

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

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

Claim No. BVIHCV 2023/0240

BETWEEN

CISTERN POINT LIMITED

CLAIMANT

AND

THE REGISTRAR OF LANDS

1st DEFENDANT

DAISY DURANT

2nd DEFENDANT

NORA MANNS

3rd DEFENDANT

Appearances: Robert Nadar for the Claimant
Shonice Warner for the 1st Defendant
Anthea Smith holding for Sydney Bennett KC and Ricardo Maddan for the 2nd Defendant
and 3rd Defendant

2024: January 23rd

ORAL DECISION

- [1] **YOUNG J:** This appeal concerns what the Appellant says may have been an unintentional omission by the Registrar of Lands not to award cost. In any event whether it was intentional or unintentional no reason was given why costs had not been awarded.
- [2] Briefly by way of background, there had been quite an involved hearing before the Acting Registrar on an application by the second Respondent to rectify the register pursuant to section 139 of the Registered Land Act (the Act). The hearing spanned a number of days during which there were two

site visits and testimony taken from a number of witnesses.

[3] An order was made dismissing the rectification application to record an easement. This was not appealed. However, it was ordered that the register be amended to reflect a right of way over 2 parcels of lands (one of which is owned by the Appellant) with costs to follow the event. The Appellant appealed the order for rectification raising a number of grounds. They also appealed what they termed the “unreasoned costsof dealing with various matters raised by the second Defendants which were not properly before the Tribunal....”

[4] The Court allowed the appeal and ordered that:

2. The Acting Registrar’s Decision in so far as it approved the rectification of the land register for Block 4033 B Parcel 7 in order to reflect the 6 foot right way in favour of Block 4033B Parcel 9 should be set aside.
3. Consequent upon this, the Court will also set aside the Decision directing that the Appellant pay the Second Defendant’s costs.

[5] The Judge then gave guidance as to the limited scope of the Registrar’s rectification power under the Act. She remitted the matter for reconsideration by the Registrar in light of her guidance and made an order for prescribed costs on the appeal.

[6] Her guidance is significant. It included at page 4:

The test in subsection 139 (1) (a) means that the Registrar has power to rectify only if it is perfectly clear and not reasonably disputable that there is an inaccuracy in the land register. In cases where the parties do not agree that there is an error or omission or where it is clear that the error or omission “materially affects the interests of any registered proprietor”, the Registrar must decline jurisdiction and require that the Parties seek a judicial determination by the High Court.

[7] On reconsideration and without a hearing the Registrar found and declared that he had no jurisdiction to hear the application as it ought rightly to be heard by the High Court. He made no reference to costs at all nor did he give any reasons why. This Appellant wrote asking for some reason or perhaps a consideration of costs. No response was received and the Appellant then appealed, the Respondent did not.

This Court's consideration:

Registrar's Jurisdiction to award costs:

- [8] The Appellant submitted that the Registrar has the jurisdiction to make costs orders. This Court having considered section 6.e of the Act finds that the discretion given to the Registrar to award costs is wide and unfettered.
- [9] Section 6 empowers the Registrar to exercise the powers stated therein in addition to any other powers conferred by the Act. By subsection e "he may order that any costs, charges and expenses incurred by him or by any person in connection with any investigation or hearing held by him for the purposes of this Ordinance shall be borne and paid by such person and in such manner and in such proportions as he may think fit"
- [10] There are no principles outlined in the Act upon which the costs orders are to be made but at the very least it would seem to me that the successful party ought to receive their costs incurred unless there is good reason why they ought not to. The Registrar will do well to adhere, with some adjustment, to the guidance offered to judges in **The Attorney General v Anton Tonge**¹:
- “(6) Whilst it is recognised that the court has a general discretion with regard to costs and may order a successful party to pay all or part of the costs of an unsuccessful party, the circumstances for departing from the general rule must either be obvious from all the circumstances such as not to require a stated reason, or otherwise it is expected that a reason or reasons would be expressed for the departure from the general rule. Further CPR 64.6(5) states in effect that in deciding who should be liable to pay costs, the court must have regard to all the circumstances. In particular, it must have regard to:
- (a) the conduct of the parties both before and during the proceedings;
 - (b) the manner in which a party has pursued –
 - (i) a particular allegation;
 - (ii) a particular issue; or
 - (iii) the case;
 - (c) whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings;

¹ ANUHCVP 2013/005 at paragraphs 6 and 7

- (d) whether it was reasonable for a party to –
 - (i) pursue a particular allegation; and/or
 - (ii) raise a particular issue; and
 - (e) whether the claimant gave reasonable notice of intention to issue a claim.'
- (7) From the factors to be considered, it becomes clear that the court would look to see whether party "A" may have behaved unreasonably in the context of the proceedings and is such that notwithstanding being successful. "A" should nevertheless either be deprived of his costs or be ordered to pay "B's" costs although "B" was unsuccessful."

[11] **The circumstances as the Court finds them for consideration:**

1. The Appellant in the first appeal asked specifically that the application be set aside and that the matter "should be remitted to the Chief Registrar for a further hearing" (pgs 32 and 37 of the bundle). However in their statement of reliefs sought (pg 49) they asked the matter be "remitted for further consideration by the Chief Registrar of Lands".
2. Ground 1.(f) and (g) of their appeal dealt entirely with the Registrar's limited jurisdiction to rectify the register and the fact that the Appellant's interest would be affected by the rectification ordered.
3. The Court then found that there were reasons why the appeal should be allowed but gave specific and focused guidance on the registrar's statutorily prescribed jurisdiction before remitting it for "reconsideration." This reconsideration was clearly expected to be done in the context of the guidance given. There was no appeal from this decision by either party.
4. It has not gone unnoticed that the Court refrained from making a decision on jurisdiction. The reconsideration would necessarily involve all that had been placed before the tribunal from the original hearing.
5. This Court recognizes that on appeal the costs order made by the Acting Registrar had been set aside. There was an order made for cost on the appeal. I am not convinced that this order covered costs below or costs on the issue as Kings Counsel for the Defendant surmised. There is simply no order to this effect.
6. A reconsideration is not necessarily are hearing. The Registrar was really being directed to reconsider the interpretation given to the law related to the Registrar's jurisdiction. It would have been impossible in those circumstances for the adjudicator to make a finding which would have gone contrary to the very specific and clear guidance given.
7. This Court also notes from the order made in the original appeal that the Appellant herein had already raised the jurisdiction issue below. In a ruling on this point the Acting Registrar

found that she did have jurisdiction and proceeded to hear the substantial application. That decision had not been appealed.

8. This Court agrees with the Appellant herein, that there had been costs orders made in the first hearing which awarded costs to the generally successful party at that time. On a reconsideration there was no reason whatsoever why costs ought not to have likewise been considered.
9. No costs order was made and no reasons were given. The Court is constrained to find that no reasons existed since there are no obvious reasons which the Court could discern. The **Attorney General v Anton Tonge** (ibid) supports this view entirely and assures that the appellate court could exercise the discretion afresh.
10. There is nothing presented to this Court to show that on a reconsideration the costs incurred in the original matter can not be taken into consideration when deciding whether or not a costs order ought to be made. This Court has a wide power under the Act to “make such order on appeal as the circumstances may require” Remitting the matter for the adjudicator to consider costs will only serve to further delay the matter. The Court therefore orders costs to the Appellant here and for both the hearing and reconsideration below.
11. This Court finds that the Defendant could have easily withdrawn its application. From the moment the appellate Court issued its guidance the message was crystal clear. The Judge clearly perceived that there had been an error of law but refrained from making a determination on the Registrar’s jurisdiction. Instead the Defendant allowed the matter to go back to the Registrar for a reconsideration and now submits that there is some unknown but good and obvious reason why costs had not been awarded. All this notwithstanding there had already been a most protracted and unnecessary hearing before the Registrar.
12. The Appellant will have his prescribed costs here and his costs below to be assessed by the master on submissions from both parties.

Leave to Appeal

13. When the Court delivered its oral decision Counsel for the Defendant sought leave to appeal. The Court granted same as the issue appeared to be one for which the Registrar of Lands/Chief Registrar of Lands could do well with specific guidance on the exercise of the discretion to award costs.

Sonya Young
High Court Judge

By the Court

Registrar