

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2018/CLE/gen/01171

BETWEEN

HUGHDON BOWE  
ADRIAN BOWE  
SHON BOWE  
HUGHDON BOWE JR.

Plaintiffs

AND

SHANIQUE ROLLE

First Defendant

AND

RUDY TAYLOR  
ELOISE McKENZIE  
RUTH ROLLE  
BERNICE ROLLE  
MELISSA HART  
SOPHIA HART-ROLLE

(in the capacity as the ROLLEVILLE COMMONAGE COMMITTEE)

Second Defendants

AND

SHAVAGO McPHEE  
QUINTON WRIGHT  
MARVIN McKENZIE  
SHAWN GIBSON  
CAREY McKENZIE JR.

(in the capacity as the ROLLEVILLE COMMONAGE LAND COMMITTEE)

Third Defendants

Before Hon. Chief Justice Sir Ian Winder

Appearances: Sidney Cambridge for the Plaintiffs  
Michelle Y. Campbell for the First Defendant  
V. Alfred Gray for the Second and Third Defendants

DECISION

## WINDER, CJ

[1.] This is my decision on costs arising out of my judgment dated 13 July 2023 dismissing the Plaintiffs' claim and allowing Shanique's counterclaim to the extent indicated in the judgment. It is to be noted that I reserved my judgment after trial in these proceedings prior to the **Supreme Court Civil Procedure Rules, 2022** coming into effect and, therefore, these proceedings are proceedings to which those rules of court do not apply.

[2.] In my judgment dated 13 July 2023, I indicated at paragraph 64 that I would deal with the issue of costs on written submissions, which were not to exceed 5 pages and were to be lodged with the Court within 14 days. That direction was reflected in the Court's Order filed on 8 August 2023. Shanique lodged written submissions dated 26 July 2023 and written submissions dated 27 July 2023 were received from the Plaintiffs and the Second and Third Defendants respectively.

[3.] In their written submissions, the Plaintiffs contended for an order that each party bear their own costs. The Plaintiffs submitted that, while the Defendants have been successful in these proceedings, there is good reason for the Court to depart from the usual rule that costs follow the event. The Plaintiffs pointed to the fact that the issues raised at trial were beneficial for both sides and Rolleville as a whole, the fact that the Court was "disadvantaged in various aspects of the case", including in determining whether a register of commers exists and whose name is on it, and the alleged fact that the practice and procedures for land distribution in Rolleville were "*flawed*" because the Committees ought to have ensured that all criteria were met before any distribution of land and exchange of money. The Plaintiffs also submitted that they acted "in good faith without negligent behaviour" throughout the "entire land process".

[4.] In her written submissions, Shanique sought an order for costs in her favour on the basis that she has been successful in these proceedings and the usual rule is that costs follow the event. Shanique submitted that there are no circumstances that give rise to any reason for a departure from the usual rule. Shanique relied on ***Re Elgindata Ltd. (No. 2) [1992] WLR 1207*** and ***Bolingbroke Limited v Summit Insurance Limited et al 2017/CLE/gen/00717*** (27 June 2023) in support of this submission.

[5.] Shanique submitted a bill of costs seeking \$31,516 in costs. Shanique relied on this Court's decision in ***Leshelmaryas Investment Company Limited v Albert C. Higgs 2002/CLE/gen/02280*** (27 July 2023) to identify the factors that the Court should consider when assessing costs. Shanique further submitted that, in assessing the reasonableness of the costs incurred by her, the Court should take into consideration that this matter took nearly 4 years to get to trial, the case was of great importance to her, as she risked losing

her home, and the Plaintiffs were urged on numerous occasions to register as commoners to be eligible for the grant of another property from the Second and Third Defendants but refused to do so.

[6.] For their part, the Second and Third Defendants submitted that, while costs are in the Court's discretion, the Court considers various factors when making such determinations including the conduct of the parties, the importance and complexity of the issues and the manner in which the parties have pursued the case. The Second and Third Defendants submitted that their success at trial, their reasonable and proportionate conduct, and the significance of the issues in this case, which relates to commonage land which "affects many Bahamians and their lineage", favour an award of costs. The Second and Third Defendants relied on ***Long Island Development Company Limited v Dyllis Smith et al [2020] BHS J. No. 722*** for the relevant legal principles governing the exercise of the Court's discretion as to costs. The Second and Third Defendants indicated that they would be prepared to have their costs taxed if not agreed but, in the alternative, suggested a figure of \$25,000 in fixed costs. The Second and Third Defendants provided no bill of costs to substantiate their claim to \$25,000 in costs.

[7.] Costs are by statute and by rules of court in the discretion of the Court. The starting point is the general rule that costs follow the event and, therefore, the successful party ought to be paid their costs by the unsuccessful party. That general rule falls to be applied unless there are cogent reasons to depart from it. The discretion of the Court must be exercised judicially, i.e., in accordance with established principles and in relation to the facts of the case.

[8.] In my view, the circumstances of this case do not afford an adequate basis to depart from the starting point that costs follow the event so far as Shanique's costs are concerned. At the heart of it, Shanique successfully defended an adversarial claim by the Plaintiffs to the land on which she had built a home and successfully obtained relief protecting her occupation of the said land from being disturbed by the Plaintiffs. An order requiring that Shanique bear her own costs would be unjust. I therefore award Shanique her reasonable costs of the claim and her counterclaim.

[9.] So far as regards the Second and Third Defendants, they too were successful, and, while there is merit in the Plaintiffs' submission that the practice and procedures for land distribution in Rolleville were "flawed", ultimately, I do not think that the circumstances of the case supply adequate grounds upon which to depart from the starting point that costs follow the event in their case either. Having put the Defendants to the anxiety and expense of a trial, the Plaintiffs cannot now disclaim responsibility for commencing and pursuing to an unsuccessful conclusion a claim which they were not able to substantiate. I therefore award the Second and Third Defendants their reasonable costs as well.

[10.] In accordance with **Order 59, rule 9** of the **Rules of the Supreme Court, 1978** the discretion of the Court extends to the fixing of costs. According to **Order 59, rule 9**:

9. (1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs

...

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled — (a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or (b) to a gross sum so specified in lieu of taxed costs.

[11.] In **William Downie v Blue Planet Limited SCCivApp & CAIS No. 188 of 2019** (5 March 2020), *Sir Michael Barnett P* considered the jurisdiction of the Court to fix costs under the **Rules of the Supreme Court** and said at paragraphs 23 to 30:

23. It is settled law 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.**

24. Order 59 Rule 2 of The Rules of The Supreme Court provides:

**(2) The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order**

25. These provisions give the court a wide discretion as to whether the costs are payable by one party to another; the amount of those costs; and when they are to be paid. This is specifically set out in the English Civil Procedure Rules Rule 44, but in my judgment represent the law as expressed in the Supreme Court Act and the Rules of The Supreme Court.

26. As far back as **Wilmott v Barber** (1881) 17 Ch.D. 772 Jessell MR said: **The judge has a large discretion as to costs. He may make the defendant pay the costs of some of the issues in which he failed, although he may have succeeded on the whole action. Or he may say that both parties are wrong, but that he could not apportion the blame in a definite proportion, and therefore would dismiss the claim without costs.**

**Or he might say that the plaintiff should have half the costs of the action, or some other aliquot part. Or he may follow the course which I sometimes adopt, and I generally find that the parties are grateful to me for doing so, namely, fix a definite sum for one party to pay to the other, so as to avoid the expense of taxation, taking care in doing so to fix a smaller sum than the party would have to pay if the costs were taxed. [Emphasis Added]**

27. The judge has a wide power to fix a definite sum that one party pays the other party instead of ordering costs to be taxed.

...

29. The issue is how does the court go about fixing that sum?

30. In **McAteer v Devine** [2016] NICA 46, the Court of Appeal of Northern Ireland had to consider an appeal from the exercise by a trial judge of his power to fix costs under the Irish Rule similar to our Order 59 Rule 9. After considering various authorities, including the decision in **Leary v Leary** (1987) 1 WLR 72 and the other authorities referred to in the intended appellant's skeleton submissions and relied upon by the intended appellant in this application, the court said:

**[27] The principles which we have distilled are as follows:**

**(i) The purpose of the rule is to avoid expense, delay and aggravation involving a protracted litigation arising out of taxation. Such an aim would be achieved especially, though not exclusively, in complex cases.**

**(ii) The discretion vested in the judge is not subject to any formal restriction.**

**(iii) The order does not envisage any process similar to that involving taxation. The approach should be a broad one. A judge is not obliged to receive evidence on oath or anything more than some evidence as to the estimated costs before making such an order.**

**(iv) Although the discretion is unlimited, it must be exercised in a judicial manner. An example of acting in an unjudicial manner would include eg "clutching a figure out of the air without any indication as to the estimated costs".**

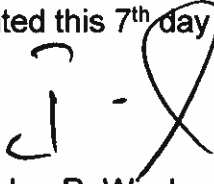
**(v) The court will only interfere with the exercise of the discretion by the trial judge if he/she has erred or was plainly wrong.**

**[Emphasis added]**

[12.] I propose to fix Shanique's costs and the Second and Third Defendants' costs. In ***Leshelmaryas Investment Company Limited v Albert C. Higgs*** 2002/CLE/gen/02280 (27 July 2023), in assessing the reasonableness of the costs incurred by the receiving parties in that case, this Court took into account the time spent by counsel, the work reasonably to have been expended, the seniority of counsel and the importance of the matter to the client.

[13.] Considering the above-mentioned factors, Shanique's bill of costs, and the matters specifically identified by Shanique in her written submissions, I fix Shanique's reasonable professional charges in this matter at \$20,000 inclusive of disbursements. I fix the Second and Third Defendants' reasonable professional charges in this matter at \$15,000 inclusive of disbursements. As Counsel for the Second and Third Defendants remarked at trial, recorded at page 72 of the transcript hearing on 4 July 2022, this was not a "complicated matter".

Dated this 7<sup>th</sup> day of December, 2023

A handwritten signature in black ink, appearing to be 'I. R. Winder', written over the date line.

Sir Ian R. Winder  
Chief Justice