**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**Case No. 2022/CLE/qui/01783**

**IN THE MATTER of the Quieting Titles Act, 1959 Chapter 393 Statute Law of the Commonwealth of The Bahamas**

**AND IN THE MATTER of a tract of land comprising Thirteen and Three hundred and Sixty-nine thousandths (13.369) acres situate approximately 0.85 miles Northwest of Haynes Avenue in the settlement of Governors Harbour in the island of Eleuthera one of the Islands of the Commonwealth of The Bahamas.**

**AND IN THE MATTER of the Petition of Jenifer Doon McKinney**

Before: Hon. Chief Justice Sir Ian R. Winder

Appearances: Tara Archer Glasgow with Trevor Lightbourne for the Petitioner

Camille Cleare with Lakeisha Hanna for the Adverse Claimant, John Gornal Jones.

On the papers

**DECISION OF COSTS**

**WINDER, CJ**

[1.] On 27 January 2026, I gave judgment in this quieting action and indicated that I would hear the parties as to the appropriate order on costs, by written submissions within 21 days. Each party lodged written submissions, which I have considered and which I summarize below. This is my decision on costs.

[2.] The Petitioner (McKinney) had petitioned the Court to investigate her claim to be the owner in possession of property which formed the northern half of a 37-acre tract of land (the "Property") originally owned by her uncle, the late Mr. Basil McKinney. John Gornal Jones(Jones), the documentary title owner, filed an adverse claim opposing McKinney's claim. For the purposes of the action, the tract of land was divided into three segments, each of which McKinney claimed to have occupied differently.

[3.] Following the trial, I made the following grants out of the Property:

(1) Mckinney received a Certificate of Title for the 1.63 acre Atlantic/Beach tract. The Atlantic/Beach tract is described as the eastern parcel nearest to the Atlantic Ocean. It is described in Jones' conveyance as the area between the high watermark and the Banks Rd. and the area after the Banks Rd. going West before the drop into the swamp. The Atlantic Beach tract borders the area where Mckinney's home and rental units are situated.

(2) Jones received a Certificate of Title for the balance of the Property being the Middle tract and the Caribbean tract.
   (i) The Middle tract is the tract of land situated between the Atlantic/Beach tract and the Queen's Highway. It borders the highway to the West and encompasses the swamp or mangrove to the east leading up to that part of the property at the Old Banks Rd. It is said to measure approximately 13.369 acres.
   (ii) The Caribbean tract is that tract of land situated on the Property and located between the Caribbean Sea on the west and the Queen's Highway on the east. It is said to measure 2.342 acres. The coastline bordering the Caribbean tract is rocky ironshore.

[4.] McKinney asserted that she should be considered the successful party on the commercial outcome of the Ruling. She argues that the question of who constitutes the successful party in a quieting action should not be determined by who retains the greater acreage, but by who ultimately secures the more substantial commercial value.

[5.] McKinney contends that the sandy beachfront is valued at more than double ironshore per linear foot, and that a significant portion of the Middle tract was described as unusable swamp land. As the Atlantic tract represented more valuable beachfront property, Mckinney says that notwithstanding Jones retained a larger physical portion of the Property, the parcel awarded to her possesses a materially greater market value. She says that this renders her as the truly successful party for the purposes of costs.

[6.] Jones says that notwithstanding the Court determined that the Petitioner was in possession of 1.63 acres of the land (Atlantic/Beach Tract) he successfully defended McKinney's remaining claim that she was also in possession of the remainder of the Property and he retained his documentary title to the Middle and Caribbean Tracts, being awarded a certificate to approximately 15.711 acres of land, which was the overwhelming majority of the land in dispute.

[7.] Jones argues that McKinney was marginally successful in her action as she obtained less than Ten percent (10%) of the land in issue (17.341 acres/10% = 1.734) successfully defeating her claim and retaining his title to over Ninety percent (90%) of his property. He therefore submits that on the facts, he is plainly the successful party and at a minimum, is entitled to Ninety percent (90%) of his reasonable costs.

**Discussion**

[8.] It is accepted by both parties that the Court has a wide discretion as to costs. Section 30 of the **Supreme Court Act** provides:

> 30. (1) Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.

[9.] Rule 71.6 of the **Supreme Court (Civil Procedure) Rules 2022** (the CPR) provides:

> (1) Where the Court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.
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> (2) The Court may, however, make no order as to costs or, in an exceptional case, order a successful party to pay all or part of the costs of an unsuccessful party.

[10.] Rule 71.9 of **CPR** provides:

> Court's discretion to order costs.
> (1) The Court has discretion as to —

(a) whether costs are payable by one party to another;

(b) when to assess costs;

(c) the amount of those costs; and

(d) when they are to be paid.

(2) Without limiting the Court's discretion or the range of orders open to it, the Court may order a person to pay —

(a) costs from or up to a certain date only;

(b) costs relating only to a certain distinct part of the proceedings; or

(c) only a specified proportion of another person's costs.

(3) In deciding who, or if any person should be liable to pay costs, the Court must have regard to all the circumstances.

(4) Without limiting the factors which may be considered, the Court must have regard to —

(a) the conduct of the parties both before and during the proceedings;

(b) whether a party has succeeded on particular issues, even if not ultimately successful in the case, although success on an issue that is not conclusive of the case confers no entitlement to a costs order;

(c) the manner in which a party has pursued —

(i) a particular allegation;

(ii) a particular issue; or

(iii) the case;

(d) whether the manner in which the party has pursued a particular allegation, issue or the case, has increased the costs of the proceedings;

(e) whether it was reasonable for a party to —

(i) pursue a particular allegation; or

(ii) raise a particular issue; and

(iii) whether the successful party increased the costs of the proceedings by the unreasonable pursuit of issues; and

(f) whether the claimant gave reasonable notice of an intention to pursue the issue raised by the application.

[11.] Rule 71.10 of the **CPR** provides

Circumstances to be taken into account when exercising its discretion as to costs.

(1) In deciding what order, if any, to make about costs, the Court must have regard to all the circumstances, including —

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of his case, even if he has not been wholly successful;

(c) any payment into court or admissible offer to settle made by a party which is drawn to the Court's attention and which is not an offer to which costs consequences under Part 35 and 36 apply.

...

(3) The Court may make an order that a party must pay —

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct issue in or part of the proceedings; and

(g) interest on costs from or until a certain date, including a date before judgment.

(4) Where the Court would otherwise consider making an order under paragraph (3)(f), it must instead, if practicable, make an order under paragraph (3)(a) or (c).

...

[12.] Costs are in the discretion of the Court, in which case it is a discretion that must be exercised judicially, i.e., in accordance with established principles and in relation to the facts of the case. The starting point is the general rule, that costs follow the event and, therefore, the successful party ought to be paid their costs.

[13.] The issue of determining who the successful party in an action ought to be was discussed by this court in the case of **Cheerene Green v Arsene Dieugste and another** [2024] 1 BHS J. No. 180. At paragraphs 34-39 of the judgment, it states:

> [34.] Consequently, I begin with the usual rule that, when the Court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party. To see whether this rule should be applied, and to apply it, I must determine who the "successful party" is.
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> [35.] Although Ms. Sands provided several authorities which provide guidance on the identification of the "successful party" in civil litigation, I think it necessary to refer only to Medway Primary Care Trust v Marcus [2011 ] EWCA Civ 750 and Summit Insurance Limited v Bolingbroke Limited SCCivApp No. 145 of 2023.
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> [36.] In Medway Primary Care Trust v Marcus [2011] EWCA Civ 750, the claimant had his leg amputated below the knee on 20 June 2005. This was necessary because the arteries in his left lower leg became blocked with embolisms driving from elsewhere which caused painful ischaemia in his foot (which resulted in the death of the tissue there). The claimant brought proceedings in negligence on the basis that a doctor employed by the first defendant diagnosed his ischaemia but failed to take appropriate steps to see it treated and the second defendant, a general practitioner, failed to take any steps to diagnose ischaemia

on the several occasions that the claimant saw him. The claimant's case was that, if he had been appropriately treated, his leg would have been saved. The defendants admitted breach of duty before trial but disputed causation. The claimant recovered only 0.25% of the amount claimed by him, on a basis that was only peripherally developed in his pleadings. The deputy judge at first instance awarded the claimant 50% of his costs. The English Court of Appeal held that this was wrong. The President of the King's Bench Division, Sir Anthony May said at paras [17] to [19]:

> [17] In my judgment, the deputy judge was wrong in principle to conclude that the respondent was the successful party. The award of £2,000 was insignificant in the context of the claim and the action as a whole, and, although it was technically within the pleaded claim, it was in truth a last minute addition to salvage something (0.25%) from an action which the respondent lost. The whole action was about the cause of the need for the respondent to undergo a leg amputation, and, for all that the first defendants did not admit breach until a late stage, the second defendant's early admission would have carried the entire claim, if the respondent had succeeded on causation. The causation issue was squarely advanced in the original defences. Mr Brearley's opinion on the causation issue was the second defendant's case from the start and it carried the day. I have already indicated my view that such vindication as the action achieved was scant consolation for a claimant whose £525,000 claim had failed entirely. This is not a case in which identification of the party who has to write the eventual (very small) cheque is persuasive as to the costs order. There is little, if any, material distinction between this case and Oksuzoglu. The essential relevant considerations which applied in 1998 have not materially changed with the advent of the Civil Procedure Rules. The fact that the costs order in Oksuzoglu was for the costs of the liability and causation issue does not directly apply to the present case, because the deputy judge decided the action, not a preliminary issue, and the costs of the action in truth related to the causation issue. The fact that the appellants did not make a Part 36 offer or write a Calderbank letter is no more relevant to the costs issue than it was in Oksuzoglu. If the defendants had made a Part 36 offer of (say) £3,000 at the outset, that would have carried a costs payment of some £100,000 which would have been disproportionate and unjust. More importantly, however, an award of £2,000 on an afterthought claim for a short period of extra pain is insignificant in the context of the action as a whole and the nominal failure to make a Part 36 offer is of no consequence and a technical triviality. As the deputy judge himself said, no rational person would issue or defend proceedings such as these, if the recovery was only £2,000. The subject matter of the £2,000 was simply not what the action was about, and, other than technically, that claim was not advanced until the respondent's closing submissions. The action was about the cause of the leg amputation and the costs

were spent in advancing and defending that. I accept that the damages awarded were not technically nominal, but they were so small as to be insignificant.

[18] Mr Mansfield, in addition to urging upon us points which we have already addressed, submits that, as in some other cases, the Respondent could not have got his damages without going to court, and no offer was made at any time. The Appellants had to write the cheque and the First Defendant contested breach until a very late stage when the case that Dr Thorn had felt a pulse on 6 April 2005 was withdrawn. Mr Mansfield says that the Appellants are trying to achieve a more favourable result than if they had made an offer. He stresses that there is no criticism of the conduct of the Claimant. He also stresses that in Oksuzoglu the Defendant did not get the costs of the action.

[19] Although some of these points are persuasive to a result that the Respondent should not be ordered to pay all the Appellants' costs, they are not persuasive on the question of who was the successful party. I am in no doubt but that it was the Appellants, and the starting point should therefore be a costs order in their favour. The question is whether it should be reduced and, if so, by what proportion.

[37.] In Summit Insurance Limited v Bolingbroke Limited SCCivApp No. 145 of 2023, he claimants filed an action against the defendants claiming a true and correct accounting of the fees due under an insurance policy and/or an indemnity under the insurance policy. Liability under the policy was not disputed. On 25 February 2021 the action against Insurance Management (Bahamas) Limited was dismissed and they were awarded the costs of the action, to be determined at the end of trial. At the end of trial, judgment was given for Bolingbroke Limited in the amount of $182,015.48 but the Court ordered that each party bear their own costs. In relation to that order, the Court of Appeal held that the Court erred in making no order as to costs because the defendants had succeeded on the material issues in the case. Evans JA said at paras [46] to [49], para [55] and paras [63] and [64]:

46. Secondly, the cumulative effect of the letters of offer to settle, the letter dated 27 May 2017, reiterating the acceptance of liability for a claim under the Policy, but disputing the amount claimed, and the admission of liability in the Defences filed show that the only issue between the parties was quantum. In the circumstances, where Bolingbroke claimed $1.6M but was awarded only $182,015.48 it is difficult to rationalize the finding by the learned Judge that Bolingbroke had "a measure of success."

...

48. In my view, the learned Chief Justice fell into error in not focusing on the success of the Appellants. They were successful on the main issue which was before the court i.e. the quantum of damages. This ought to have been the starting point and the factors identified above would then be relevant in determining to what extent the general rule would apply.

49. The Appellants were vindicated on the issue as to quantum. They were successful on interlocutory applications and four of the Summonses resulted in

orders that the Insurers receive their costs of the applications, to be available only if the Insurers were successful in the action. They also failed on the claims that the Insurers breached their respective duties to carry out the proper assessment of the claim; that the Insurers were guilty of intentionally delaying and/or frustrating the claims process or otherwise acting in bad faith and in breach of duty; the claims in relation to conflict of interest; and in relation to claims made by Bolingbroke that the Insurers did not properly explain how the deductible worked. Those are all issues which were held over to trial and ultimately Bolingbroke did not succeed on any of those additional claims that were made.

...

55. It is not unusual in cases where, after considering the circumstances of a case, a court may find that there was no clear winner in a trial. It is also not unusual to find that the order made in such cases is likely to be that both parties will bear their Cheerene Green v Arsene Dieugste and another [2024] 1 BHS J. No. 180 own costs. This is not such a case. In my respectful view, the facts point clearly to the Appellants being the successful parties. I am satisfied that there is merit in all of the grounds of appeal and Mrs. Smith properly conceded that the extension of time should be granted. I am further satisfied that having heard full submissions from the parties the appeal should be allowed.

...

63. I am further satisfied that on the totality of the evidence The Insurers were the successful parties at trial. They succeeded before the court on every material issue which was raised. The learned Chief Justice provided no reasons as to why they were deprived of their costs in this matter. From our own review, the evidence shows that the Insurers did everything possible to settle the claim. Offers of settlements were made beginning prior to trial and a payment was made into court. Liability was not contested paving the way for a speedy resolution.

64. In considering the payment into court and the offers to settle, I have taken them into consideration only to the extent that they show the Insurers good faith efforts to settle the claim and avoid a trial. I am satisfied that although Bolingbroke may have had a genuine belief that they were entitled to a greater compensation that does not provide a valid reason for depriving the Insurers of their costs due to them as the successful party.

[38.] In Summit Insurance Limited, Evans JA explained at paras [25] to [27] and [61], in the context of the Rules of the Supreme Court, that the Court's discretion as to costs, although wide and unlimited, is not to be exercised arbitrarily but must be exercised judicially. This requires the Court to act in accordance with established principles applied to the relevant facts of the case. The general rule is that, at the conclusion of a hearing, costs follow the event unless there are special circumstances. The duty of the judge is to make an order which meets the justice of the case. If a judge deprives a successful party of his costs, cogent reasons are required to explain why.

> [39.] Returning to the present case, when I ask the question "which party, as a matter of substance and reality, has been successful in these proceedings?", I am driven to the conclusion that the Claimant is the "successful party". In Roache v News Group Newspapers Ltd [1998] EMLR 161, Sir Thomas Bingham MR spoke of asking whether "...the plaintiff won anything of value which he could not have won without fighting the action through to finish" and whether "...the defendant has substantially denied the plaintiff the prize which the plaintiff fought the action to win". The central issues in this case were the cause of the accident and the cause of Colebrook's death. The Claimant succeeded on those issues, as the Defendants denied all liability for the accident or Colebrook's death. I am not prepared to hold that a representative of the dependents of a deceased person wins nothing of value by establishing liability after a highly contested trial.

[14.] Notwithstanding the attractiveness of McKinney's argument, based upon commercial value, I am satisfied that Jones ought to be regarded as the successful party in this litigation, as matter of substance and reality, having preserved his title to most of his property.

[15.] Having identified Jones as the successful party in this litigation, it is necessary also to consider whether there should be a departure from the general rule that the successful party's entire costs of the action should be paid by the unsuccessful party.

[16.] In **Re Elgindata (No 2)** [1992] 1 WLR 1207, the petitioners, shareholders in Elgindata Ltd, obtained an order that another shareholder in the company (the "purchasing shareholder") purchase their shares in proceedings brought under section 459 of the English Companies Act 1985. The trial judge found most of the petitioners' case failed but found some conduct on the part of the purchasing shareholder was unfairly prejudicial. The trial judge therefore ordered that three-quarters of the purchasing shareholder's costs be paid by the petitioners and one-quarter of the petitioners' costs be paid by the purchasing shareholder. The English Court of Appeal substituted an order that the petitioners should be deprived of half of their costs. *Nourse LJ* said at pages 1213 and 1214:

> In order to show that the judge erred I must state the principles which ought to have been applied. They are mainly recognised or provided for, it matters not which, by section 51 of the Supreme Court Act 1981 and the relevant provisions of R.S.C., Ord. 62, in this case rules 2(4), 3(3) and 10. They do not in their entirety depend on the express recognition or provision of the rules. In part they depend on established practice or implication from the rules. The principles are these. (i) Costs are in the discretion of the court. (ii) They should follow the event, except when it appears to the court that in the circumstances of the case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. (iv) Where the successful party raises issues or

makes allegations improperly or unreasonably, the court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party's costs. Of these principles the first, second and fourth are expressly recognised or provided for by rules 2(4), 3(3) and 10 respectively. The third depends on well established practice. Moreover, the fourth implies that a successful party who neither improperly nor unreasonably raises issues or makes allegations on which he fails ought not to be ordered to pay any part of the unsuccessful party's costs. It was because of his disregard of that principle that the judge erred in this case.

[17.] In **Beoco Ltd v Alfa Laval Company Ltd** [1995] QB 137, a case in which the plaintiff obtained judgment against the first defendant for an amount to be assessed reflecting the loss and damage which the plaintiff would inevitably have incurred in replacing or repairing a defective heat exchanger employed at its plant. This claim arose as a result of an amendment made to its statement of claim in the course of trial. The plaintiff failed on its primary claim that the defective heat exchanger caused an explosion at its plant. *Stuart-Smith LJ* (with whom the rest of the English Court of Appeal agreed) said at page 156:

> What then should be the result in this case? I can see no reason to deprive the first defendant of the costs down to the date of the amendment. Thereafter, they were essentially the winners, since the primary contest related to the damage caused by the explosion. Even on the basis of the judge's conclusion that the defendant would be liable for the hypothetical loss of production, it was a case in which the first defendant should have been awarded a proportion of their costs thereafter, for the reasons I have already given. As it is, in the light of our decision that the only damages that the plaintiff is entitled to recover is the cost of replacing the casing of the heat exchanger and such loss of production that occurred on 24 August as a result of the defect discovered on that day, this is likely to be no more than £21,574.28 now claimed in the Scott schedule and it may well be less. Although this sum cannot by itself be described as trivial, in the context of a claim for £1m. and the enormous expense of this action, it is trivial. It makes no commercial sense to incur costs of this sum to recover such a small sum. And it seems to me very probable that if the first defendant had had a proper opportunity to make a payment into court on the basis that its liability on the alternative claim was limited in the way we have held it to be, it would have done so. A payment in of £21,574, plus interest, would obviously not have been accepted and it would have made sound commercial sense to have made it. But for the reasons I have indicated, the first defendant had no chance to do so. Accordingly, in my judgment, although some discount should be made to reflect the very modest degree of success that the plaintiff achieved, it should not be a large one. I would award the first defendant 85 per cent of its costs after 24 February 1992.

[18.] In my view, a departure ought to be made in the context of this case. Here, the commercial disparity in the land values could factor. More importantly, however, it ought to be noted that the action related to three distinct tracts of land, separated by road or swamp and in each tract the

parties had to argue separately whether McKinney's claim to occupation could be sustained. A large concentration of the evidence, and the dispute, centered on the Atlantic tract, where McKinney was eventually successful. There was very limited battleground with respect to the Middle tract, the largest of the three tracts, which had a large swampy area.

[19.] I will therefore award Jones 40% of his costs. I propose to summarily assess these costs. I therefore invite Counsel for Jones to provide a summary of their costs, within 21 days, to assist in the determination of the appropriate quantum of costs.

Dated the 23rd day of June 2026

Sir Ian R. Winder Kt.
Chief Justice