparation

of the Skeleton Arguments, Supplemental Skeleton Arguments, and costs submissions is plainly excessive in this uncomplicated case

23. The application for relief from sanctions was straightforward and supported by limited affidavit evidence. It did not involve complex legal or factual issues. The Court considers that the preparation reasonably required to oppose such an application would have been modest.
24. The claim for 15 hours drafting skeleton arguments and a further 20 hours drafting supplemental skeleton arguments is manifestly excessive in light of the simplicity of the issues. Similarly, charges for routine email correspondence at senior counsel rates are excessive. While counsel remains at liberty to agree any fee arrangement with their own client, on a summary assessment the paying party is liable only for such costs as are fair, reasonable, and proportionate to the work that ought reasonably to have been required.
25. The Skeleton Arguments (8 pages) and Supplemental Skeleton Arguments (8 pages) largely restate the procedural history, apply well-established principles on relief from sanctions, argue the inadequacy of the Claimant's explanation and prejudice from potential committal, and (in the Supplemental) advance procedural challenges relative to the jurisdiction to grant relief from sanctions and an extension of time. The submissions do not introduce novel issues, extensive original analysis, or unusually complex research. The core dispute centred on a minor administrative oversight in a short affidavit, not intricate facts or uncharted law.
26. Having considered the Defendant's Bill of Costs and the circumstances of the application, the Court finds that the sum claimed is excessive having regard to the nature of the work and what was reasonably required. Having said that, the Court also considers the sum of \$500 put forward by the Claimant to be unreasonably low having regard to what was at stake.
27. The Court assesses the Defendant's recoverable costs in the sum of \$4,000.00, which the Court considers to be fair and reasonable in all the circumstances.

Dated this 16<sup>th</sup> day of February 2026

Gail Lockhart Charles KC  
Justice (Acting)