

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.7 OF 1997

BETWEEN:

PARRY HUSBANDS

Appellant

and

WAREFACT LIMITED

Respondent

Before:

The Hon. Mr. Denys Barrow, SC

Justice of Appeal

Appearances:

Appellant in person

Mr. Dexter Theodore for the Respondent

Mrs. V. Georgis-Taylor Alexander for the Sheriff

2005: November 22;
2006: March 17.

JUDGMENT

[1] **BARROW, J.A.:** The applicant seeks a review of the costs order made by the Chief Registrar of the Supreme Court on 1st July 2005 because she failed to award him “a brief fee with solicitor’s costs in the sum of £45,000 as a fair and reasonable assessment of his legal costs incurred in Saint Lucia from the date when leave to appeal to the Privy Council was obtained, that is 26th May 1999 to 1st February 2003 ...”¹ The applicant had earlier obtained an order from this court, on 13th June 2005, that “[t]he question of costs of the appeal to the Privy Council

¹ Appellants notice of application filed 17 October 2005.

incurred outside of England prior to 1st February 2003 [is] remitted to the Chief Registrar.”

- [2] This matter has a long history. The short version is that on the applicant's successful appeal to the Privy Council he had been allowed costs up to 1st February 2003 but not thereafter because, their Lordships decided, the applicant should have accepted an offer that the respondents had made which would have rendered further proceedings unnecessary. The applicant is a Queen's Counsel and acted as a litigant in person. It was expressly decided by their Lordships in Privy Council Appeal No.74 of 2001, **Parry Husbands v Warefact Ltd.** that because the legal profession in St. Lucia is fused the applicant was not precluded, even though he is a Queen's Counsel, from suing for legal fees. This is unlike the old common law position that formerly applied in England that prohibited barristers, but not solicitors, from suing for fees.
- [3] The applicant's costs were taxed before the Registrar of the Privy Council and on 9th May 2003 he was awarded the costs he claimed for services rendered by his English solicitors in connection with the Privy Council proceedings. The applicant then applied for costs he incurred in St. Lucia to be taxed. The Chief Registrar by an order dated 12th August 2003 awarded the applicant his costs of the High Court proceedings and of the Court of Appeal proceedings but made no award in respect of the applicant's costs for what he had done subsequent to the decision of the court of appeal. The applicant applied to the court of appeal for a review of that decision. That review was refused by a single judge but was granted by the full court, as noted in paragraph 1 of this decision.
- [4] Consequent on that order the Chief Registrar conducted another taxation and allowed to the applicant the costs of his application for conditional leave to appeal to the Privy Council, of the application for final leave and of the hearing before the full court. It seems to have been accepted that notwithstanding that the appellant acted as a litigant in person he was entitled to an award of costs. This accords

with the principle that a litigant in person who is a solicitor holding a valid practising certificate is entitled to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary; see **The London Scottish Benefit Society v Chorley**² and **Buckland v Watts**.³ In light of the decision in the applicant's case before the Privy Council, that a barrister in the fused legal profession in St. Lucia is entitled to sue for his fees in the same way as a solicitor, it seems that the rule that a solicitor acting in person may be awarded costs should equally apply to a barrister acting in person.

[5] The applicant contends that the Chief registrar did not address the question of his costs of the appeal to the Privy Council after he obtained final leave to appeal to the Privy Council. In his written application for a review he declared that he had prepared, in Saint Lucia prior to the 1st February 2003, his skeleton arguments as well as his brief for presentation to the Privy Council. He was therefore entitled to a Queen's Counsel brief fee in the same way that such a fee had been awarded by the Registrar of the Privy Council for the leader and the junior who appeared for the other side. Those fees amounted to £23,000, according to the applicant, and he contended that he should be entitled to costs in the sum of £45,000.

[6] It does not appear from the court's file that the applicant ever submitted a bill of costs in connection with this application for costs. Mr. Theodore, counsel for the respondent, took that objection. According to the court file in his first application for review the applicant had stated that he was prepared to accept the following costs:

\$10,000.00 for the application to the Court of Appeal for conditional leave
\$5,000.00 for the application for final leave
\$150,000.00 for preparation of skeleton arguments before February 2003
\$20,000.00 for solicitors costs
\$175,000.00

² (1884) 13 QBD 872

³ [1970] 1 QB 27

[7] Instead of \$10,000.00 for the first item the registrar awarded \$1,500.00 and instead of \$5,000.00 for the second item the registrar awarded \$1,000.00. The applicant has not challenged those awards but, as stated, he challenges the absence of an award for solicitor's costs and barrister's fee. The question is, can he? To answer that question it is necessary to examine the foundation of the applicant's claim to costs.

[8] The applicant claims to be entitled to an award of a sum for counsel's fee based on the Privy Council's decision in **Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd (No 2)**⁴ which applied the provision in r 76 of Sch 2 to the **Judicial Committee (General Appellate Jurisdiction) Rules Order 1982** that the taxation of costs in England shall be limited to costs incurred in England. In that case the appellant was not allowed to recover on the taxation before the registrar of the Privy Council the travel and accommodation costs of Hong Kong counsel whom the appellant brought to England to argue before their Lordships' Board. Their Lordships, however, approved the practice which has prevailed for many years of treating counsel's fees incurred in settling the cases of the parties as costs incurred in England.⁵ Their Lordships recognized that there existed a separate jurisdiction to tax other costs incurred in Hong Kong to be found in the following rule:⁶

"Where the Judicial Committee directs a party to bear the costs of an Appeal⁷ incurred in Hong Kong, 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."

[9] In St. Lucia the comparable rule is contained in section 20 of the **West Indies Associated States (Appeals to the Privy Council) Order 1967**. The language is similar, the only difference being the reference to the jurisdiction where local costs are to be taxed. It is therefore the case that the Chief Registrar has the jurisdiction

⁴ [1986] 1 All ER 897

⁵ At p 900 c.

⁶ Hong Kong (Appeal to Privy Council) Order in Council of 10 August 1909 p 374, r 25.

⁷ The reference is to the appeal to the Privy Council; see p 899 h.

to tax the costs of an appeal to the Privy Council that were incurred in St. Lucia. (I make no determination as to whether the Judicial Committee's order as to costs directed the respondent to bear the costs of this appeal incurred in St. Lucia because the point was not raised before me and I do not even know if a formal order was drawn up and, if so, what were its terms.)

[10] These last observations raise the foundational point that the costs that the applicant seeks to recover are costs in the Privy Council appeal; they are not costs in the court of appeal. It was not competent, therefore, for the Chief Registrar to have awarded Privy Council costs to the applicant on the application that he filed in these proceedings in the Court of Appeal, Civil Appeal No. 7 of 1997. It was therefore fatal, in my view, that the application by which the applicant claimed his Privy Council costs was an application in these proceedings. The applicant claimed Privy Council costs in the wrong proceedings.

[11] In the event that I am wrong and it is open to a litigant to claim Privy Council costs in the court of appeal proceedings a further difficulty stands in the way of the applicant. Rule 20 of the Appeals to the Privy Council Order applies the taxation rules of the Court of Appeal. Assuming without deciding that it is not **Civil Procedure Rules 2000** that apply (which contain no provision for taxation) but the **West Indies Associated States Court of Appeal Rules 1968**⁸ that apply then the relevant rule is rule 41 which provides:

“(4) Any party who may be dissatisfied with the allowance or disallowance by the Taxing Officer, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, or such earlier time as may in any case be fixed by the Taxing Officer, deliver to the other party interested therein, and carry in before the Taxing Officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short or concise form the items or parts thereof objected to, and the grounds and reasons for such objections and may thereupon apply to the Taxing Officer to review the taxation in respect of the same. The Taxing Officer may, if he shall think fit, issue pending the consideration of such objections a certificate of taxation or allocatur for or on account of the remainder of the bill of costs and such

⁸ Statutory Rules and Orders, 1968, No. 10, St. Lucia.

further certificate or allocatur as may be necessary shall be issued by the Taxing Officer after his decision upon such objections.

(5) Upon such application the Taxing Officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state ... the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto. ...

(6) Any person aggrieved by any order, decision or ruling of the Taxing Officer may apply to the Court to set aside such order, decision or ruling and to make such further order as it may think fit.

(7) Any application to the Court under the foregoing paragraph shall be by motion accompanied by an affidavit in support and notice of such motion shall be served upon the Taxing Officer and upon all parties having interest therein."

[12] In essence, a party who is dissatisfied with the decision of the Taxing Officer cannot apply to the Court for a review but must apply to the taxing officer. It is only if that review leaves the party dissatisfied that he may move the court. The extensiveness of the procedure that the rule contains makes it clear that it does not simply permit a decision on the taxation of a bill of costs to be challenged but regulates the time and procedure for doing so. The applicant has ignored the procedure stated in the rule and has applied to the court for a review. He is not permitted to do so. I have no choice but to dismiss the application and there is no need to consider the other violations of the rule. I award costs of \$750.00 to the respondent.

Denys Barrow, SC
Justice of Appeal