

[2012] CCJ 2 (OJ)

**IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction**

CCJ Application No OA 1 of 2011

Between

Hummingbird Rice Mills Ltd

Claimant

And

Suriname

The Caribbean Community

Defendants

THE COURT,

Composed of R Nelson, A Saunders, J Wit, D Hayton and W Anderson, Judges

Having regard to the Order made on February 23, 2012 requesting written submissions as to costs and to the written submissions filed on behalf of the Claimant on March 14, 2012, the written submissions filed on behalf of the First Defendant on March 15, 2012 and the written submissions filed on behalf of the Second Defendant on March 15, 2012

ISSUES on the 11th day of April, 2012 the following:

SUPPLEMENTARY JUDGMENT AS TO COSTS

- [1] The Claimant in these proceedings succeeded on some only of the claims made against the First Defendant (“Suriname”). In particular, although the Claimant did not recover any damages against Suriname it succeeded in obtaining a declaration that Suriname had breached its obligations under Article 82 of the Revised Treaty of Chaguaramas. The Claimant did not succeed on any of the claims made against the Second Defendant (“the Community”).
- [2] In its judgment on the claim delivered on February 23, 2012 the Court reserved its decision on costs and ordered that written submissions be filed and exchanged.¹ The Court had earlier ordered that the costs of the Claimant’s application for Special Leave, made some months earlier, abide the outcome of the substantive proceedings.²
- [3] In its written submissions the Claimant argued that it should receive its full costs from Suriname as it had succeeded in establishing one of its claims against that Defendant. In relation to the Community, the Claimant submitted that it should not be condemned in costs. Suriname submitted that in light of the fact that the Claimant was only partially successful in the claims made against it, both the Claimant and Suriname should bear their own costs. The Community submitted that the Claimant should pay the costs of the Community.
- [4] The Court takes into account that the breach of the Revised Treaty committed by Suriname was serious especially given its prolonged nature; that the Claimant was prejudiced by that breach; that the breach was so serious as to justify a claim in damages, and that the Claimant was therefore entitled and right to commence these proceedings. Therefore, while the Claimant did not recover damages against Suriname the Court’s view is that in all the circumstances Suriname should pay 50% of the Claimant’s costs.

¹ See *Hummingbird Rice Mills Ltd v. Suriname and The Caribbean Community* [2012] CCJ 1 (OJ)

² See *Hummingbird Rice Mills Ltd v. Suriname and The Caribbean Community* [2011] CCJ 1 (OJ)

[5] In relation to the Community, the Court considers that the appropriate Rule to which it should have regard in the circumstances of this case is Part 30.1(3) which states:

“Where ... circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.”

[6] What does or does not amount to exceptional circumstances is to be determined on a case by case basis. At this nursery stage of the development of Caribbean Community law, it is important that the burden of establishing the basic principles underpinning the Single Market should not weigh too heavily and disproportionately on private entities and thus discourage the bringing of important issues of economic integration law before the Court. In the instant case, with the very able assistance of counsel for the Community, this Court has been able to clarify further the monitoring and regulatory role of COTED in relation to the CET and to pronounce on the powers of COTED and the Secretary-General to invigilate the CET and require compliance with it. Moreover, the Court takes into account the Claimant’s persistent efforts, over a period of several years from December 2005³ to have the CET imposed.

[7] In the exceptional circumstances of this case, the Court considers that the proper order as between the Claimant and the Community is that pursuant to Rule 30.1(3) of the Original Jurisdiction Rules, as between the Claimant and the Community, each party should bear its own costs. This order is not to be construed as the first in a series of decisions destined to result in a practice that in litigation between individuals or private entities and the Community, no costs would be awarded to the Community where it is successful. Each case on costs will be decided on its own merits on a case by case basis.

³ See *Hummingbird Rice Mills Ltd v. Suriname and The Caribbean Community* [2012] CCJ 1 (OJ) at [23]

Order

[8] **The Court orders that :**

- (a) Suriname pay 50% of the costs incurred by the Claimant in these proceedings including the Special Leave proceedings.
- (b) The Community bear its own costs.

The Hon Mr Justice Rolston Nelson

The Hon Mr Justice Adrian Saunders

The Hon Mr Justice Jacob Wit

The Hon Mr Justice David Hayton

The Hon Mr Justice Winston Anderson