

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO 29/2009**

<b>BETWEEN</b>	<b>BARTHOLOMEW BROWN</b>	<b>1<sup>ST</sup> APPELLANT</b>
<b>A N D</b>	<b>BRIDGETTE BROWN</b>	<b>2<sup>ND</sup> APPELLANT</b>
<b>A N D</b>	<b>JAMAICA NATIONAL BUILDING SOCIETY</b>	<b>RESPONDENT</b>

**4 February 2014**

**(Considered on paper pursuant to rule 2.10(3) of the Court of Appeal  
Rules 2002)**

**IN CHAMBERS**

**Appeal against taxation**

**HARRIS JA**

[1] On 4 March 2010, the appellants were successful in an appeal against the respondent and costs were awarded to them. An amended bill of costs was laid by them. It is as follows:

"In March 2009 the Appellants  
spent some 110 hours preparing  
Notice of Appeal @ \$7,000.00 per  
hour

\$770,000.00

TO PREPARING THE FOLLOWING  
DOCUMENTS

Notice of Appeal (including review of judgment of the Supreme Court 5 hours @ \$7,000.00 per hours	\$35,000.00
Copy to Keep 19 pages @ \$10.00	190.00
Copy to file 19 pages @ \$10.00	190.00
Copy to serve 19 [pages] @\$10.00	190.00
To prepare Record of Appeal  (Appellants) 1.5 hour[s] @ \$7,000.00	\$10,500.00
Copy to keep 52 pages @ \$10.00	520.00
Copy to file 156 pages @ \$10.00	1,560.00
Written Submissions and Affidavit	
Copy to keep 25 pages @ \$10.00	250.00
Copy to file 25 pages @ \$10.00	250.00
Copy to serve 25 pages @ \$10.00 `250.00	
Authorities relied on by the Appellants Appellants spent 5 hours reviewing @ \$7,000.00	\$35,000.00
Respondent [sic] written Submissions and authorities relied on therein  (Appellants in person) spent 4 hours @ \$7,000.00	\$28,000.00
Judgment dated March 4, 2010 (Appellants in person) 3 hours @ \$7,000.00	\$21,000.00
Preparing Bill of Costs	5,000.00

Copy to keep 3 pages @ \$10.00	30.00
Copy to file 3 pages @ \$10.00	30.00
Copy to serve 3 pages @ \$10.00	30.00
Attendance and travelling	35,000.00
Subtotal	\$942,470.00
GCT (17.5%)	\$164,932.25
Total	\$1,107,402.25."

[2] The costs were taxed by the registrar in the sum of \$216,740.00, the following items being allowed:-

"Notice of Appeal (including review of judgment of the Supreme Court

5 hours @ \$7,000.00 per hour	\$35,000.00
Copy to keep	190.00
Copy to file	190.00
Copy to serve	190.00
To prepare record 1.5 hours @ \$4,500.00	6750.00
Copy to keep	250.00
Copy to file	250.00
Copy to serve	250.00

Written Submissions and Affidavit

Copy to keep	250.00
Copy to file	250.00

Copy to serve	250.00
Reviewing Authorities relied on by appellants - 5 hours	
@ \$4500.00 per hour	22,500.00
Respondent's written submissions and authorities - 4 hours	
@ \$ 4500.00	18,000.00
Judgment - 3 hours	13,500.00
Preparing bill of costs	5000.00
Copy to keep	30.00
Copy to file	30.00
Copy to serve	30.00
Attendance and travelling	35,000.00."

[3] The appellants now challenge the costs as taxed.

[4] The appellants filed seven grounds of appeal. Rule 65.28 (2) (a) of the Civil Procedure Rules (2002) (CPR) prescribes that each item in the taxation which is appealed must be specified in the appeal notice. The appellants have not done so. They have, instead, elected to disregard the rule and have filed grounds in which they have posed questions. This procedure is clearly wrong. Despite this, in the interests of justice, the matter will be considered.

### **Ground one**

"Whether the Applicants [sic] are entitle [sic] to received [sic] two (2) days Costs for the hearing of this appeal that was heard on November 2-3, 2009?"

[5] The appellants did not list their attendance at court on 2 and 3 November 2009 as an item for taxation in their bill of costs. Therefore, the question posed is not relevant on the review of the taxation of costs.

### **Ground two**

"Whether the Registrar erred in assessing the Appellants [sic] Costs on the Basic Principle rather than the Indemnity Principle?"

[6] The case is not a complex one. The registrar, in assessing the costs, was required to adhere to the basic costs principle, in accordance with the schedule to the Court of Appeal Rules. There is no rule requiring her to have taxed the costs in accordance with the indemnity principle. Nor is there any reason for her to have done so.

### **Ground three**

"Basic Costs in the Court of Appeal of Jamaica have: 'been calculated on the basis of a minimum rate of \$6,000.00 per hour, \$90,000.00 for the first day of hearing, plus for each additional day of hearing, \$24,000.00.'

Is the amount of hours claimed by the applicants [sic] reasonable? Dose [sic] the authority relied on have any relevance in the matter."

[7] The hours claimed by the appellants in relation to various items were unreasonable. The registrar correctly assessed and allowed the hours spent by the appellants in respect of each item. However, on three items, she erroneously fixed the hourly minimum rate of the costs at \$4,500.00. By the basic costs schedule, the hourly costs are calculated at a minimum rate of \$6,000.00. In

keeping with the provision of the schedule, the hourly rate ought to have been calculated by the registrar at \$6000.00. As a consequence, the appellants would have been entitled to \$6,000.00 per hour instead of \$4,500.00.

### **Grounds four and five**

"Should the Registrar take into account the Conduct of the Respondent? Whether the Respondent's [sic] and their [sic] Attorney's [sic] are abusing the process of the Courts? And if so should she invoke the Indemnity Costs Principle?

Whether there was any Procedurals [sic] Fraud committed by these individuals? [sic] Were the Courts [sic] process been [sic] abused by the Respondent's [sic] and Mr. McBean?"

[8] This is an appeal against the taxation of the costs. The questions posed are irrelevant.

### **Ground six**

"Should the Court upon review of the files submitted by the parties, make an Order for Wasted Costs? Whether \$4,500.00 is the reasonable fees for a Litigant in person, where the Respondent had turned the matter into a very complex and vexatious dispute? [sic]"

[9] There is nothing to show that the appellants would have been entitled to recover an amount for wasted costs. An allowance of basic costs, as specified by the schedule, at the rate of \$6000.00 per hour is reasonable.

### **Ground seven**

"Is [sic] the Costs incurred on the Taxation procedure itself are [sic] in principle recoverable? And if so how much? Is this case one that fall [sic] within the ambit for Indemnity & Wasted Costs?"

[10] The first question is vague. However, if the appellants wish to know whether they are entitled to costs for attendance at taxation, the answer is in the affirmative. Costs for the appellants' attendance at taxation had been awarded by the registrar. The third question has already been answered.

[11] The appellants are entitled to the following costs on those items in which the costs were taxed at \$4,500.00 instead of \$6,000.00 per hour:

To prepare record 1.5 hours @\$6,000.00 per hour	\$ 9,000.00
Preparing authorities 5 hours @\$6,000 per hour	30,000.00
Reviewing respondent's written submissions and authorities 4 hours @\$6,000 per hour	24,000.00
Attendance to receive Judgment 3 hours @ \$6000.00 per hour	18,000.00.

[12] The appeal is allowed only to the extent of the difference between the costs as taxed in paragraph [11] above and the costs as taxed by the registrar on those items. All other costs, as taxed by the registrar remain. It is ordered that the costs are taxed at \$232,490.00.