



IN THE SUPREME OF JUDICATUE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2003 HCV 0908

BETWEEN	DELBERT ANTHONY WILLIAMS	1 <sup>ST</sup> CLAIMANT
AND	KWESI SHOMANI WILLIAMS	2 <sup>ND</sup> CLAIMANT
AND	RAMON NATHANIEL WILLIAMS (By his next friend Delbert Anthony Williams)	3 <sup>RD</sup> CLAIMANT
AND	STEFAN MICHEL WILLIAMS (By his next friend Delbert Anthony Williams)	4 <sup>TH</sup> CLAIMANT
AND	DONALD ROBERTS	1 <sup>ST</sup> DEFENDANT
AND	DALTON POWELL	2 <sup>ND</sup> DEFENDANT

IN CHAMBERS

**APPLICATION TO SET ASIDE REGISTRAR'S COSTS CERTIFICATE**

Mr. Alexander Williams Attorney-at-Law instructed by Usim Williams & Company for Applicant.

Mr. Jermaine Spence Attorney-at-Law instructed by Dunn Cox for Respondent.

**Heard: January 5<sup>th</sup>, 7<sup>th</sup> 14th and 15<sup>th</sup> 2008**

**Thompson-James J, (Ag.)**

This is an application by NEM Insurance Company Limited to set aside a Registrar's Default Costs Certificate dated 31<sup>st</sup> May 2007. I dismissed the application.

**Background:-**

On the 24<sup>th</sup> June 2003 the Claimant being near relations of Ivy Williams, deceased, who died on the 31<sup>st</sup> July 2000 as a result of a motor vehicle collision, filed a claim naming Donald Roberts and Dalton Powell as 1<sup>st</sup> and 2<sup>nd</sup> defendants.

On the 9<sup>th</sup> December 2002 the Master in Chambers in an adjourned notice of application for court orders (without notice) filed on the 29<sup>th</sup> July 2003,

**Ordered:-**

- 1. That the applicants be allowed to dispense with personal service of the claim form, particulars of claim and subsequent processes on the defendants.*
- 2. That there be liberty to effect service on the defendants by substituted service of the claim form and particulars of claim and subsequent processes in the cause on the 1<sup>st</sup> defendant's insurers NEM Insurance Company Jamaica Limited at 9 King Street, Kingston.*
- 3. Time for acknowledging service limited to fourteen (14) days from the date of the service of claim and particulars of claim on NEM Insurance Company Jamaica Limited.*

On the 16<sup>th</sup> May 2005 Claude France swore an affidavit that between the hours of 11 a.m. to 12 noon on the 27<sup>th</sup> of April 2005, he attended at the head office of NEM Insurance Company Jamaica Ltd. situated at 9 King Street in the city and parish of Kingston and there served a copy of the Amended Particulars of Claim on the company pursuant to an Order for Substituted Service made by the court. He further stated that the company's

legal officer Miss Bell stamped the copy of the amended Particulars of Claim as having been received by her.

The defendant failed to file Acknowledgment of Service and judgment was entered. NEM Insurance Company filed a notice of application for court orders requesting that the Order made by the Master for Substituted Service be set aside.

On the 7<sup>th</sup> December 2006 the Master in Chambers refused the application and ordered that:

**Costs of the application against NEM Insurance Company Jamaica Ltd. to the claimants to be agreed or taxed.**

The matter was set down for assessment on the 22<sup>nd</sup> March 2007. On the 3<sup>rd</sup> March 2007 the claimant's bill of costs was filed. On the 3<sup>rd</sup> May 2007 Learned Counsel Miss Teri-Ann Lawson on behalf of the claimant swore to an affidavit that the claimant's Billing Costs and Notice to Serve Points of Dispute were served on NEM Insurance Company Ltd on the 3<sup>rd</sup> March 2007 by delivering the said documents to Alexander E. Williams Attorney-at-Law for an on behalf of NEM Insurance Company Ltd.

On the 31<sup>st</sup> May 2007 the Registrar issued a Default Costs Certificate that NEM Insurance Company Jamaica Ltd not having filed Points of Dispute they are hereby ordered to pay costs in the sum of \$356,897.75 to the named claimants.

It is against this background that on the 31<sup>st</sup> August 2007 the applicant herein NEM Insurance Company Jamaica Ltd of 9 King Street Kingston filed this application.

### **The Issue**

The applicant sought the following orders:

- (1) That the Defaults Costs Certificate dated the 31<sup>st</sup> May 2007 be set aside

(2) An Order that the claimant receives basic costs

The grounds on which the applicant is seeking the Orders are:-

- (1) That the claimant's bill of costs was filed more than three (3) months after the date of order contrary to Rule 65.18(2) of the Civil Procedure Rules 2002 – herein after referred to as CPR
- (2) Costs were not taxed in accordance with section 2 of part 65 of the CPR as required by Rule 65.13(2)
- (3) Claim for costs is manifestly excessive and unreasonable.

The relevant Rule is Rule 65.22 of the CPR which reads:

**Setting aside Default Costs Certificate**

- 1. The paying party may apply to set aside the Default Costs Certificate**
- 2. The Registrar must set aside a Default Costs Certificate if the receiving party was not entitled to it.**

It seems to me that there is a paucity of precedents in this area and neither Attorney nor myself was able to find any.

The contention of the applicant is that the bill of costs having been awarded on the 7<sup>th</sup> May 2007, it is not in keeping with the provisions of part 65.18(2) of the CPR which reads:

**The bill of costs must be filed and served not more than three (3) months after the date of order or event entitling the receiving party to costs.**

I shall examine the grounds put forward.

The first ground states that the claimant's bill of costs was filed more than three (3) months after the date of order citing Rule 65.18(2) of the CPR 2002. It must be agreed

that the bill of costs was filed more than three (3) months after the date of the award. I will return to this ground.

The second ground states that the costs were not taxed in accordance with section 2 of part 65 of the CPR as required by Rule 65.13(2). Section 2 of this part sets out the taxation procedure.

There is nothing in the accompanying affidavit to support this ground and neither has anything been put forward to support that the taxation procedure was not in accordance with Rule 65.13(2). I find that this ground must fail.

The third ground on which the applicant sought to rely is that the claim for costs is manifestly excessive and unreasonable.

Part 65.20(1) of the CPR reads:

**The paying party and any other party to the taxation proceedings may dispute any item in the bill of costs by filing points of dispute and serving a copy on**

- (a) the receiving party; and
- (b) any other party to the taxation proceedings.

The unchallenged affidavit evidence of Counsel on behalf of the claimant Teri-Ann Lawson is that on the 30<sup>th</sup> May 2007 the claimant's bill of costs and notice to serve points of dispute were served on NEM Insurance Company Jamaica Ltd.

Part 65.20 of the CPR sets out the procedures relating to points of dispute as well as the consequences of not serving.

Part 65.20(5) of the CPR points out that;

The receiving party may file a request for a Default Cost Certificate if

- (a) The period set out in paragraph 3 for serving points of dispute has expired.**

**By part 65.20(3) the period for filing and serving points of dispute is 28 days after the date of service of the copy bill.**

The applicant served no points of dispute neither was any item in the Registrar's default costs certificate challenged in any way.

The claimants proceeded to file and obtain a Registrar's default costs certificate. I find no reason to disturb any item in the Registrar's bill of costs. This ground therefore fails.

Returning to the first ground on which the order is sought that the claimant's bill of costs was filed more than three (3) months after the date of the order contrary to Rule 65.18(2) of the CPR –

Rule 65.19(1) of the CPR reads:-

**When the receiving party fails to commence taxation proceedings in accordance with 65.18(2) the paying party may apply for an order requesting the receiving party to commence taxation proceedings within such time as the Registrar may specify.**

It seems that this provision recognizes that an application for a Registrar's Costs Certificate can be made out of time albeit in relation to the paying party. I therefore find that filing and serving the bill of costs outside of the three (3) months stipulated in Rule 65.18(2) of the CPR does not automatically disentitle the receiving party to the costs awarded nor does it entitle the receiving party to basic costs only.

I now examine the affidavit of Learned Counsel Alexander Williams in support of the application. Paragraph 2 of the affiant states that the applicant was informed of the award on the 7<sup>th</sup> December 2006 that is the said day on which the award was made. Paragraph 3 of the affidavit states that the applicant was advised to seek to negotiate a settlement.

Paragraph 4 states that the applicant on the 23<sup>rd</sup> February 2007 received copy of correspondence from the claimant's Attorney-at-Law addressed directly to the applicant seeking a settlement of the issue of quantum of those costs. He further deponed that after enquiring of the applicant whether they needed further assistance in the matter he received correspondence from the applicant indicating that their interest had ceased in the matter and they no longer require his services. There is nothing to indicate why this was so. The applicant it seems to me lost interest in the matter.

The affiant said he was later advised that the quantum of costs had not been settled.

I find that the affidavit accompanying the application is vague and reveals a lack of interest in the proceedings by the applicant who had been informed of a court order in relation to cost.

I find that there is nothing before me to indicate that the applicant, NEM Insurance Company of Jamaica Ltd has not got a right to this Registrar's Costs Certificate and that only basic costs should be awarded.

The applicant sought leave to appeal pursuant to section 11 (1) of the Judicature (appellate jurisdiction act.) This also was refused.

Harrison Judge of appeal in **Paulette and Edward Bailey vs. Incorporated Lay Body of the Church in Jamaica and the Cayman Island Province of the West Indies: Supreme Court Civil Appeal No: 103/2004 at page 4** points out that the over-riding objective of the new Rules of Procedure is the prompt disposal of cases and saving expenses in doing justice between the parties.

Rule 1.8(9) of the Court of Appeal Rules 2002 provides:.

L.B.S.

**“The general rule is that permission to appeal will only be given if the court or the court below considers that an appeal will have a real chance of success”.**

In Swain vs. Hillman 2001 1AER page 91 – in construing the term “real prospect” of success which term is employed in Rule 52.13(6) of the Civil Procedure Rules 1998 UK which Justice Harrison said in **Paulette and Edward Bailey vs. Incorporated Lay Body of the Church in Jamaica and the Cayman Island Province of the West Indies** is in pari materia with Rule 1.8(9) Supra, Lord Woolf Master of the Rolls said that the words, direct the court to the need to see whether there is “a realistic” as opposed to a fanciful prospect of success”

I find that there is no real chance of success

**Order**

Application to set aside the Registrar’s default cost certificate dismissed with costs to the respondent to be agreed or taxed.

Application for leave to appeal refused.