**EASTERN CARIBBEAN SUPREME COURT**
**FEDERATION OF ST. CHRISTOPHER AND NEVIS**
**NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE**
**(CIVIL)**

**SUIT NO: NEVHCV2011/0130**

**In the matter of sections 3,12,15, 18, 29(3), 33, 34,36,96, 101(4) and 104 of the Constitution of Saint Christopher and Nevis**

**And**

**In the matter of the National Assembly Elections Act Cap 2:01**

**And**

**In the matter of the Nevis Island Assembly Election for the Constituency of Nevis 2 (Parish of St. John) held on the 11th day of July 2011.**

**BETWEEN:**

**[1] MARK BRANTLEY**

Petitioner

**[1] HENSLEY DANIEL**
**[2] LEROY BENJAMIN (THE SUPERVISOR OF ELECTIONS)**
**[3] BERNADETTE LAWRENCE**
**(REGISTRATION OFFICER FOR THE CONSTITUENCY OF ST. JOHN'S)**
**[4] KELVIN DALEY (RETURNING OFFICER)**
**[5] JOSEPH PARRY (PREMIER OF NEVIS)**
**[6] HESKETH BENJAMIN (CHAIRMAN, ELECTORAL COMMISSION)**
**[7] MYRNA WALWYN (MEMBER, ELECTORAL COMMISSION)**
**[8] WILLIAM DORE (MEMBER, ELECTORAL COMMISSION)**
**[9] THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS**

Respondents

**Appearances:**

Ms. Dia Forrester with Mrs. Dahlia Joseph Rowe for the Petitioner.

Mr. Perry Joseph holding for Mr. Sylvester Anthony

and instructed by Ms. Angelina Sookoo for the Respondents.



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2015: January 19
2015: March 9
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**JUDGMENT**

[1] **WILLIAMS, J.:** The Application before the Court is for an Assessment of costs pursuant to an amended Judgment handed down by the Court of Appeal on the 17th October 2013.

[2] The Order of the Court of Appeal is in the following terms;

1) Paragraph 92 of the Judgment in the Court of Appeal, Nos. 3, 4 and 5 dated 27th August 2012 is amended to delete the Order as to costs against Joseph Parry and Hensley Daniel and therefore reads as follows;

"[92] - The normal rule in our jurisdiction in public law matters is that each party bears his own costs unless there is some special cause to order otherwise. The rule is based on the premise that meritorious public interest litigation is not to be unduly restrained by the fear of being burdened personally by an order for costs. The learned trial judge followed that rule in this case and he ordered each party to bear his own costs.

Mr. Brantley appeals this order and asks that he not be made to bear the financial burden of redressing a public wrong that affected many persons. Having found that the learned judge in the light of the facts found by him, was wrong not to have found Mr. Benjamin and Ms. Lawrence guilty of bad faith and misconduct in preparation of the list used for the election, the normal rule should not have applied.



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The only proper order for him to have made was that Mr. Benjamin and Ms. Lawrence be jointly and severally liable for the costs of Mr. Brantley in the Court of Appeal to pay Mr. Brantley costs assessed at two-thirds of the costs in the Court below, as I consider their appeals to have been entirely without merit while Mr. Brantley's cross-appeal has succeeded. "

[3] This matter before the Court had several scheduled hearings to allow the parties to pursue settlement talks; on the 19th January 2015, the Court heard oral submissions by Counsel for the 2nd and 3rd Respondents and the Applicant to strike out the Application for Costs on the basis that the Court of Appeal had ordered that costs to Mr. Brantley were to be assessed if not agreed within 21 days of the date of their decision.

Mr. Brantley had moved the Court to hear the Application for assessment of costs on the 16th day of April 2014.

[4] At that hearing, the Claimant/Petitioner succeeded in his response to the submissions of the Defendants and the matter proceeded for hearing as the Application to strike out was refused by the Court.

The Affidavit of the Petitioner filed on the 22nd September 2014 was deemed properly filed.

[5] The Application for costs before the Court brought by way of Summons, supported by the Affidavit of the Petitioner Mark Brantley and filed on the 16th April 2014 is as a result of the decision of the Court of Appeal delivered on the 27th August 2012 as amended by the Order of the Court dated 17th October 2013.

[6] In his application supported by Affidavit the Petitioner Mark Brantley gave a similar ground which read;



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"As per paragraph 92 of the decision, the costs payable in the Court of Appeal is two thirds of the sum payable in the High Court."

[7] In his Affidavit in support dated 16th April 2014 Mr. Brantley refers to the decisions of the High Court and the Court of Appeal on the said Petition and in paragraph 7 of his said Affidavit he deposes as follows:

[7] In the premises, I respectfully request that the Court assess the costs payable to me in accordance with the Invoice I have submitted to the Court and exhibited as "MAGB4". I have incurred costs in the High Court in the total sum of US$ 477,237.47 or

EC$ 1,288,541.17.

As per paragraph 92 of the Decision, the costs payable in the Court of Appeal is two thirds of the sum payable in the High Court. I therefore respectfully submit that the costs payable in the Court of Appeal be set at EC$ 859,027.45, that is two thirds of the sum of EC$ 1,288,541.17. The total costs I claim in the High Court and in the Court of Appeal is therefore EC$ 2,147,568.62.

[8] In submissions on behalf of the Petitioner made by Ms. Dia Forrester on the 19th January 2015, Counsel concedes to objections made by Counsel for the 2nd and 3rd respondents in relation to the inclusion of Invoices in the Bill of Costs which related to the **Palmer case.**

These invoices amounted to EC $39,658.31.

The Bill of Costs was therefore amended to reflect the following;

Costs at High Court level EC$1,248,882.86

Costs at Court of Appeal- EC$749,329.72

Global costs- EC$1,998,212.58.



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[9] In her Affidavit of Points of Dispute Ms. Bernadette Lawrence at paragraphs 4 and 5 disputes the level of costs involved in the preparation of Affidavits which she considers to be highly excessive, unreasonable, and unjustified.

[10] At paragraph 5, Ms. Lawrence deposes as follows;

"The total claim for the preparation of Affidavits is highly excessive, unreasonable and unjustified. The Petitioner was not certified for costs fit for two senior Counsels. There is no justification why the Petitioner must be awarded costs for two senior Counsel in this matter. There is no justification why the Petitioner should be reimbursed for the costs of overseas travel and Hotel accommodation for Senior Counsel and overseas Junior Counsel."

**Submissions**

[11] Learned Counsel for the Petitioner Ms. Forrester submitted that the Petitioner's costs were reasonable and the Court had to consider what costs were reasonably incurred by the Petitioner. Ms. Forrester stated that the Invoices submitted by the Petitioner outlined in detail what was done by all Counsels involved in the case.

[12] Learned Counsel further submitted that in comparison to fees charged by other Counsel who appeared for the 2nd and 3rd Respondents, the costs of the Petitioner's legal team was fair and reasonable.

Counsel referred to "Exhibit MAGB5" fee note of Dr. Henry Browne dated the 1st August 2012 in the amount of $761,262.50 for services at the High Court and the Court of Appeal.

[13] Learned Counsel for Mr. Brantley argued that there was no overbilling of the costs for the Petitioner's Legal team and the costs incurred was reasonable. Counsel contended that



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the time was spent on researching and preparation of the Law on the eighteen issues that the Petitioner had submitted to the Court. Ms. Forrester argued that the submissions made on behalf of the Petitioner involved novel points of Law and that the Respondents had grossly understated the issues, which involved nine Respondents.

[14] In the final analysis, Ms. Forrester submitted that the Petitioner's application for costs were fully established, were not excessive and were reasonably incurred.

[15] In relation to the Respondents, learned Counsel Mr. Perry Joseph concurred that the paramount issue in the Application for costs is that of reasonableness.

However he contended that the Petitioner oversteps what is reasonable and referred to the case of **Paul Webster et al vs. The Attorney General for the Government of Anguilla.** [1]

[16] Learned Counsel Mr. Perry Joseph conceded that while the case was a weighty one, it was not novel and not complex. Consequently the Bill of Costs which was submitted by the team of Lawyers was wholly unjustified.

[17] Mr. Joseph argued that the cumulative effect of several junior Counsels in the case was overreaching, and that they were all commissioned to do the same work.

[18] Learned Counsel Mr. Joseph's final submission was that the Court should not grant the costs as quantified in the Petitioner's Bill of Costs and that the Petitioner's costs should be restricted to costs for one Senior Counsel, one Junior Counsel and one Instructing Counsel.

[19] Also in her Affidavit filed on the 1st July 2014, the 2nd Respondent, Ms. Bernadette Lawrence deposes at paragraphs 9 & 10 as follows;

9. The Claim for two Queen's Counsels to represent the Petitioner is unreasonable, excessive and was not granted by the Court.

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[1] AXAHCV2008/0015



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10. The particulars claimed as disbursements are not accompanied by the requisite receipts.

**Issues**

[20] The issues for determination are;

1) The Legal basis for the quantification of costs in Election Petition cases.
2) Whether the costs claimed by the Applicant Mark Brantley are reasonable and should be awarded.

**Issue No. 1**

**The Legal basis for the quantification of costs in Election Petition cases.**

[21] It was generally agreed by the Parties that Part 65 of the CPR 2000 is not the legal basis for the quantification of costs arising out of Election Petition cases.

In the case of **Cedric Liburd, Leroy Benjamin, Wayland Vaughn vs. Eugene Hamilton**[2], the Eastern Caribbean Court of Appeal in an analysis of a number of authorities ruled as follows;

"More recently in **Lindsay Grant vs. Glen Phillip et al**, Hariprashad-Charles J at paragraphs 61-62 of her Judgment stated

a) "I am bound to follow the numerous judicial authorities from the Privy Council and our Court of Appeal that the Election Jurisdiction is a special and peculiar jurisdiction. The very special and peculiar nature of the Election Court jurisdiction is such that without an express application of the CPR by the provisions of the Election Act, on "the yet to be made" Rules, Election proceedings do not fall within the ambit of civil proceedings under CPR 2.2. Consequently I find that the CPR 2000 does not apply and the correct position to

[2] Claim No. SKBHCV2004/0183



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adopt is that held by Baptiste J. in **Lindsay Grant vs. Ruper Herbert** that the Court will, in the absence of express rules, be guided by its inherent jurisdiction.

b) The reference by Justice Hariprashad-Charles to CPR 2.2 is of considerable importance since subparagraph (3) of that rule prescribes the proceedings to which CPR 2000 does not apply. And at subparagraph (3) (c) the following is stated "any other proceedings in the Supreme Court instituted under an enactment, in so far as rules made under that enactment regulate those proceedings.

c) In the Federation of Saint Christopher and Nevis, elections are governed by a statute bearing the short title of National Assembly Elections Act Section 100 thereof vests in a Judge at the trial of an election petition, the same powers Jurisdiction, and authority as the trial of a civil action in the High Court.

d) With CPR 2000 excluded, it means that a Trial Judge in an Election case derives power to award costs from the inherent jurisdiction of the High Court as stated at Section 100 of the National Assembly Elections Act.

e) Therefore both the National Assembly Elections Act in the case of Saint Christopher and Nevis, and the Representation of the People Act, in the case of Antigua and Barbuda, there is a statute as contemplated by Rule 2.2, and thereby excludes CPR 2000 as not applicable to Election petitions."

Accordingly the basis upon which costs are awarded is the National Assembly Elections Act [3] and the inherent jurisdiction of the Court.

**Issue No. 2**

[23] Whether the Claim for costs by the Petitioner Mark Brantley is reasonable.

[3] Cap 2.01 of the Revised Laws of St. Kitts and Nevis.



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**Submissions**

[24] Counsel for the Petitioner Ms. Forrester stated that the Petitioner has applied for his costs in the matter to be quantified for his Legal team at EC$1,998,212.58.

The Petitioner has claimed the sum of US$51,000.00 as Legal fees for Douglas Mendes S.C, a sum of which the Respondents have agreed to. The Petitioner has also claimed the sum of US$60,000.00 as legal fees for Dane Hamilton Q.C.

[25] However the 3rd Respondent Bernadette Lawrence in her Affidavit of Points in dispute dated 1st July 2014 at paragraph 5 states;

"The total claim for the preparation of Affidavits is highly excessive, unreasonable and unjustified. The Petitioner was not certified for costs fit for two Senior Counsels. There is no justification why the Petitioner must be awarded costs for two Senior Counsel in this matter. There is no justification why the Petitioner should be reimbursed for the costs of overseas travel and Hotel accommodation for Senior Counsel and overseas Junior Counsel."

[26] Also Mr. Leroy Benjamin the 2nd Respondent in his Affidavit of Points of dispute filed on the 15th July 2014 at paragraphs 26-32 challenges the involvement of Dane Hamilton Q.C in the case, and states inter alia as follows;

"I have also reviewed the documents submitted in this matter and note that no fee notes were provided by Mr. Hamilton Q.C detailing the work done in this matter.

There is a wire transfer to Mr. Hamilton Q.C attached to the Bill of Costs in the sum of US$10,035.55. This wire transfer does not detail the nature of the transfer. The sum does not match the US$60,000.00 claimed by the Petitioner on behalf of Mr. Hamilton Q.C."

[27] Mr. Leroy Benjamin in his said Affidavit at paragraphs 28-32 deposes as follows;



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**Keithley Lake**

[28] "The Court did not certify the Petitioner to have two junior Counsel in this matter. I am advised that Keithley Lake is admitted to the Bar of St. Kitts and Nevis and therefore does not fall under the category of an overseas Counsel offering any expert services. The nature of the work listed in the Bill of Costs does not reveal any collaboration with Keithley Lake. I verily believe that this is because Keithley Lake did not participate in the prosecution of this case. No fee note is attached for Keithley Lake to prove that he was in fact involved in the preparation of the case and ought to be disallowed."

**Jean Dyer**

[29] "There is no authentic receipt given for the per diem of US$742.08. I am advised by my Counsel and verily believe that this ought to have formed part of the brief fee. Additionally the Petitioner has attempted to claim for accommodations, meals and travel for J. Dyer separately. No reason has been given as to why J. Dyer ought to be given this per diem. Based on the Bill of Costs and details of the nature of the work done, it appears that the only work done by J. Dyer was a total of Eighteen (18) hours of work in two days; the hours of work under this date, 24th January 2011 is highly excessive and ought to be reduced to three hours.

[30] The sum claimed for Keithley Lake is summed together with J. Dyer in the amount of US$79,475.00; there is no distinction as to the proportions of this fee between both Counsels; additionally the legal fees claimed for Junior Counsel In the matter exceeds the amount claimed for Senior Counsel D. Mendes.

[31] I am advised by my Counsel and verily believe that the case law and the practice authorities Junior Counsel legal fees calculated a rate of two-thirds Senior Counsel's legal



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fees. In this case I believe that the total amount to be awarded for Junior Counsel's legal fees in this case is two thirds of US$51,000.00 which is US$34,000.00."

[32] I agree with Counsel for the Respondents that there is no justification for the reimbursements of costs and per diem to Counsel Jean Dyer and I therefore disallow all fees and costs to Ms. Dyer.

**The Law**

**The Measure of Costs**

[33] In the case of **Ritter vs. Godfrey** [4] Atkin LJ stated;

"In exercising his discretion over costs a Judge should be guided by the following principles. In the case of a wholly successful defendant, the Judge must give him his costs unless there is evidence

1) That the Defendant brought about the litigation **or**
2) Has done something connected with the Institution or the conduct of the suit calculated to occasion unnecessary litigation and expense or
3) Has done some wrongful act in the course of the transaction of which the Plaintiff complains.

[34] As submitted by learned Counsel on behalf of the 1st Applicant in **Loreday vs. Renton et al** [5] as follows

"In assessing Counsel's brief fee, it is always relevant to take into account what work that fee together with any refreshers has to cover. The brief fee covers all this work done by way of preparation for representation at the Trial and attendance on the first day of the Trial. But in hearing litigation particularly where there is a team of barristers and experts,

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[4] [1920] 2KB 47,48

[5] [1992] 3 All E.R 184



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and additional work is involved in ensuring that the client is properly represented and his case fully developed beyond simply appearing in Court, such as Counsel having to meet to consider strategy and tactics and prepare material, and to meet experts prior to their going into the witness box to give evidence."

[35] The Court agrees with the submissions of both Counsel that the Court must determine the question of reasonableness. In the case of **Hughes vs. Meyrick** [6] Borill CJ stated;

"A party to whom costs were awarded was entitled to be identified against all costs reasonably incurred, that must depend upon the particular circumstances of each case."

[36] In **Peter Maxymych vs Global Convertible Megatren Ltd. et al** [7]**,** Olivetti J referenced the decision of the Privy Council in **Horsford vs Bird** [8] where Lord Hope of Craigshead stated as follows;

"It has to be borne in mind in judging what was reasonable and proportionate in this case, that the basis of the award was not that the Appellant was to be indemnified for all his costs. The respondent was to be required to pay only such costs as were reasonably incurred for the conduct of the hearing before the Judge and were proportionate."

[37] It is therefore pellucid that the Claimants must satisfy the Court that the costs that are being claimed is reasonable. The Claimant cannot say that the Defendants have not shown any basis for their claim that costs are excessive. Similarly the Defendants must show some basis for concluding that the costs are excessive; and cannot limit himself/herself to saying that the costs appear to be excessive, and that a lower sum has been claimed for similar cases.

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[6] [1870] R.R 5CP 407;410
[7] Claim No. 246 of 2006
[8] Claim No. 43 of 2004



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**The Bill of Costs**

[38] The Claimant filed his Bill of Costs on the 11th October 2012 in the amount of US$477,237.44.

However Counsel for the Claimant Ms. Dia Forrester in her submissions at an oral hearing of this matter on the 19th January 2015 conceded that Invoices tendered and amounting to EC$39658.31 should be deducted from the global amount in the said Bill of Costs as they related to another case.

Consequently the amount now claimed as costs by the Claimant is EC$1,248,882.86 at High Court level; EC$749,329.72 at the Court of Appeal, making a global figure of Fees and Disbursements EC$1,998,212.58.

[39] The Defendants submit that the time and costs claimed are excessive and unreasonable, that the matter raised no novel issues and while it was a weighty matter, it was not a complex one.

[40] In the Bill of Costs under Attorney's fees, the claim is for EC$245,831.63 for a multiplicity of tasks including investigation research, meeting with clients, preparation of submissions, preparation of pleadings, attendance at Court; the claim applies to the period July 11th 2011 to 21st March 2012 for a total of 670 hours.

[41] The Defendants submit that the hours claimed are excessive and unreasonable. The Defendants also submit that the work required, degree of preparation and attention allegedly applied by the Petitioner's Instructing Counsel was grossly exaggerated, excessive, unacceptable and included work which appeared to be duplicative and repetitious. The Defendants further submit that a total of 84 hours of work is reasonable for the preparation of this case.



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[42] Counsel for the Claimant disputes that the matter was not a complex one. Counsel reiterated that there were serious and substantive issues of public law which affected the rights of citizens in Nevis. Counsel further submits that an entire election had to be conducted again as a result of the case.

[43] Ms. Forrester pointed out that the Court of Appeal upheld the decision of the High Court and that these successes depended on their Legal team and the quality of time and effort provided by them. Counsel therefore reflected the submission of the Defendants as being unsupported, speculative and unrealistic as a result of the unique and multifaceted circumstances in the case.

[44] The Claimants have also exhibited the Invoices and copies of Bills of Costs for Dr. Henry Browne Q.C and Oral Martin in a similar Election case. The sum of EC$761,262.50 was approved as payment for the services of Dr. Browne and for Oral Martin in the sum of EC$100,000.00; See (Exhibit MAGB5).

[45] I have considered the submissions in writing from both parties and have studied and scrutinized the Claimant's Bill of Costs and attached Invoices.

[46] In my opinion, I consider that the Legal Fees presented for two Queen's Counsels, one Instructing Counsel and two Junior Counsel are fair and reasonable. I do not agree that the costs for Ms. Jean Dyer are justified, and will disallow those costs in relation to Legal fees, accommodation, meals and per diem and travel.

**Item 2**

[47] This is a claim for US$27,914.85 for preparation of Affidavits, meeting with Deponents and liaising with CCM members from the 11th July 2011 and the 14th December 2011 a total of 295 hours.



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[48] The Defendants do not agree with the amount claimed by the Petitioner. In their opinion the time and costs claimed are excessive and include works which is duplicative and repetitious. The Defendants also state that the Petitioner has over manpowered the number of Counsel in the matter and that only one Instructing Counsel was necessary in the matter.

**Item no. 3**

[49] This is a claim for EC$47.227.00 for attendance at Court and for conducting research for the period 15th January 2012 to March 21st 2012 (Counsels Dahlia Joseph and Perry Joseph) spending 139 hours.

The Defendants dispute this amount as being excessive, grossly exaggerated, unacceptable and included work which appeared to be duplicative and repetitious and say that a total of Eighty four hours is a reasonable period for the preparation of the case. The Petitioner however maintains that the trial took place as invoiced and that he had a duty to research the case for novel points of law; Counsel for the Petitioner states that over sixty Affidavits were prepared and fifty seven deponents gave evidence. Counsel states further that the preparation of the Petition for filing involved nine defendants and Counsel for the Petitioner had to cross-examine nine defendants.

**Item No. 4**

[50] The Claimants claim an amount of US$231,405.84 as Disbursements which the Claimants have itemised.

The disbursements include;

a) Legal fees for Counsel Douglas Mendes S.C for US$51,000.

b) Legal fees for Counsel Dane Hamilton Q.C US$60,000.00.

c) Legal fees for Keithley Lake and Jean Dyer US$79,475.81.



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d) Accommodation for Counsels- D. Mendes, D. Hamilton, Keithley Lake and Jean Dyer US$10,562.18.

e) Counsel disbursements (photocopying paper, toner, travel expenses, stamps, air tickets, meals, service of documents) at a total of US$15,282.

These items are stated as covering the period 6th July 2011 to 21st March 2012.

[51] The Defendants state in response that the Petitioner has over manned the number of lawyers used as Instructing Counsel, and that the nature of this matter only required one Instructing Counsel; the fees that are reasonable for Instructing Counsel ought to be one-third of Senior Counsel fees or 886 hours x US$202.44. Therefore according to the Defendants, legal fees for Instructing Counsel should be US$17,000.00.

One Senior Counsel- US$51,000.00

One Junior Counsel- US$34,000.00

One Instructing Counsel- US$17,000.00

Disbursements- US$3570.00

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Total fees- US$100,000.00

Disbursements- US$3570.00

[52] I have considered the submissions both oral and in writing from Counsel for both parties including the Petitioner's reply to the Defendants' submission on costs which is contained in the Affidavit Evidence of Mark Brantley dated 22nd September 2014.

[53] In my opinion, I consider that the most fair and reasonable disposition on the assessment of costs is to order costs to the Petitioner in the sum of US$177,593.85 with Disbursements for two Queen's Counsel, one Instructing Counsel and two Junior Counsels.



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I will also adopt the standard practice that Junior Counsel's Fees will be $\frac{2}{3}$ of that of Queen's Counsel.

[54] In coming to this determination on the Bill of Costs, I considered;

a) The work required, and the degree of preparation and professional attention which the Petitioner's lawyers applied to it.

b) That while some of the disbursements are too high and excessive, however I will allow;

   a. The sum of US$55,000.00 each for two Queen's Counsels.

   b. The sum of US$39,000.00 for one Instructing Counsel- Keithley Lake and disallow all disbursements costs for Jean Dyer.

   c. Accommodation costs are allowed for three Counsel; D. Mendes S.C, D. Hamilton Q.C and Keithley Lake;
   Although the costs for accommodation were not broken down and the length of stay in the hotel for Counsels seems to be excessive, these are costs that are allowable.

[55] In my respectful opinion some line items, and the number of hours claimed to have been worked is unacceptably high, and they appear excessive, duplicative and repetitious. For example from January 17th 2012 to January 25th 2012, the costs in relation to preparation by Counsel for attending Court and preparing bundles appear to be duplicative and excessively high. The nature of the work undertaken by Counsel is also not detailed in the Bill of Costs.

[56] Also the costs for refund of tickets for overseas witnesses who are not named and with no documents to support the claim makes it is very difficult to allow this line item, and



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consequently I will disallow that claim. Further there is no no justification or Invoice which has been exhibited for a Charter for D. Hamilton Q.C on the 6/8 July 2011 consequently this claim is disallowed as being unjustified and excessive. However I will allow the cost of a regular scheduled plane ticket.

[57] Although there might appear to be over manning in the case, the Defendants have not satisfied me that there is no justification for utilizing the Legal Counsels I have allowed, and for claiming costs for them.

[58] The Petitioner is claiming according to the Defendants the sum of US$225.00 per hour for work done by Counsel Adrian Daniel, Us$375.00 per hour for Perry Joseph and US$350.00 per hour for Dahlia Joseph.

At the material time Counsel Dahlia Joseph was seven years called to the Bar, Counsel Adrian Daniel was one year called to the Bar, and Counsel Perry Joseph was eleven years called to the Bar.

In the Assessment of costs case of **HMB Holdings Ltd. vs. The Attorney General and David Matthias** Mathurin M (as she then was) held at paragph 10 as follows;

"I would have difficulty in assessing that an hourly rate is in excess of EC$1000.00 per hour. I agree with the Attorney-General's submissions that this amount is excessive, and although the learned Attorney-General has not provided any comparators, I agree that the fees charged should be at rates reasonable for and appropriate to Counsel at the utter bar of Antigua and Barbuda.

My experience in this jurisdiction makes me comfortable in allowing the sum of **EC$550.00 or US$203.00** as a more appropriate rate of Counsel more than **18 years call.**"

[59] In the circumstances and in reviewing the work performed by Junior Counsels, I will award legal fees to two Junior Counsel, Dahlia Joseph and Perry Joseph at the standard practice



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of calculating Junior Counsel's fees as being **two-thirds** of Senior Counsel fees and disallow the hourly rates as invoiced.

[60] In relation to Instructing Counsel the claim in the Bill of Costs for two Instructing Counsel Keithley Lake and Jean Dyer is US$79,475.81.

I have already stated that fees and costs for Jean Dyer is excessive, unwarranted and unjustified and I will disallow all those costs.

The sum claimed for Instructing Counsel is not detailed and I am unable to determine the scope of work which Mr. K Lake performed, and the hours spent in the conduct of the matter.

However I recognize the weightiness and complexity of this matter and I will allow the sum of US$39,000.00 as reasonable legal fees for Mr. Lake. Since Counsel Lake came from overseas to conduct this matter, I will allow accommodation costs, airfare, and expenses for meals for Mr. Lake as they are reasonable.

[61] It is hereby ordered as follows;

1. The total sum of EC$479,503.40 due on the Bill of Costs for the High Court is allowed.
2. The total sum of EC$319,668.92 is allowed for the Court of Appeal.
3. The Legal fees and costs claimed by Counsel Jean Dyer is disallowed.
4. Legal fees and costs are allowed as follows;
   - Douglas Mendes S.C- US$55,000.00
   - Dane Hamilton Q.C- US$55,000.00
   - Keithly Lake- US$39,000.00
   - Dahlia Joseph- US$34,000.00
   - Perry Joseph- US$34,000.00



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as they are considered reasonable in the circumstances having regard to the complexity of the matter and duration of Court proceedings.

[62] Costs to the Petitioner, to be assessed if not agreed upon for this application.

[63] I thank Counsel on both sides for their assistance to the Court in this matter.

**Lorraine Williams**
High Court Judge.



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