ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2007/0530

In the matter of the Registered Land Act Cap. 374
Of the Law of Antigua and Barbuda (1992) revised Edition

And

In the matter of an application for a Rectification of the Land Register in accordance with Section 140 of the Registered Land Act

BETWEEN:

DELCINE THOMAS

Claimant/Applicant

And

VICTOR WILKINS
The lawful attorney of TERESA LEWIS
And administrators of the estate of
MARY FELICIA THOMAS
The administrator and sole beneficiary of the
Estate of MALCOLM THOMAS

Defendant/Respondent

Appearances:

Mrs. Laurie Freeland-Roberts for the Applicant
Ms. Mary B. White for the Respondent

…….
2008: November 27
December 1, 2, 18
……..

DECISION

[1] **Blenman J:** This is an application by Ms. Delcine Thomas (Delcine) for an order that the affidavit or parts of the affidavit that was filed by Mr. Victor Wilkins (Victor), be struck out.

[2] The grounds for the application are that (a) statements contained in the affidavit are scandalous, frivolous and vexatious and they raise a defence which is factually weak and futile; and (b) statements contained hearsay evidence that are not only inadmissible and false but are also irrelevant to the case.

[3] Victor denies that the paragraphs in question are scandalous, offensive or vexatious. He denies that his affidavit contains inadmissible material, and he urges the Court not to strike out the paragraphs of his affidavit or his affidavit.

[4] **Issues**

The issues that arise to be resolved by the Court are as follows:

(a) Whether the Court should strike out the paragraphs on the ground that they are scandalous; or

(b) Whether the Court should strike out the paragraphs on the ground that they contain hearsay material which is inadmissible.

[5] **Brief Background**

Delcine and Ms. Mary Felicia Thomas (deceased) are relatives. The substantive claim arises as a result of a family dispute in relation to lands owned by the parties' grandparents. Delcine alleges that the lands were owned by their grandparents. She says that her grandmother intended to transfer the lands to her two sons, however it was fraudulently transferred only to one son Malcolm. Further, she alleges that Malcolm wrongfully caused the property to be transferred to his wife Mary Felicia Thomas.

[6] Mary Felicia Thomas is alleged to have died a widow and without children. She is survived by her sister Teresa Lewis. Apparently, Victor, in his capacity as the Attorney of Teresa Lewis, has applied for Letters of Administration to the Estate of Mary Felicia Thomas. Delcine alleges that a fraud has been committed in those circumstances and she claims to be entitled to a share in her grandmother's property and seeks various orders.

[7] Several affidavits have been filed by Delcine in support of her claims. Victor has deposed to affidavits in opposition to her claim. Eustace, who is Delcine's brother, has also filed affidavits in support of her claim. The affidavits contain several allegations of fabrication and untruths, on both sides. It was against that setting that Victor filed the affidavit in response, which contains the paragraphs of which Delcine complains.

[8] On 18th January 2007, Delcine and Eustace applied for a caution/restriction to place against the material land. In their statutory declaration in support of the caution at paragraph 7, they have stated that it was only recently that they became aware that Mr. Malcolm Thomas (deceased) had the lands transferred into his name.

[9] Victor says that statement is untrue and rather they amount to a total fabrication on the part of Delcine and her Eustace for divers reasons. He has stated a number of matters in his affidavit.

[10] **Affidavit**

The paragraphs of the affidavit of which Delcine complains are as follows:

(5) "I have read the said Affidavit and make no admission as to the contents thereof, save to say that the Affidavit (which was "signed" and not "sworn") is laden with unsubstantiated and self-serving information, and evidently composed to point to what appears to be the sole intention of the Claimant/Applicant and her siblings and that is to put their hands on the "top ground, the larger of the two plots... of land that is currently in question. (Please see the first 4 lines of paragraph 4 of the Affidavit of Lynroy Thomas).

(6) This conclusion is in line with the statement made by Carlton Samuel, retired Head of the Agricultural Extension Division, Ministry of Agriculture, that the said Claimant/Applicant herein remarked that "this land nar go in no stranger han.." as long as she lived. The Honourable Court is humbly asked to infer there from that the Claimant/Applicant and her siblings well knew that the lands were properly owned by Malcolm Thomas, who at his death and at that of his wife left no issue

for any or each of them. The said Claimant/Applicant and her siblings, including Lynroy Thomas thereby sought to engage in contrivances, distortions and prevarications to found a wholly "trumped up" and unsubstantiated claim of fraudulent action on the part of Malcolm, which they dared not engage in or entertain during the lifetime of Malcolm or his wife "Aunt Baby" or "Baby" for the sole reason that they knew that Malcolm owned the land, and they would not have had a proverbial "legal leg" on which to stand.

(22) In light of the matters deposed to above I respectfully implore the Honourable Court to find that the Affidavit of the said Eustace Thomas to be laced with inconsistencies and or fabrication and crafted to feign innocence, deceit and cunning. At paragraph 8 of his said Affidavit Eustace Thomas deposed, inter alia, that "I returned to Antigua in December of 2006 on this return I made my second and final visit to Baby to enquire about the land. Her response was the same as the initial visit so I began conducting searches…" This statement is wholly untrue. In December 2006 "Baby" or Mary Felicia Thomas was already dead. She died on the 1st October, 2006! Clearly that unfortunate statement catches the (unwise) Eustace Thomas in his own cunning!

(25) I resolutely maintain that the Claimant/Applicant, Lynroy Thomas and Eustace Thomas were all aware of or ought to have been aware of the status of the lands in question and that they carefully and cowardly connived and strategized their belated legal action in that they harboured a covetous desire to acquire the land as against "a stranger". They would stop at nothing to achieve their ravenous intensions by employing lies, contrivances and prevarications. Their nefarious conduct has been tried because Malcolm and "Aunt Baby" or "Baby" are now all dead and they misguidedly felt that nobody was left to challenge them. The Court is humbly called upon to conclude with the utmost respect that the Claimant/Applicant and her siblings are not ignorant of their devises."

[11] **Ms. Mary B. White's submissions**

Learned Counsel Ms. White stated that Delcine objected to paragraphs 5, 6, 22 and 25 of the affidavit in reply by Victor to affidavits filed on behalf of Lynroy and Eustace dated 2nd July, 2008 and filed on 4th July, 2008 respectfully. Paragraphs 1 to 6 of Delcine's affidavit are now reproduced for ease of reference:

> "(1) I am advised by Counsel and I verily believe that the affidavit filed by the defendant on July 10, 2008 contains statements in paragraph 5, 6, 22 and 25 that are scandalous, frivolous and vexatious and that the sole purpose is to degrade my siblings and me, and they are irrelevant and unnecessary.
>
> (2) In paragraph 5 of the said affidavit, the defendant states "I have read the said affidavit and make no admissions as to the contents thereof". Yet he proceeds to conclude that it is "laden with unsubstantiated and self-serving information, and evidently composed to point to what appears to be the sole intention of the claimant/applicant and her siblings and that is to put their hands on the "top ground, the larger of the two plots"."
>
> (3) In paragraph 22, the defendant has maligned my family and me when he stated that we "thereby sought to engage in contrivances, distortions and prevarications to found a wholly "trumped up" and unsubstantiated claim."
>
> (4) In paragraph 22, the defendant states that the affidavit of Eustace Thomas is "crafted to feign innocence, deceit and cunning" in attempts to discredit the character of Eustace Thomas.
>
> (5) In paragraph 25, the defendant states as follows:
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> > "The claimant/applicant Lynroy Thomas and Eustace Thomas carefully and cowardly connived and strategized their belated legal action in that they harboured a covetous desire to acquire the land against "a stranger". They would stop at nothing to achieve their (our ravenous intentions by employing lies, contrivances and prevarications. Their nefarious conduct has been tried and they misguidedly felt that nobody was left to challenge them."

(6) I am advised by Counsel and verily believe that the following statement in paragraph 6 should also be struck out from the affidavit as it is tantamount to hearsay:

> "This conclusion is in line with the statement made by Carlton Samuel, retired Head of Agricultural Extension Division, Ministry of Agriculture, that the said claimant/applicant herein remarked that "this land nar go in no stranger han" as long as she lived".

There is no evidence before the Court from Carlton Samuel in this matter which contains the said statement; therefore, besides being untrue the statement is inadmissible.

[12] Learned Counsel Ms. White said that striking out is stated to mean "the Court ordering written material to be deleted so that it may be no longer relied upon". The Court has discretion to strike out a statement of case; such an order may be made either on application by a party or by the Court of its own initiative. CPR 2000 Part 26.2 gives the Court power to make orders of its own initiative. Part 26.3 addresses Sanctions; Striking out of statement of case. In the jurisdiction of Trinidad and Tobago, in the CCCP, the comparative cross reference with CPR 2000 Part 26.3 is TT26.2. In Trinidad and Tobago, in the case of **Moonam Sokarran v Development Innovations Ltd. CV 2005-000549,** in a related judgment of Madam Justice Judith Jones delivered on the 6th day of December, 2006, her Ladyship stated inter alia,

> "In my view, Part 26.2(c) of the CPR [TT] provides the same remedy as Order 18 Rule 19 did under the Rules of the Supreme Court where the Court was empowered to strike out a pleading".

[13] Ms. White said that the statement of case is a pleading and the affidavit is not.

[14] Ms. White argued that for the matters stated above, Delcine has not brought the application under the appropriate part of the CPR 2000 and accordingly, and respectfully, the application ought to be dismissed.

[15] In **Walsh v Misseldine [2001] CPLR 201, CA,** there was ration that when deciding whether to strike or not to strike out, the Court takes into account all the relevant circumstances and makes a broad judgment after considering the available possibilities. It is necessary to concentrate on the intrinsic justice of a particular case in light of the overriding objective.

[16] Learned Counsel Ms. White told the Court that on the 20th day of October 2008, Victor swore to an affidavit dated the 17th October 2008 in response to the application, engaging the Court's attention.

[17] Ms. White then referred the Court to the affidavit in reply by Victor-

> I, Victor Leopold Josiah Wilkins of Freetown in the Parish of Saint Phillip in the Island of Antigua and Barbuda hereby make oath and say as follows:
> That I am the person named above and am also known as Victor Wilkins.
>
> As to paragraph 2 to 5 of the affidavit, I humbly ask the Honourable Court to observe that the applicant/claimant has carefully dissected the relevant paragraphs to highlight to the Honourable Court the sections of my affidavit which she deems to be "scandalous frivolous and vexatious". And the sole purpose [being] to degrade [her] siblings and [herself].
>
> The Honourable Court is begged to note that those sections are to be read in the totality of the context touching the issues raised in the affidavits and statutory declaration filed in this matter to date.
> I contend respectfully that the applicant/claimant and her siblings well knew all along that the lands at "top ground" or at Red Hill in general belonged to Malcolm Thomas and now to his Estate. I further contend that since all main parties have died, in particular Malcolm and Aunt Baby, his wife, and, more important, now that the land has been demarcated and subdivided since Malcolm Thomas' death it was now a golden opportunity for the applicant/claimant and her siblings to make an all out claim to the property in issue.

[18] Ms. White urged the Court to find to be contradictory and conflicting paragraph 7 of the joint statutory declaration given by Delcine and Eustace declared on the 17th January 2007 and exhibited with my affidavit filed on the 30th November 2007.

[19] Finally, learned Counsel commended the affidavit of Alfred Lewis to the Court and asked that the Court will apply the matters deposed to therein together with Victor's reply and dismiss the application made by Delcine as being without merit. Further, the Court is implored to find that the matters deposed to in paragraphs 5, 6, 22 and 25 of Victor's affidavit filed on 10th July, 2008 are not scandalous but are relevant to the matter and that the hearsay evidence attributed to paragraph 6 should be admitted.

[20] **Mrs. Laurie Freeland-Roberts submissions**

Mrs. Freeland-Roberts said the striking out of case or part of the statement of case is regulated by Rule 26.3(1) of CPR 2000 and is in these terms:

> "26.3(1) In addition to any other powers under these rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that:
>
> (a) There has been a failure to comply with a rule, practice direction order or direction given by the Court in proceedings;
>
> (b) The statement of case or part tot be struck out does not disclose any reasonable ground for bringing or defending a claim;
>
> (c) The statement of case or part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
>
> (d) The statement of case or part to be struck out is prolix or does not comply with the requirements of parts 8 or 10."

[21] In **Biguzzi v Rank Leisure Plc [1999] 4 All ER 934**, the English Court of Appeal noted that the English Rules of Civil Procedure, 1999 confer a very wide discretion upon judges to strike out statements of case. According to Lord Woolfe MR:

> "The fact that a judge has the power does not mean that in applying the overriding objectives the initial approach will be to strike out the statement of the case. The advantage of the CPR over the previous rules is that the Court's powers are much broader than they were. In many cases there will be alternatives which enable a case to be dealt with justly without taking the draconian step of striking the case out."

However, the Court has frowned upon statements of claim or defence or parts therein that are frivolous and vexatious that are likely to obstruct the just disposal of the proceedings.

[22] Learned Counsel Mrs. Freeland-Roberts stated that a statement that is scandalous has been defined as one which allegations of dishonesty, corruption or outrageous conduct are made in order to degrade an opponent. In the case at bar, the offending statements have described Delcine and her siblings as being dishonest, cunning and corrupt whose sole purpose is to literally swindle lands from Victor.

[23] Delcine filed two additional affidavits in support of its claim; however, the affidavit in reply by Victor is filled with accusations and unsubstantiated allegations that do not speak to the claim or the defence, but serve to attack the credibility and character of Delcine and her siblings. The most glaring statements are noted as follows:

> In paragraph 5: "laden with unsubstantiated and self-serving information, and evidently composed to point to what appears to be the sole intention of the claimant/applicant and her siblings and that is to put their hands on the "top ground, the larger of the two plots"."
>
> In paragraph 6: "thereby sought to engage in contrivances, distortions and prevarications to found a wholly "trumped up" and unsubstantiated claim."
>
> In paragraph 22: "crafted to feign innocence, deceit, and cunning" is used to discredit Eustace Thomas; and
>
> In paragraph 25, Victor states as follows:
>
> > "The claimant/applicant, Lynroy Thomas and Eustace Thomas carefully and cowardly connived and strategized their belated legal action in that they harboured a covetous desire to acquire the land against "a stranger".

> They would stop at nothing to achieve their (our ravenous intensions by employing lies, contrivances and prevarications. Their nefarious conduct has been tried and they misguidedly felt that nobody was left to challenge them."

[24] Counsel quite fairly stated that the Courts have refused to strike out statements that may appear scandalous in nature, but are relevant to the statement of the case of the defence. According to the learned judge Cotton, LJ in **Fisher v Owen [1878] 8 CD 615**;

> "Can it possibly be said that these interrogatories are scandalous or irrelevant, or not put bona fide for the purpose of the action? Certainly nothing can be scandalous which is relevant."

As indicated by Bacon, VC in the said case, the rule is that an interrogatory may be struck out on the ground that it is impertinent or scandalous, "or is not put bona fide for purpose of the action, or that the matter inquired is not sufficiently material at that stage of the action." The Court is hereby urged to assess the relevance of the affidavit or parts therein in the context of the claim and on the basis that the statements are objectionable and should be struck out.

[25] The rules in relation to hearsay in the Antigua and Barbuda are quite clear. Hearsay is not deemed to be admissible evidence with one exception (adverse admissions) in this jurisdiction and the United Kingdom's position on its admissibility does not apply under the saved Evidence Act, Cap 155 of the Laws of Antigua and Barbuda or under the CPR 2000 since the attainment of statehood on 1967. Part 31, "Miscellaneous Rules about Evidence" specifically omits all references to hearsay evidence (which is included in the pre-existing, corresponding Part 33 of the English CPR, as a result of the Civil Evidence Act 1995 of England. Accordingly to Mitchell J in **Psalter Millwood v Dale Richards Civil Suit No ANUHCV 1997/0121**, in response to Counsel's submissions the Court could consider and take into account as hearsay evidence the defendant's witness statement in accordance with "the White Book 2000":

> "The White Book 2000 is not very helpful to us because it refers to the UK position under their statute governing the admissibility of hearsay evidence in civil cases,

which statute does not apply in the Leeward Islands. In the Leeward Islands, our rules relating to evidence in civil cases is governed by the old Evidence Act of 1876, now properly described as the Evidence Act, Cap 155 of the Laws of Antigua and Barbuda. Under the Act, the common law position is preserved, and hearsay evidence is not generally admissible in evidence in civil trials."

[26] Mrs. Freeland-Roberts argued that the parts of the affidavit be struck out and the Court should order that costs be the cost in the cause.

[27] **Court's analysis and conclusions**

As stated earlier, Delcine seeks to have paragraphs 5, 6, 22 and 25 of Victor's affidavit struck out on the basis that it contains scandalous material and in addition, she says that it contains hearsay evidence that is inadmissible and false.

[28] I have paid particular regard to the submissions of Counsel and have perused the affidavits in question.

[29] In this application, Delcine proposes to rely on Part 26.4 of CPR 2000. However, Part 26.4 of CPR 2000 addresses the Court's power to strike out a statement of case if a party has failed to comply with a rule or Court order. Accordingly, it has no relevance to the application that is engaging the Court's attention.

[30] Further, Part 26.3 (1) of CPR 2000 empowers the Court to strike out a statement of case or part thereof if it amounts to an abuse of the process of the Court or it is likely to obstruct the just disposal of the proceedings. The difficulty lies in the fact that the above mentioned rules are applicable to statements of case. An affidavit is not a statement of case.

[31] Indeed, Part 2.4 of CPR 2000 defines a statement of case as:

(a) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and reply,

(b) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of Court.

[32] It is the law that the Court acting under its inherent jurisdiction is clothed with the power to strike out part or paragraphs of an affidavit that contains scandalous, frivolous and vexatious information.

[33] Part 30.3 (1) of CPR 2000 provides that the general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge. Part 30.3 (3) of CPR 2000 enables the Court to order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit. It is therefore under the rule, if at all, that Delcine should have sought to invoke that Court's jurisdiction. Part 30.3 (2) (a) and (b) of CPR 2000 states that an affidavit may contain statements of information and belief:

(a) if any of these Rules so allows; and

(b) if the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates-

(i) which of the statements in it made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source of any matters of information and belief.

[34] The Court is therefore empowered to strike out any matter in an affidavit which may be scandalous, irrelevant or otherwise oppressive. The primary test of whether a matter is scandalous is whether it is relevant to an issue raised. The test of relevance in this context is admissibility in evidence. The sole question is whether the matter alleged to be scandalous would be admissible in evidence to show the truth of any allegation. Analogously, where unnecessary matter in a pleading contains any mitigation on the opponent or makes any degrading charges or allegations of misconduct or bad faith against him or anyone else, then it becomes scandalous and will be struck out. The mere fact than an allegation is unnecessary in no ground for striking it out.

[35] Affidavits should contain evidence that is relevant and necessary. They are not to be used to attack others unnecessarily by giving the opinions of others. It is the law that the Court in determining whether to strike out paragraphs of an affidavit must examine the affidavit in question with care. The Court is enjoined to determine whether any aspect of the affidavit offends the rules of evidence or procedure. Should the Court come to the conclusion, and only in very clear cases, where it is shown that the affidavit offends either of the two sets of rules, the offending paragraphs should be struck out.

[36] A review of the paragraphs in question has given the Court great cause for pause. I do not share learned Counsel's Mrs. White's views that the several aspects of the affidavit are not scandalous. In addition, the Court has no doubt that some of the assertions that seek to impugn the character of the opposing side are so stated in a manner that if they were to be answered by Delcine, they will have no effect other than to obstruct the just disposal of the matter. To put the other side to respond to the pejorative and scurrilous statements made by Victor can serve no useful purpose than to increase the costs of the trial.

[37] Where objectionable matter is included in an affidavit in an oppressive manner, the Court in its inherent jurisdiction is clothed with the discretion to strike out those parts of the affidavit. There is no doubt that several of the allegations made by Victor were done to degrade Delcine. I am of the view that unnecessary and scandalous statements are incorporated in Victor's affidavit. Many of the statements made in paragraph 5, 6, 22 and 25 of the affidavit are harsh and perhaps could have been refined. Many of the statements are indeed unnecessary.

[38] While I accept learned Counsel Mrs. White's submissions that Delcine has grounded her application under the incorrect section of the CPR 2000, I do not share the view that such an error is fatal to her application. Utilising the overriding objective to do justice between the parties, coupled with the fact that the Court has an inherent jurisdiction to strike out offending paragraphs in the affidavit should the Court conclude that they are scandalous or otherwise oppressive. I would exercise my discretion judicially, and applying the principles referred to above, to the application at bar, the Court is of the view that the below

mentioned parts of the affidavit should be struck out. Further, I have no doubt several aspects of the affidavit contain oppressive matter that should be struck out.

[39] **Paragraph 5 line 2-6**, the words "is laden with unsubstantiated and self-serving information, and evidently composed to point to what appears to be the sole intention of the Claimant/Applicant and her siblings and that is to put their hands on the "top ground, the larger of the two plots of land that is currently in question. (Please see the first 4 lines of paragraph 4 of the Affidavit of Lynroy Thomas)".

[40] **Paragraph 6 line 1-4** the words "This conclusion is in line with the statement made by Carlton Samuel, retired Head of the Agricultural Extension Division, Ministry of Agriculture, that the said Claimant/Applicant herein remarked that "this land nar go in no stranger han" as long as she lived".

[41] **Paragraph 22 lines 1-4** the words "In light of the matters deposed to above I respectfully implore the Honourable Court to find that the Affidavit of the said Eustace Thomas to be laced with inconsistencies and or fabrication and crafted to feign innocence, deceit and cunning." **Lines 9-12** the words "Clearly that unfortunate statement catches the (unwise) Eustace Thomas in his own cunning!"

[42] **Paragraph 25 lines 3-7** the words "and that they carefully and cowardly connived and strategized their belated legal action in that they harboured a covetous desire to acquire the land as against "a stranger". They would stop at nothing to achieve their ravenous intensions by employing lies, contrivances and prevarications. Their nefarious conduct has been tried because Malcolm and "Aunt Baby" or "Baby" are now all dead and they misguidedly felt that nobody was left to challenge them".

[43] Hearsay information is only permissible, if CPR 2000 so allows, or in interlocutory matters and the source of the information and belief must be provided. That is not the case in relation to paragraph 6 above. The first part of paragraph 6 is struck out as being hearsay evidence and inadmissible. It has no probative value but is highly prejudicial.

[44] **Conclusion**

In view of the foregoing, it is ordered that the following parts of the paragraphs below mentioned be struck out:

(a) Paragraph 5 line 2-6, the words "is laden with unsubstantiated and self-serving information, and evidently composed to point to what appears to be the sole intention of the Claimant/Applicant and her siblings and that is to put their hands on the "top ground, the larger of the two plots... of land that is currently in question. (Please see the first 4 lines of paragraph 4 of the Affidavit of Lynroy Thomas)".

(b) Paragraph 6 line 1-4, the words "This conclusion is in line with the statement made by Carlton Samuel, retired Head of the Agricultural Extension Division, Ministry of Agriculture, that the said Claimant/Applicant herein remarked that "this land nar go in no stranger han.." as long as she lived".

(c) Paragraph 22 lines 1-4, the words "In light of the matters deposed to above I respectfully implore the Honourable Court to find that the Affidavit of the said Eustace Thomas to be laced with inconsistencies and or fabrication and crafted to feign innocence, deceit and cunning." Lines 9-12, the words "Clearly that unfortunate statement catches the (unwise) Eustace Thomas in his own cunning!

(d) Paragraph 25 lines 3-7, the words "and that they carefully and cowardly connived and strategized their belated legal action in that they harboured a covetous desire to acquire the land as against "a stranger". They would stop at nothing to achieve their ravenous intensions by employing lies, contrivances and prevarications. Their nefarious conduct has been tried because Malcolm and "Aunt Baby" or "Baby" are now all dead and they misguidedly felt that nobody was left to challenge them".

[45] It is further ordered that the matter is adjourned to chambers on the 6th February, 2009, at 9:00 am for Pre Trial Review. The parties are to comply with Part 38.5 CPR 2000.

[45] Costs to be costs in the cause.

[46] I thank both learned Counsel for their assistance.

High Court Judge
Louise Esther Blenman