[2016] JMCA App 10

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 179/2014

BEFORE: **THE HON MR JUSTICE BROOKS JA**
THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA (AG)

BETWEEN	**DAYNE SMITH**	**APPLICANT**
AND	**WILLIAM HYLTON**	**1ST RESPONDENT**
AND	**ANNMARIE HYLTON**	**2ND RESPONDENT**

13 April and 13 May 2016

Richard Reitzin and Miss Petra Phillips instructed by Reitzin and Hernandez for the applicant

M Maurice Manning instructed by Ms Sherry-Ann McGregor of Nunes, Scholefield, DeLeon and Co for the respondents

BROOKS JA

[1] This is an application for the stay of execution of an order for costs, which was made by this court. The applicant, Mr Dayne Smith, was injured in a motor vehicle crash on 25 March 2011. He was the driver of one of the two vehicles involved in the crash, whilst the respondents, Mr William Hylton and his wife Mrs Annmarie Hylton,

were the owner and driver respectively, of the other vehicle. Mr Smith sued Mr and Mrs Hylton in order to recover damages for his loss and damage.

[2] Mrs Hylton eventually admitted liability and judgment on admission with damages to be assessed was entered against her. Mr Hylton denied liability. He asserted that Mrs Hylton was not his servant or agent when she drove his vehicle. Mrs Hylton's admission and the resultant order for judgment were made at a case management conference. At that time, a date was set for the hearing of the assessment of damages, but unfortunately, no orders were then made in respect of the trial of the claim against Mr Hylton.

[3] When the assessment of damages came on for hearing before C Brown J (Ag), as she then was, the learned judge, after considering the matter, decided that the "[a]ssessment of damages against [Mrs Hylton] cannot proceed before the trial against [Mr Hylton]", and that it should "be heard at the same time as the trial between [Mr Smith] and [Mr Hylton]" (see paragraphs [12] and [14] of her reasons for judgment). She also ordered that a case management conference should be held in advance of that trial.

[4] Mr Smith was aggrieved by that order. He applied, unsuccessfully, to this court for permission to appeal against it, C Brown J (Ag) having previously refused him permission to appeal. In addition to refusing him permission to appeal, this court ordered that he should pay the costs of the application.

[5] Since that time the claim has proceeded in the Supreme Court. A trial date has been set for sometime in 2017. In this court, the Hyltons have been pursuing securing the fruits of the costs order made in their favour. Mr Smith's present application before this court is for the latter process to be permanently halted.

[6] Mr Smith's application took a surprising turn when the hearing commenced before this court. Mr Reitzin, bravely appearing on behalf of Mr Smith, despite physically challenging personal circumstances, submitted that this court had no jurisdiction to make the order for costs that it did. Learned counsel also argued that if the court did not agree with that position, it should nonetheless stay the execution of the bill of costs and, in any event, the execution of any order on taxation of that bill. His arguments on each point, and the response by Mr Manning, appearing for the Hyltons, shall be separately assessed below.

The jurisdiction point

[7] Mr Reitzin sought to make it clear that there was a distinction between costs in respect of an appeal and costs in respect of an application for permission to appeal. Whereas, he submitted, there was ample evidence of authority for awarding costs in respect of the former, and applications related to appeals in existence, there was no rule authorising an order for costs in the case of an application for permission to appeal.

[8] Learned counsel pointed to rule 1.18 of the Court of Appeal Rules (CAR). He submitted that the rule incorporated parts 64 and 65 of the Civil Procedure Rules (CPR),

with appropriate amendments, into the CAR. Rule 1.18, he said, in incorporating parts 64 and 65, did not refer to applications for permission to appeal, but rather to appeals. There was, similarly, he argued, no reference to such applications in either part 64 or part 65, which are the parts of the CPR dealing with costs.

[9] Mr Reitzin then turned his attention to the Judicature (Appellate Jurisdiction) Act (the Act). He submitted that, whereas the Act does give the court the power to make orders for costs, that power is to be exercised in the context of the rules. It is therefore to the rules that one must look for guidance. Applying the canons for construction of statutory instruments, in such cases, learned counsel submitted, it should be held that the draftsman intended that the court ought not to be able to make orders for costs in respect of applications for permission to appeal.

[10] Learned counsel accepted that this court, both before and since the inception of the CAR, had made orders for costs consequent on ruling on applications for permission to appeal. If, however, the practice is wrong, he argued, it ought to be recognised as such and brought to an end.

[11] Mr Manning, for the Hyltons, adopted a different approach to the legislation. He argued that section 30(3) of the Act provided that the court did have the discretion to make orders for costs in every aspect of its jurisdiction.

[12] Learned counsel submitted that rules 64.3 and 64.4 of the CPR reinforce that point. Mr Manning submitted that even if the rules omitted to grant the authority, the

Act did authorise the awarding of costs in any proceedings before the court, including applications for permission to appeal.

[13] Mr Manning further argued that it was far too late in the day for Mr Smith to raise this point. He submitted that this court had made the order for costs over a year ago. Counsel for the parties would, at the time of the making of the order, have been entitled to make submissions concerning the appropriateness of the order, either as to jurisdiction or to quantum. None was, however, made.

[14] Rules 64.3 and 64.4, to which Mr Manning referred, are, at first blush, of general application. They state as follows:

> **"Orders about costs**
>
> 64.3 The court's powers to make orders about costs include power to make orders requiring any person to pay the costs of another person arising out of or related to all or any part of any proceedings.
>
> **Costs where there is an appeal**
>
> 64.4 The court hearing an appeal may make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal."

Mr Reitzin argued that neither of these rules had any application unless they were imported by rule 1.18, which, he submitted, they were not.

[15] In considering these submissions, it may be noted that applications for permission to appeal in civil proceedings are not to be heard by a single judge as was contemplated by the rule 1.8 of the CAR, but are to be heard by the court. This was the

ruling in **John McKay v Attorney General** [2011] JMCA App 26. It was held in that case that despite the CAR purporting to grant the power to a single judge of this court to consider and grant applications for permission to appeal, the Act allowed only the court to exercise that authority.

[16] It would have been gleaned from the review of the submissions that the question in this aspect of the case is: "where there has been a contested application for permission to appeal, how is the issue of costs to be resolved?" On Mr Reitzin's submissions, there would be no order for costs, as the court would not have had the jurisdiction to award costs. Mr Manning would have the court follow the general rule that the unsuccessful party should pay the costs of the successful party.

[17] Although interesting, Mr Reitzin's submissions must fail. The first reason for the failure is the cumulative effect of three main factors. Firstly and most importantly, section 30(3) of the Act does not restrict to appeals, the matters in which the court may grant orders for costs. Specifically for these purposes, applications made prior to the institution of an appeal, particularly applications for permission to appeal, are not excluded by the section. It states as follows:

> "Subject to subsections (1) and (2), the provisions of any other enactment and to rules of court, the costs of and incidental to **all civil proceedings** in the Court shall be in the discretion of the Court." (Emphasis supplied)

Subsections (1) and (2) of section 30 do not affect the present issue. It is unnecessary to quote them. It then has to be determined if any other enactment or rule of court

restricts the authority given to the court, by section 30(3). This brings to focus the second aspect of the first reason for disagreeing with Mr Reitzin.

[18] The second factor, as does the third to follow, draws its potency from the first. Its thrust is that no provision restricts the authority given by section 30 to award costs in applications for permission to appeal. No other enactment or rule of court which has been brought to our attention, except the CAR, and its incorporation of the CPR, seems to specifically address the issue of the award of costs by this court. A review of the CAR shows that it does not restrict the authority granted by section 30(3) to make orders in respect of applications for permission to appeal.

[19] The broad authority, given by section 30(3), to grant costs in civil proceedings is not limited by rule 1.18. Even if it were accepted, despite the provisions of rules 64.3 and 64.4 of the CPR, that rule 1.18 only incorporates the provisions of the CPR in cases of appeals, as opposed to applications for permission to appeal, the result would be that there is no restriction to the court's authority, as granted by section 30(3), to grant costs in the case of applications for permission to appeal. What rule 1.18 provides, is that where appeals are concerned, the provisions of parts 64 and 65 apply to the issues of award and quantification of costs. The rule states as follows:

> "(1) The provisions of CPR Parts 64 and 65 apply to the award and quantification of costs of an appeal subject to any necessary modifications and in particular to the amendments set out in this rule.
>
> (2) The following words are to be substituted - for "**Appendix B to this Part**" substitute "**Appendix B to these Rules**";

for "**Chief Justice**" substitute "**President**";
for "**case management conference**" and "**pre-trial review**" substitute "**case management hearing under rule 2.9**"
for "**claim**" substitute "**appeal**";
for "**claimant**" substitute "**appellant**";
for "**proceedings**" substitute "**appeal**"
for "**statement of case**" substitute where appropriate "**notice of appeal or counter-notice**"; and
for "**trial**" substitute "**hearing of appeal**".

(3) The expression -
"**court**" means the **Court of Appeal**;
"**registrar**" means the Registrar of the Court of Appeal;
"**registry**" means the registry of the Court of Appeal; and
"**these Rules**" mean the Court of Appeal Rules 2002.

(4) The following rules do not apply -
rules 65.2(a), 65.3, 65.4, 65.5, 65.6, 65.8(3) and Appendices A and B." (Emphasis as in original)

[20] Mr Reitzin's submission is that since the rules are silent in respect of applications for permission to appeal, it means that it was not contemplated that costs would be awarded in such matters. His submission could find support in the fact that in the pre-CAR dispensation, the rules specifically provided for the court, in such circumstances, to make orders for costs. Rule 22(2) of the Court of Appeal Rules 1962 (the old rules) so stipulated. It stated:

> "Any application to the Court for leave to appeal (other than an application made after the expiration of the time for appealing[)] shall be made *ex parte* in the first instance; but unless the application is then dismissed or it appears to the Court that undue hardship would be caused by an adjournment, the Court shall adjourn the application and give directions for the service of notice thereof upon the

> party or parties affected, and if on the adjourned application leave to appeal is refused **the Court may make such order as to the costs of any such party as may be just.**" (Emphasis supplied)

[21] Examples of cases in which costs were ordered, other than in an appeal, may be seen in the following cases:

> **Patrick v Walker** (1966) 10 WIR 110 – notice of appeal, having been filed without permission, was declared void on a preliminary point, with costs to the respondent; and
>
> **Charles Stewart v Glennis Rose** Motion No 15/1997 (delivered 17 June 1997) – application for permission to file appeal out of time was granted with costs of the application to be costs in the cause.

[22] The third factor, which is closely connected to and supports the second, specifically answers this aspect of Mr Reitzin's submission. It is that silence in the CAR cannot deprive the court of an authority granted by the Act. The decisions in **John McKay** and in **William Clarke v The Bank of Nova Scotia Jamaica Ltd** [2013] JMCA App 9 are classic examples of this court's acceptance of the principle that subsidiary legislation, such as the CAR, cannot override the provisions of the statute, representing the will of Parliament, or, indeed, of the Constitution. In applying that principle to this issue, it may be said that, without more, "what the Act gives, the rules cannot take away". In **Clarke v The Bank of Nova Scotia**, a five-judge panel of this court held that the power that the CAR purported to give to a single judge in procedural

appeal was invalid because it would have had the effect of depriving the appellant of a Constitutional right of a further appeal.

[23] In the years since the inception of the CAR, this court has continued to grant orders for costs, as it had been accustomed to do under the regime of the old rules. In recent times, orders for costs have been made in connection with applications for permission to appeal in the following cases:

> **National Commercial Bank Jamaica Limited v Garey Whittaker** [2013] JMCA App 30 - application for permission to appeal refused with costs of the application awarded to the respondent;
>
> **Primrose Cohen v Rollington Sterling and Another** [2014] JMCA App 6 – application for extension of time to file notice of appeal refused with costs to the respondents;
>
> **Egerton Chang and Another v Supreme Ventures Ltd** [2014] JMCA App 24 – application for permission to appeal granted with costs to the respondent to be agreed or taxed; and
>
> **Ilene Williams v Wesley Williams** [2015] JMCA App 48 – application for permission to appeal granted with costs to the applicant to be taxed if not agreed.

An application for extension of time has been included in this listing. Since such applications are made prior to the existence of an appeal, they would, using Mr Reitzin's

categorisation, not be proceedings in an appeal and would, therefore, be in the same position as applications for permission to appeal.

[24] The practice of this court of awarding costs in connection with these applications has undoubtedly been exercised as a part of the court's control of its process. That power to control its process is undoubtedly derived from the fact that this court has been given, by section 30(3) the power to grant costs. The exercise of that power has been continued in the way it formerly had been done. It should be noted, by section 9 of the Act, this court has all the powers of the former Court of Appeal. Those powers were outlined in the judgment of Downer JA in **Stewart v Rose**, cited above. In that case, the respondent sought to challenge this court's jurisdiction to grant a stay of execution or leave to file a notice of appeal out of time. Downer JA stated, in part at page 6 of the judgment:

> "In considering this issue, it is important to bear in mind that this court is a superior court of record by virtue of section 103(5) of the Constitution. Further, by legislative references to section 9 and 10 of the Judicature (Appellate Jurisdiction) Act it acquired the historic inherent, common law, equity and procedural powers of the former Appeal Court which was part of the Supreme Court prior to 1962. Further, the Supreme Court prior to 1962 and continuing to this day, has inherited all the powers of the courts which were consolidated to form one Supreme Court. See section 4 of the Judicature (Supreme Court) Act. This section reads:
>
> > '4. On the commencement of this Act, the several Courts of this Island hereinafter mentioned, that is to say-
> >
> > The Supreme Court of Judicature,
> > The High Court of Chancery,
> > The Incumbered Estates' Court,

> The Court of Ordinary,
> The Court for Divorce and Matrimonial Causes,
> The Chief Court of Bankruptcy, and
> The Circuit Courts,
>
> shall be consolidated together, and shall constitute one Supreme Court of Judicature in Jamaica, under the name of 'the Supreme Court of Judicature of Jamaica', hereinafter called 'the Supreme Court'."

Downer JA went on, at page 9 of his judgment, to cite the "principle that in the absence of a rule of law or procedure, a superior court of record has jurisdiction to regulate its own procedure".

[25] Since the inception of the CPR, the orders made in respect of costs in applications for permission to appeal must be considered as orders made in the course of this court regulating its own procedure. The normal orders, since that time, are that where those applications are successful, the costs will normally be ordered to be costs in the appeal. Where the applications are contested and are unsuccessful, the costs will normally be awarded to the respondent. All these orders, and any variations from the norm, are authorised under the general canopy of section 30(3) of the Act.

[26] It is for that tri-factored reason that Mr Reitzin's submission cannot be accepted as being valid.

[27] Litigants should note, however, that rule 1.8 contemplates that applications for permission to appeal need not be made on notice to the intended respondent. Rule 1.8(4) states the general position:

"(4) Notice need not be given to any proposed respondent unless the court below, the court or a single judge so directs."

If the intended general procedure is observed the incidents of orders for costs against the applicants will be reduced.

[28] There is yet another reason that Mr Reitzin's submissions on this point should fail. Mr Manning stressed this reason. It is that this court has already made an order for costs in this case. Another court of equal jurisdiction cannot overturn or set aside that decision except in certain specific circumstances (see paragraph [58] of **Ralford Gordon v Angene Russell** [2012] JMCA App 6). Such a circumstance would be a finding that the previous decision was plainly wrong, or was made, *per incuriam*, which is literally translated to mean "through want of care".

[29] This is not the case in which such a grave step need be taken. The present point was raised by Mr Reitzin without notice to the court or to the Hyltons' attorneys-at-law. The point ought to have been taken at the time the order for costs was made or before the order was perfected (see paragraphs 22 to 24 of the decision of the Privy Council in **Sans Souci Limited v VRL Services Limited** [2012] UKPC 6). Mr Manning is correct on this aspect of his submissions.

[30] The stay aspect of Mr Reitzin's submissions must now be considered.

The stay point

[31] Mr Reitzin submitted that if the court did not agree with him on the jurisdiction point, it should, nonetheless, grant a stay of the enforcement of the order for costs made in favour of the Hyltons against Mr Smith. Learned counsel argued that there were two tests to be considered in assessing the application for the grant of a stay.

[32] The first test, he said, was Mr Smith's prospects of success in the substantive proceedings. Those prospects, learned counsel submitted, were very good. Not only, Mr Reitzin argued, did Mr Smith have a judgment against Mrs Hylton, but there was a development that assured his success against Mr Hylton as well. That development, learned counsel submitted, was Mr Hylton's agreement to pay damages and costs to another person who had been injured in the same crash. Mr Reitzin argued that that development was a powerful indication that Mr Hylton may be estopped from denying liability at the trial of Mr Smith's claim.

[33] The second test, Mr Reitzin submitted, is the risk of injustice to Mr Smith if the court declines to grant a stay. For this argument Mr Reitzin centred his submissions on an aspect of the "overriding objective" set out in the CPR. Learned counsel argued that as the overriding objective required that parties, as far as was practicable, be "on an equal footing and are not prejudiced by their financial position" (rule 1.1(2)(a) of the CPR), the court should seek to ensure that Mr Smith, a plumber by trade, was not prejudiced by his limited means, as against the greater assets of the insurance company that supports the Hyltons in these proceedings.

[34] Based on the bill of costs laid by the Hyltons' attorneys-at-law, Mr Reitzin submitted, an enforcement of the order for costs is likely to severely prejudice Mr Smith. Learned counsel outlined the dire consequences, including the risk of incarceration, of the enforcement of an order to pay taxed costs, where the judgment debtor is of limited means. Those consequences were a real possibility in Mr Smith's case, submitted Mr Reitzin. Enforcement would, he argued, have a dire effect on Mr Smith's ability to prosecute his claim against the Hyltons.

[35] It is in this context, Mr Reitzin submitted, that the overriding objective was important. The grant of a stay in these circumstances, he argued, would ensure that the parties remained on an equal footing for the trial of the claim in the Supreme Court. That equal footing, learned counsel submitted, is what the overriding objective demands.

[36] Mr Reitzin argued that, on those bases, Mr Smith had satisfied the two tests required for the grant of a stay. He relied, in support of those submissions, on **Dennis Atkinson v Development Bank of Jamaica Limited** [2015] JMCA App 40.

[37] In response, Mr Manning submitted that an application of the overriding objective did not contemplate justice for one side only. He argued that the general rule is that, where an order for costs is made on the conclusion of an appeal, the successful party is entitled to have his costs paid at once. The authorities stipulated, Mr Manning

submitted, that a stay of an order for costs was only granted in exceptional circumstances. He argued that there was nothing exceptional in the present case.

[38] Learned counsel submitted that the order for costs had been fairly and appropriately granted and that the Hyltons ought not to be deprived of its fruits. The prejudice to them, he argued, would be that they would continue to be out of pocket despite their deserved success at the end of the hearing of the application for permission to appeal. He relied on, among others, **Marilyn Hamilton v United General Insurance Company Limited** [2010] JMCA App 32. Mr Manning argued that, if the court were minded to grant a stay, it should not affect the taxation of the costs but only stay the actual enforcement of the order until the trial date.

[39] The evidence from Mr Smith's witness statement, prepared for the trial in the Supreme Court, reveals that he is 31 years old. He was, at the time of his injury in the crash caused by Mrs Hylton's negligence, working with his father as a plumber. He was then earning $18,000.00 per week. Subsequently, he became a taxi-driver earning $11,000.00 per week. He clearly is a man of limited means. The bill of costs filed by the Hyltons' attorneys-at-law claims $1,426,924.00. The chances are that Mr Smith would be severely challenged if he were to have to meet a claim for the payment of a taxed bill in a sum in that region. How is the situation to be resolved?

[40] It is true that the decision in **Hamilton v United General** is authority for the principle that a successful litigant in this court is, generally speaking, entitled to immediately enforce an award of costs at the conclusion of an appeal. A departure from

that general rule requires special circumstances. There have been examples of departure in the past.

[41] Mr Manning cited **Fiduciary Limited and Another v Morningstar Research Pty Limited** [2002] NSWSC 432 in support of his submissions. In that Australian case, Barrett J ordered that costs of an interlocutory order should be made forthwith. This was a departure from the norm. The norm in that court of first instance is that the payment of costs should await the conclusion of the claim. In making the order, Barrett J considered a number of factors including the fact that the trial was scheduled for a date in excess of a year from the time that he was considering the application. The case is not really helpful in this analysis, although it did provide some guidelines for considering whether or not to order the immediate execution of an order for costs.

[42] In **Stevens v Economic House Builders Ltd** [1938] 1 All ER 654, the English Court of Appeal "granted a stay of payment of costs by a solvent party to an insolvent party in a case where in further proceedings there may be costs due to the solvent party by the insolvent, thus affording an opportunity of set-off". The headnote of the case reads as follows:

> "The plaintiff brought an action for damages for personal injuries caused by negligence or breach of statutory duty. At the close of the plaintiff's case, the judge ruled that there was not sufficient evidence of negligence to go to the jury, and he directed the jury to find a verdict for the defendants. On appeal, it was held that there was evidence of negligence sufficient to go to the jury, and that it could not be said that there was conclusive evidence of contributory negligence on the plaintiff's part. A new trial was therefore ordered. The costs of the first trial not having been paid by the plaintiff, a

bankruptcy notice had been served on him in respect of those costs:—

Held – there must be a stay of the order for the costs of the appeal until after the new trial. Should the defendants be successful again, the costs of the trial would be set off against the costs of the appeal."

[43] The circumstances in **Stevens** are not exactly on all fours with the present case but are sufficiently close to warrant attention. Mr Smith's position may, arguably, be said to be stronger than that of the solvent defendant in **Stevens**. Whereas that defendant was to undergo a trial where the result was uncertain, Mr Smith is, at least, assured of an award of damages against Mrs Hylton.

[44] Another case, which had similar, though not identical, circumstances to the present case, is **Horrobin and Another v Anz Banking Group** [1997] NSWSC 232. In that case, the defendants succeeded in having set aside, a summary judgment that had been made against them. Their defence to a bank's claim and their counter-claim against a bank were ordered to be tried. The defendants wanted to have their costs paid immediately while the bank wished to have payment stayed until after the trial. The relative financial resources of the parties were considered in the course of the deliberations. Despite the bank's assertions that the defendants were able to finance the costs of litigation, the Supreme Court of New South Wales ruled that the usual order should be made for the costs of setting aside the summary judgment to be paid forthwith. It was pointed out at page seven of the judgment that cases should be "considered by reference to their own particular facts".

[45] Mr Smith's case is different from the bank's position in **Horrobin**. In **Horrobin**, there was no issue of the bank being unable to afford the award of costs or being hampered if the award were executed on it. Mr Smith's limited means have been distinctly raised in this case.

[46] His position is somewhat stronger than that of the defendants in **Horrobin.** They faced the prospect of a trial with an unknown result. Mr Smith is assured of an award of damages. Whether or not that award is likely to exceed the sum for which the costs in this court will be taxed is a matter for determination in the future. He should not, however, as a person with limited means, as appears from the information in his witness statement, be subject to having to pay the costs of the appeal, until he has had an opportunity to have his claim assessed and there is a fund to which he can look to assist him in satisfying those costs.

[47] On the other hand, there is no basis for preventing the Hyltons, in the meantime, from proceeding with the taxation of their bill of costs. That exercise will assist the parties as they continue their preparation for the trial in the Supreme Court. Both will know, at the end of the exercise, what Mr Smith's eventual liability to the Hylton's will be. It may even assist in bringing the claim to a negotiated settlement. The prospect of the stay coming to an end at the trial date will also galvanise Mr Smith to do all that he can to ensure that the trial commences on that date and is efficiently conducted.

[48] Based on the reasoning set out above, the application to stay the taxation of the bill of costs should be refused but the application to stay the enforcement of the order for costs, as determined on taxation, should be granted. In order to ensure that Mr Smith remains focussed on having his case ready for trial on that date, the stay should only be until the first trial date of the claim herein, or until further order of the court.

Costs

[49] Mr Smith's position, as described by his affidavit and the circumstances revealed by the record, makes it necessary to separately consider the appropriate order that should be made in respect of the costs of this application. Based on the reasoning set out above, both parties have had a measure of success. In addition, Mr Smith, having been injured by Mrs Hylton's admitted negligence, should not ordinarily be made to suffer the indignity of having to surrender all his award of damages to satisfy awards for costs. It is true that he made a hopeless application for permission to appeal. He has, however, had an order against him in that regard and will have to pay for his folly.

[50] His present application is not, however, in the same category. This has been demonstrated in the reasoning above on the stay point. Nonetheless, the Hyltons are being made to forego a right which they undoubtedly have. They should not be further penalised by having to pay the costs of the application.

[51] In balancing these competing positions, the appropriate order in respect of this application is that there should be no order as to costs.

WILLIAMS JA

[52] I have read the judgment of my brother Brooks JA. I agree entirely with his reasoning and conclusion and have nothing to add.

EDWARDS JA (AG)

[53] I too have read the judgment of Brooks JA. I agree and have nothing further to add.

BROOKS JA

ORDER

a. The application for a stay of taxation of the respondents' bill of costs is refused.

b. The application for a stay of execution of any sum allowed on taxation of the respondents' bill of costs is granted.

c. The collection of any sum awarded on taxation of the respondents' bill of costs is stayed until the first trial date fixed for the hearing of the claim herein, in the Supreme Court, or until further order of this court.

d. No order as to costs.