

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 1999/0304

BETWEEN:

ANDREW SMITH

Claimant

and

CLENDON LOUIS

Defendant

Appearances:

Mrs Wauneen Louis-Harris for the Applicant

Mr. Horace Fraser for the Respondent

2011 March 29th

2012 April 10th

JUDGMENT

[1] **BELLE.J:** The Applicant seeks to have the costs assessed in relation to the proceedings in the Privy Council in the matter in which judgment was delivered on 7th June 2007. Council for the Respondent has objected to costs for the Privy Council being assessed by the High Court.

[2] Counsel for the Applicant submits that CPR 65.12 (1) provides that:-

"This rule applies where costs fall to be assessed in relation to any matter or proceedings, or part of a matter or proceedings other than a procedural application"

[3] Subparagraph (2) of the rule goes on to say that if the assessment relates to part of court proceedings it must be carried out by a judge, master or registrar hearing the proceedings.

- [4] Counsel's arguments continued that as long as the application complied with CPR 65.12 (4) and is accompanied by a bill or other documents showing the sum in which the court is being asked to assess the costs and how such sum is calculated then the master or registrar presiding must:
- (a) Assess the costs if there is sufficient material available to do so or
 - (b) Fix a date, time and place for the assessment to take place.
- [5] Counsel also relied on Rule 75 of the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, No. 1676 (Hereinafter referred to as "the Rules") which provides that:-
- "All bills of costs under the orders of Judicial Committee shall be taxed by the Registrar or such other person as the Judicial Committee may appoint, and all such taxations shall be regulated by the scale set forth in part 1 of Schedule B hereto"*
- [6] In order to demonstrate that this rule does not apply to the costs being claimed counsel argued that Rule 76 of the Rules referred to above governing costs in the Privy Council states that the taxation of costs in England shall be limited to the costs incurred in England but the items claimed for by the Petitioner / Applicant reveal that the only charges incurred in England are the Service of Process charges, which do not fall under the rubric of "costs" in the sense of legal representation on the behalf of the litigant in the Privy Council.
- [7] Counsel argued that the Privy Council itself had noted that "The Respondent Andrew Smith ... was not represented before the Board and did not appear in person but has written to oppose the appeal."
- [8] The Privy Council according to the record went on to hear submissions of the Appellant and consider written submissions from the Respondent. Thereafter the Board reported to Her Majesty that the appeal should be dismissed.
- [9] Clearly, counsel argued, the Petitioner / Applicant was not represented by Counsel at the hearing before the Board. Thus the Petitioner is not approaching the High Court to assess the "costs" incurred in England in representing him at the Privy Council. This is where the fallacy in the Respondent counsel's argument lies, says counsel.

- [10] The costs to be assessed, as counsel views it, are the costs incurred in Saint Lucia in order to defend the Applicant's position before the Privy Council. By "costs" counsel is referring to the expenses incident to a suit or action, paid in general, by the losing party in a law suit.
- [11] Counsel set out the Applicant's Bill which appeared to refer to items which occurred only in Saint Lucia. The terms of the Privy Council's costs order are:
- " ..it is directed that the appellant shall pay to the Respondent his costs of this appeal both in St. Lucia and in England which , if not agreed are to be taxed and certified."
- [12] Counsel sought to distinguish the Privy Council decision **Joseph W Hosford v Lester B Bird and others** Privy Council Appeal No. 43 of 2004 which was a decision by the Privy Council on assessment of costs incurred pursuant to an appeal previously heard. I agree with counsel that the Privy Council in that case only considered costs which were incurred in England, being fees paid to a travel agent and accommodation at a Hotel for 16 days.
- [13] A taxing judge in England had taxed the costs under rule 75 of the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 (SI 1982/1676). The Appellant had appealed to the Privy Council against the decision of the taxing judge/ master.
- [14] Counsel for the Respondent argued that the applicable rules have repealed the 1982 rules referred to by counsel for the Applicant. The applicable rules are the Judicial Committee (Appellate Jurisdiction) Rules 2009 says counsel for the Respondent.
- [15] Based on these rules the Applicant would be out of time for the filing of an application for costs to the Registrar of the Privy Council. The court has not been asked to extend the time neither has there been any argument as to whether such an application could be made to the Privy Council at this time.
- [16] If the 2009 Rules are applied in this way Counsel's submission would be correct since the said rules state at rule 45 that where the Judicial Committee has made an order for costs a party claiming costs must submit the claim for costs to the Registrar within (3) months of the date the costs order was made. By rule 46 of the said Part 6 of the Privy Council Rules the power to assess costs resides with a costs judge as an assessor.

- [17] There is no doubt that Article 4 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 revokes The Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 S.I. 1982/1676. But it leaves unexplained matters that were clearly spelt out under the 1982 Rules.
- [18] For example section 76 of the 1982 Rules states that the taxation of costs in England shall be limited to costs incurred in England. It is not logical to assume that this rule has been reversed by a rule which merely states that the claim for costs must be submitted to the Registrar within 3 months beginning with the date on which the costs order was made.
- [19] The logical conclusion then is that if costs are to be taxed in England because they were incurred in England then the claim should be submitted to the Registrar of the Privy Council in three months.
- [20] The question that arises then is what happens to costs which are incurred in Saint Lucia in relation to Privy Council hearings in England?
- [21] Before moving to answer this question it is opportune to rule that the court would apply the Rules which were in force on 7th June 2007 since it is not conceivable that the 2009 Rules could apply before they came into force on 21st April 2009 and in any event the Agent and Registrar for the Privy Council will only act in relation to cost claims obtained in England. The applicable rules would have to be those in operation at the time the Privy Council made the order awarding costs to the Applicant. The applicable rules would therefore be the 1982 Rules and not the 2009 Rules.
- [22] In answering the question re: the manner in which the applicable rules should be applied I have to say that regrettably neither counsel cited the court of Appeal decision in **Joseph W Horsford v Lester B Bird** and others HCVAP 2008/005. This was a continuation from the Privy Council decision cited earlier where the Court of Appeal was called upon to determine an appeal from a High Court Judge who was being asked to do exactly what I have been asked to decide in this case.
- [23] In that matter Gordon JA had this to say in the Court of Appeal:

"Pursuant to The Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, rule 76 the taxation of costs in England shall be limited to costs incurred in England. Thus, although the appellant secured a certificate of taxation from the Registrar of the Privy Council in the sum stated in paragraph 4 above, it is quite

clear that this sum could have represented only costs to which the appellant was entitled which were incurred in England. There is still the issue of costs incurred in Antigua relating to the appeal to the Privy Council.

Section 20 of The West Indies Associated States (Appeals to the Privy Council) Order 1967 (the 1967 Order) reads as follows:

'Where the Judicial Committee directs a party to bear the costs incurred in a State, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.' “

- [24] Pursuant to this dictum the court of appeal ordered that the assessment of costs awarded by the Privy Council but incurred in Antigua was to be heard by the Chief Registrar of the Court.
- [25] I consider this court therefore to be bound by that decision and I therefore order that the assessment of costs in the Privy Council be assessed by the Chief Registrar.
- [26] Since neither counsel got it quite right in this matter I would decline to make any order for costs in this application.


Francis H V Belle
High Court Judge