

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2014/0256

BETWEEN:

SHAHEEL GIVANNI JAGROOP
By his next friend FABIAN JAGROOP

Claimant

And

LUCRETIA JOHNNY
Administratrix of the estate of GREGORY JOHNNY and VELINA JOHNNY

Defendant

Appearances:

The Claimant in person
Mr. Dexter Theodore, KC of counsel for the Defendant

2022: July 27;
2023: August 21.

Administration claim – Accounting – Costs – Prescribed costs ordered to be paid out of estate – court ordering prescribed costs to be paid by party personally in previous related proceedings – Whether variation of initial costs order – Whether judge competent to vary its own costs order previously made – General principle that costs follow the event – CPR 64.6 – Circumstances in which court will not apply the follow the event principle – Costs – Prescribed costs – CPR 65.5(2) – Value of claim – Whether opened to court to determine value of the claim

JUDGMENT

[1] **INNOCENT, J.:** The claimant by his next-friend, had brought the present claim against the defendant for orders directing the defendant to provide a full accounting of the assets and liabilities of the estates of Gregory Johnny and Velina Johnny; a full accounting of all money expended out of the estates; that the defendant pay to the claimant all sums found due and owing to him from the estate as a result of such accounting; and costs.¹

¹ Fixed date claim filed 16th April 2014

- [2] The present claim was preceded by Claim No. SLUHCV2010/0066 wherein the claimant had sought various forms of declaratory relief including the right to be considered a beneficiary of the estates of Gregory Johnny and Velina Johnny and the right to his share in the distribution of the respective estates.
- [3] By a Judgment delivered on 26th February 2014 in Claim No. SLUHCV2010/0066, Wilkinson J. declared that the claimant was an heir by representation and beneficiary in equal degree in the estate of Gregory Johnny and Velina Johnny and that the grant be amended to include the claimant as beneficiary. Wilkinson J. also ordered that the RBTT life insurance proceeds formed part of the estate of Gregory Johnny for distribution in equal shares to include the claimant. The court in the preceding claim also ordered prescribed costs be paid to the claimant payable from the estate of Gregory Johnny.
- [4] By order of Wilkinson J. dated 26th June 2014, in the present claim, the defendant was ordered to file an account of assets and liabilities of the estate on or before 30th September 2014. The claimant was granted leave to file queries to the defendant's accounting by 15th October 2014 and the defendant was ordered to reply to the claimant's queries by 30th October 2014.
- [5] The claimant disputed the accounting provided by the defendant on numerous grounds. The defendant adopted the position that the estate had already been distributed among the persons entitled and accordingly, there was no amount available for distribution. The defendant held the view that she had complied with the requirement to provide an account of her administration as detailed in her affidavit filed 30th November 2014. Copious affidavits were filed by both parties; the defendant filed several affidavits with statements of accounts exhibited thereto and the claimant seemingly disputed the statements of accounts filed.
- [6] In an oral judgment delivered by Wilkinson J. on 8th August 2019, the learned judge ordered that: (1) the defendant file within 30 days the necessary documents for the amendment of the grant to reflect the claimant as beneficiary of the Estates; (2) the defendant prepare separate accounts for each estate showing their respective

assets and liabilities; (3) the matter be fixed before the Court for the determination of what claims would be allowed and disallowed from the estate of Velina Johnny; (4) the defendant to support the accounts with respect to the estate of Velina Johnny with letters and bank statements from Velina Johnny's bankers showing the position of these accounts from the date of her death until the date of such letters and bank statements; (5) and with respect to the property registered as Block Parcel 1021B Parcel 56 that the claimant elect whether he intended to remain in undivided ownership of the property or whether he was desirous of obtaining his 1/5 share to be paid out of the estate.

- [7] By the same judgment of Wilkinson J. delivered on 8th August 2019, the learned judge ordered that legal costs associated with Claim No. SLUHCv2010/0066 was not to be borne out of the estate of Gregory Johnny and Velina Johnny but was to be paid by the defendant personally. This costs order appeared to have run contrary to the previous costs order made in the judgment of 26th June 2014.
- [8] The court also ordered that the date for the payment of sums due to the claimant from the Estates shall be fixed by the Court on the making of a final order with respect to the accounts of the estate of Velina Johnny.
- [9] On this occasion the court's order was that costs of the present claim were to be borne by the Estates and were to be fixed by the Court after the accounts for the estate of Velina Johnny were settled by the Court.
- [10] On 8th July 2020, the claimant filed an application by his next-friend seeking an order that the defendant comply with the Court's order of 8th August 2019. In his application the claimant complained that the defendant had yet to produce the accounting so that a final order could be made finalising and settling the estate accounts; that although a valuation of Block 1021B Parcel 56 had been conducted certain improvements had been done to the property which required the defendant to show the source of the funds used to effect these improvements and the nature of the improvements made; and that since the accounts have not been finalised the

award of prescribed costs in Claim No. SLUHCV2010/0066 could not be ascertained.

- [11] In the circumstances, the claimant sought orders and directions from the court to fully and finally determine the matters set out in the judgment of Wilkinson J. dated 8th August 2019.
- [12] On the hearing of the said application on 24th February 2021, Philip J. found that the issues regarding the amendment of the grant and the valuation and the claimant's election with respect to Block 1021B Parcel 56 had been resolved; and that the outstanding matters that required directions were with respect to the filing of separate accounts for each estate the filing of the supporting banking documentation which the court found to be a precondition to the finalising of the costs order in Claim No. SLUHCV2010/0066, the determination of a date for payment out of the estate to the claimant and the incidence and assessment of costs in the present claim.²
- [13] In the order of 24th February 2021, the court noted that difficulties had arisen with respect to obtaining information from one of the financial institutions ('RBC') and gave directions for the defendant to file the necessary applications to obtain the information from the bank which would enable the defendant to comply with paragraph 1(b) of the grounds stated in the claimant's application, that is the preparation of separate accounts.³
- [14] By order of the court dated 23rd March 2022, the claimant was granted liberty to make an application for an order directed to the various financial institutions to produce the relevant bank statements with respect to the Estates by 25th April 2022.
- [15] By virtue of the abovementioned order the defendant was ordered to pay to the claimant the sum equivalent to his 1/5 share in property registered as Block 1021B Parcel 56 by 8th June 2022. The defendant was also ordered to file a further affidavit

² Paragraphs 1(e), (f) and (g) of the claimant's notice of application.

³ At para [46] 2 judgment of Wilkinson J. dated 8th August 2019

with respect to the draft accounting already filed by 31st March 2022. The court also reserved its decision on the question of costs in Claim No. SLUHCV2010/0066 and the reconciliation of the accounts in respect of the insurance payments.

Interim payment

- [16] It appeared that by order of Wilkinson J. dated 27th November 2014 the defendant was ordered to pay into court an interim payment in the sum of \$102,542.38. The payment in was made on 2nd December 2014. The defendant made an interim payment to the claimant which was paid into court on 2nd December 2014 in the sum of \$102,542.38.⁴ The claimant somehow translated this payment to mean that the court having found in SLUHCV2010/0066 that the claimant was entitled to 1/5 share in the proceeds of the insurance policies and the bank accounts made the claim one for a monetary sum which required costs to be awarded on the basis of CPR 65.5(2)(a). This argument was misguided and unfortunate as will be seen later on in this decision.

The Property

- [17] The claimant has received his 1/5 share of the Augier, Vieux Fort property being Block 1021B Parcel 56. This property was valued at \$383,769.86. Therefore, the issue of the claimant's entitlement to a share in this part of the estate is no longer outstanding. The claimant accepted that the net value of the property for the purpose of the claimant's 1/5 share is \$121,609.38 which is equivalent to \$24,321.87.
- [18] It appeared that there was no delay by the claimant with respect to the payment of the 1/5 share in the property since the claimant had only exercised his election to be paid his share in the property in cash by his affidavit of 8th February 2022. Given the fact that the court's order required payment to be made 120 days after such election by the claimant, the period expired on or before 8th June 2022.⁵

⁴ Order of Wilkinson J 27th November 2014; Exhibits LJ2 and LJ3 affidavit 31st March 2022

⁵ At para 10 affidavit 21st February 2022

The Insurance Policies & Bank Accounts

- [19] The claimant claimed that the value of the estate based on the proceeds of insurance policies and bank accounts was in the sum of \$641,523.01 by his estimation. Accordingly, he claimed that the claimant was entitled to 1/5 share which was equivalent to \$128,304.60. The defendant having made an interim payment to the claimant which was paid into court on 2nd December 2014 in the sum of \$102,542.38,⁶ from the various insurance monies the claimant is entitled to \$25,762.22.⁷
- [20] However, the claimant contended also that Velina Johnny held account number 421819347 at Bank of Saint Lucia Limited ('BOSL') and that the defendant had not provided any accounting with respect to this account. Additionally, the claimant contended that the defendant had not provided any information regarding any additional accounts and property held in the name of the estates so that the claimant's 1/5 share therein could be fully determined.⁸
- [21] Based on his own rudimentary accounting extrapolated from the proceedings in SLUHCV20210/0066, the claimant contended that the total value of the estate available for distribution stood in the sum of \$641,523.01 of which the claimant was entitled to a 1/5 share totaling \$128,304.60. He accepted that the claimant had been paid the sum of \$102,542.38 and therefore, there was an outstanding balance owed to the claimant in the sum of \$25,762.22.⁹
- [22] The defendant's position was that she had made attempts to comply with the court's order; but had not received the bank statements required to complete and finalise the accounting.¹⁰ The defendant presented a draft statement of account.¹¹

⁶ Order of Wilkinson J 27th November 2014

⁷ At paras 6 - 7 claimant's affidavit 8th February 2022

⁸ At paras 11 – 12 claimant's affidavit 8th February 2022

⁹ At paras 6 – 7 affidavit 8th February 2022

¹⁰ At para 5 affidavit 21st February 2022

¹¹ Exhibit LJ1

- [23] The defendant maintained the position that as far as she was aware Velina Johnny did not have any accounts at BOSL. She claimed that her legal practitioner had written to BOSL requesting bank statements in the event that any accounts were held at BOSL but that no response was initially received.¹²
- [24] The defendant also claimed to have had no knowledge of the plight and destination of the sum of \$10,712.01 held in account number 1107600117 held at RBTT Bank and that she has since distributed the insurance proceeds in accordance with the order of Wilkinson J.¹³
- [25] The defendant's legal practitioner had written to 1st National Bank St. Lucia Limited formerly RBTT Bank regarding the accounts, if any, held in the names of Gregory Johnny and Velina Johnny. It appeared that 1st National Bank wrote to the defendant's legal practitioners by letter dated 21st June 2021 indicating that there were no accounts held in these names.¹⁴
- [26] The claimant had raised issue regarding the accounting for sums held in account number 4553 held at the Laborie Cooperative Credit Union Limited ('Laborie Credit Union'). This seemed odd given the fact that any issue regarding the funds held in this account had been canvassed and settled in the decision of Wilkinson J on 9th August 2019 where she found:
- "As regards the present suit, it relates solely to the accounting for the 2 estates. The Court has noted that Mr. Jagroop while for instance asking for an account of Mrs. Velina Johnny's joint account held with him at the Laborie Co-operative Credit Union, that he was in fact the person who went to the Credit Union and removed the available funds which he then stated in his second affidavit were used to support Mr. Shaheel Jagroop. Secondly, as noted the RBTT debit of \$750.00 was quite explicit ... These matters were not matters for honest challenge..."¹⁵

¹² Exhibit LJ4; para 16 affidavit 21st February 2022

¹³ At para 11 affidavit 21st February 2022

¹⁴ At para 12 affidavit 21st February 2022; Exhibit LJ2

¹⁵ At para [42]

Notwithstanding, the findings of Wilkinson J the defendant still took the initiative of writing to the Laborie Credit Union requesting bank statements.¹⁶ All of the foregoing notwithstanding that the Credit Union had already disclosed the information by letter dated 24th November 2014.

[27] Now the court found it astonishing that the claimant would insist on an accounting with respect to the proceeds of the Laborie Credit Union account and demand payment therefrom. This is particularly the case in light of what is disclosed by the defendant's affidavit of 31st March 2022 wherein she stated that this account was debited almost entirely by the claimant since 2009. It appeared that the claimant was the administrator of the estate of Greta Johnny and Velina Johnny was the beneficiary named on this account. The defendant referred to a letter from the Credit Union dated 24th November 2014 which indicated that on 3rd January 2009, the Credit Union paid Mr. Jagroop the sum of \$830.88.¹⁷

[28] The dispute between the parties resided in the actual value of the proceeds of the policies of insurance and the bank accounts which inevitably affected the final amount available for distribution. The claimant had placed the value of the estates at \$641,523.01 and the defendant at \$630,151.19.

[29] It appeared by virtue of what is contained at paragraph 28 of the defendant's affidavit of 31st March 2022 that the proceeds of the insurance policies and the Bank of Nova Scotia account had been paid to the claimant.

[30] In an affidavit filed 4th March 2022, the claimant largely repeated the assertions made in his previous affidavits. However, the claimant asserted for the first time that the defendant held several accounts at BOSL one of which contained the sum of \$170,153.62 as at 10th March 2009. He claimed that this sum did not include the proceeds of the insurance money received by the defendant. The court was at a loss to understand the relevance of this information as the statement from BOSL

¹⁶ At para 13 affidavit 21st February 2022; Exhibit LJ3

¹⁷ Exhibit LJ5

showed that the account referred to was a “Joint Supersaver” held by Lucretia Johnny and Greta Johnny.¹⁸ In any event, the court paid no regard to the letter of 10th March 2009 which in any event was unsigned and more particularly because of its tendency to offend the provisions of the Banking Act as it pertains to client confidentiality.¹⁹

- [31] In any event, the defendant’s legal practitioner wrote to BOSL by letter dated 9th June 2021 requesting transactions histories and accounts held by Gregory Johnny and Velina Johnny pursuant to a court order dated 8th August 2019 be provided prior to 24th June 2021.²⁰
- [32] By order of Phillip J dated 26th May 2021, Royal Bank of Canada (‘RBC’) formerly RBTT Bank and now 1st National Bank, was ordered to produce to the defendant bank statements by 1st July 2021 showing the position of the accounts of the late Gregory Johnny and Velina Johnny from 3rd January 2007 to the date on which the bank statements were produced and to provide reasons for its inability to do so by 1st July 2021.
- [33] By letter dated 21st June 2021, 1st National Bank wrote to the defendant’s legal practitioner informing that there were no accounts in the name of Gregory Johnny and Velina Johnny and no sums due and owing to the bank in respect of mortgages and other facilities.²¹
- [34] When the matter came on for hearing on 25th May 2022, Mr. Theodore KC informed the court that attempts had been made to obtain the requested information regarding the accounts pursuant to the court’s previous order and that 1st National Bank was making an attempt to comply with the request. By order dated 25th May 2022 both BOSL and 1st National Bank were directed to file and present to the court and to serve the parties with information and details pertaining to accounts, if any, held in

¹⁸ Exhibit FJ1

¹⁹ Aloysius Cumberbatch v East Caribbean Financial Holding Company Ltd [2019] No. 39

²⁰ Exhibit LJ4

²¹ Exhibit LJ2

the names of Gregory Johnny and Velina Johnny on or before 10th June 2022.²² By the same order the hearing was adjourned to 22nd June 2022.

[35] It appeared that the claimant was content with the fact that 1st National Bank was unable to provide any details pursuant to the court's previous order.²³ However, he sought to provide his own accounting for the assets and liabilities of the two estates.

[36] The court had difficulty appreciating the claimant's insistence regarding the provision of statements with respect to account(s) held at 1st National Bank since it appeared that this issue had already been dealt with by Wilkinson J in her decision of 8th August 2019. At paragraph [36] of her decision Wilkinson J said:

"On Mr. Fabian Jagroop's challenge of the \$750.00 – the RBTT receipt is quite explicit and clearly states the mortgage payment was sent to the Bank of Saint Lucia. The Court has no reason to doubt that RBTT paid the money to the Bank of Saint Lucia for the mortgage of Mrs. Greta Johnny-Jagroop and Mr. Fabian Jagroop does not dispute that the mortgage was at the Bank of Saint Lucia."

[37] In any event, the claimant appeared to have taken the position that the accounts held at BOSL by Greta Johnny and at times jointly with the defendant and other persons ought to be debited so that the expenses of the estate of Gregory Johnny be deducted therefrom.²⁴ The court has taken the view that the claimant appeared to be conflating these accounts with assets belonging to the estate. It is the court's considered view that these accounts did not form part of the estates. Accordingly, they did not factor into any accounting required to be made by the defendant.

[38] The court was not inclined to accept that there were any sums to be distributed out of any accounts held at BOSL. Mr. Jagroop was the administrator of his deceased wife Greta Johnny's estate. Clearly, he would have had the ability to deal with these accounts. Mr. Jagroop did not indicate whether the joint accounts were subject to a right of survivorship or otherwise fell to be administered as part of the estate of Velina Johnny. It would not be surprising that the proceeds of these BOSL accounts

²² Letter from BOSL 20th April 2022

²³ At para 3 affidavit 20th June 2022

²⁴ At para 11 – 12 affidavit 20th June 2022

had already been converted or distributed prior to the commencement of SLUHCV2010/0066. Assuming that this might very well be the case, then clearly there would be no sums available for distribution from those BOSL accounts. In any case, the court was not satisfied that they formed part of the estates of Gregory Johnny and Velina Johnny. The claimant had made particular reference to account number 421819347 held at BOSL. This account was a savings account held by Greta Johnny and Velina Johnny. This account was closed on 14th February 2007.²⁵

- [39] The defendant had repeatedly maintained that the total value of the estates was in the sum of \$630,185.21 in 2014 exclusive of the property and that to the best of her knowledge there were no other assets belonging to the estates.
- [40] The claimant had made the point of noting that the statement of account produced by the defendant made no reference to the liabilities of the estates; a fact which the defendant agreed to and acknowledged. Having acknowledged the same the defendant went on to state the liabilities of the estates.²⁶
- [41] According to the defendant, the liabilities referred to had been largely settled in that most of the expenses are no longer outstanding. She referred to the liabilities of the estate as being inclusive of the medical and funeral expenses of her deceased parents.²⁷ These expenses she stated were largely incurred and paid off between 2004 and 2014 and were included in her statement of account in 2014. The defendant also accounted for legal and accounting expenses incurred during that period.
- [42] Notwithstanding the accounting provided by the defendant in the statement of account dated 31st March 2022 wherein she set out the expenses of the estate of Gregory Johnny and Velina Johnny separately, the claimant continued to insist that the defendant had somehow inflated these expenses. As far as the court is concerned the expenses in relation to Gregory Johnny were already allowed in the

²⁵ Letter dated 12th March 2009 from BOSL

²⁶ At paras 14 – 20 affidavit 31st March 2022

²⁷ At para 16 affidavit 31st March 2022; Exhibit LJ4

previous proceedings as appeared by the decision of Wilkinson J dated 8th August 2019.²⁸ At paragraph [34] of the decision Wilkinson J said:

“Also, for the account of the estate of Mr. Gregory Johnny are all expenses supported by receipts/bills in relation to his medical attention, care and his funeral expenses. The Court is prepared having had sight of documentary evidence in this regard, notwithstanding the sum cited by Ms. Johnny in any earlier proceedings, to allow these bills.”

The vehement challenge mounted by the claimant with respect to the expenses of the estate of Mr. Gregory Johnny appeared to be another attempt by the claimant to re-litigate issues that were already determined in previous proceedings.

[43] The defendant stated that she excluded the legal expenses in her updated statement of account. She maintained on the basis of the decision of Wilkinson J that the legal costs are to be borne by the estates.²⁹

[44] In any event the defendant prepared an updated statement of account which included the liabilities and expenses of the two estates. The defendant maintained that she intended to rely on this statement of account until such time as she received the letters from the banks.³⁰

[45] Having read the several affidavits filed herein the court has formed the view that the defendant had made a concerted effort to comply with the court’s order to provide an accounting with respect to the estates. The defendant prepared a statement of account dated 20th February 2022 which was annexed to her affidavit³¹ and made pursuant to the order of Wilkinson J dated August 2019.

[46] It was apparent from this statement of account that all the proceeds of insurance had been distributed and that indeed the claimant had already received his 1/5 share. Also, the property had already been valued although the claimant’s share had not yet been distributed. Additionally, the proceeds of Bank of Nova Scotia

²⁸ At paras [33] – [34]

²⁹ Per Wilkinson J at para [43] Judgment 8th August 2019

³⁰ Statement of Account dated 31st March 2022

³¹ Exhibit LJ1

account number 10296 had already been distributed and the claimant had received his share of the proceeds.

[47] Notwithstanding the efforts made by the defendant, the claimant continued to dispute the accounting provided by the defendant and also continued to insist that there were additional sums available for distribution without providing any proof to substantiate his allegations. The claimant's affidavits were replete with incessant demands for the payment of costs and interest according to his interpretation of the costs orders made by the court previously.³²

[48] On 22nd June 2022, the court in its order noted that the outstanding issues with regard to the claimant's entitlement in the estate and the costs to be awarded were the only matters left to be settled. Accordingly, the court adjourned the matter for the purpose of finalizing the amount payable to the claimant and for the determination of the question of costs to be awarded to the claimant and directed the parties to file submissions relative to the question of costs.

[49] As far as the court is concerned there appears to be no further accounting required to be undertaken by the defendant. For all intents and purposes the court is inclined to treat the estate accounts dated 31st March 2022 presented by the defendant as settled and final. In the court's view, the only issue now left to be determined is with respect to the question of costs in both sets of proceedings.

Shaheel's entitlement

[50] Mr. Theodore KC outlined what he described as the two remaining issues to be determined with respect to the claimant's entitlement to a share in the estates. Firstly, whether there is or was in account number 421819347 held at BOSL, after payment of funeral expenses a balance of \$8,374.64 to which the claimant is entitled to a 1/5 share. Secondly, whether there was still a balance due to the claimant after the payment of \$102,542.38 in the sum of \$23,487.86.

³² At paras 13 – 18 affidavit of 4th March 2022

Interest

- [51] The claimant contended that he is entitled to interest on the amount awarded as his entitlement to a share in the estates at the statutory rate of 6% per annum or otherwise in the court's discretion which he claimed would of necessity affect the costs to be awarded in the present claim.³³
- [52] The court disagrees with this submission. The claimant's position that interest could be awarded on costs or that interest could be awarded on the global sum inclusive of costs is misguided. Although the claimant had made a claim for an award of interest on the sum found payable to the claimant out of the estate, the court in its discretion declines to do so. To hold otherwise, in the court's view, would inevitably result in the unnecessary and unreasonable depletion of the assets of the estates.

Costs

- [53] The claimant's position on the question of costs in Claim No. SLUHCV2010/0066 was premised on the court's order dated 26th February 2014, wherein the court ordered that prescribed costs be paid to the claimant from the estate of Gregory Johnny. According to the claimant, at that time the monetary value of the claim had not yet been determined. In the premises, the claimant contended that the court's order of 26th February 2014 did not contemplate that costs be assessed in accordance with CPR 65.5(2)(b) and 65.5(3). Therefore, the claimant disputed that the claimant was only entitled to prescribed costs in the sum of \$7,500.00.³⁴
- [54] Essentially, the claimant insisted that the claim was for a monetary sum and relied on the decision of the court in Claim No. SLUHCV2010/0066 as it related to the payment to the claimant of his share out of the proceeds of the RBTT Life Insurance money. On this basis the claimant submitted that the claim was a monetary claim and therefore prescribed costs should not be calculated in accordance with CPR 65.5. According to the claimant, the matter did not involve merely the amendment

³³ At para 13 claimant's affidavit 8th February 2022

³⁴ At paras 5 – 10 claimant's affidavit filed 7th April 2022

of the grant but instead was a claim made for an order that the claimant's share of the estate be established and paid to him.³⁵

[55] The claimant also relied on the order of Phillip J dated 4th April 2022 wherein he stated that the decision of the court in respect of costs in SLUHCV2010/0066 and the reconciliation of the accounts in respect of the insurance payments shall be rendered after.

[56] The posture adopted by the claimant with respect to the initial costs order made by Wilkinson J is surprising considering that at paragraph 5 of his affidavit filed 7th April 2022 he said:

“Based on the court order SLUHCV2010/0066 paragraph 4, prescribed costs is awarded to Mr. Shaheel Jagroop and same is payable by the estate of Mr. Gregory Johnny, which the monetary value is still pending.”

It appears to the court that the claimant by this statement acknowledged and recognised that the monetary value of SLUHCV2010/0066 was not capable of being quantified at the time that the court rendered its judgment.

[57] Just as surprising is fact that the claimant rightly stated at paragraph 4 of this affidavit of 7th April 2022 that:

“That this matter is before the court to determine the exact value of the estates of Mary Velina Johnny and Gregory Johnny so that the claimant's share can be ascertained and thereafter paid to him.”

Again it can reasonably be inferred that this is a clear recognition by the claimant that the amount payable to the claimant as his share of the estates had not yet been determined. Therefore, the posture adopted by the claimant in respect of the costs arising in SLUHCV2010/0066 is disturbing since clearly he seemed to have accepted that the value of the claimant's share had not been finally determined in the preceding claim.³⁶

³⁵ At para 11 claimant's affidavit filed 7th April 2022

³⁶ See at para 2 claimant's affidavit 8th February 2022

- [58] The defendant took serious objection to the costs order made by the court on 8th August 2019 wherein the learned judge ordered that legal costs associated with SLUHCV2010/0066 was not to be borne out of the estate of Gregory Johnny and Velina Johnny but was to be paid by the defendant personally.³⁷
- [59] In her judgment dated 8th August 2019, the learned judge also ordered that costs of the present claim were to be borne by the Estates and were to be fixed by the Court after the accounts for the estate of Velina Johnny were settled by the Court.
- [60] Based on the claimant's interpretation of the costs orders made by the court in SLUHCV2010/0066, the claimant contended that costs ought to be assessed as prescribed costs based on the value of the claimant's share of the estate to which he was entitled. Therefore, the claimant submitted that he was entitled to costs in the sum of \$33,750.00 together with interest at the rate of 6% making an aggregate of \$48,937.50 to be paid by the defendant personally in respect of SLUHCV2010/0066.
- [61] With respect to the question of the costs payable in SLUHCV2010/0066, the defendant contended that this claim was a claim for declaratory relief and rectification and or the revocation of a grant of Letters of Administration. Accordingly, SLUHCV2010/0066 was not a claim for a monetary sum, hence costs fell to be determined in accordance with CPR 65.5(2)(b).
- [62] The defendant in disputing the claimant's interpretation of the various costs orders made by the court, submitted that the learned judge could not have purported to vary or set aside a costs order which she made in a previous claim in a subsequent claim.
- [63] According to the defendant, the learned judge's costs order not having been appealed and set aside made the issue of costs in SLUHCV2010/0066 res judicata. Therefore, the learned judge could not have purported to vary or set aside the costs

³⁷ At paras 8 – 9 claimant's affidavit 8th February 2022

order which she made in a previous proceeding and substitute it with a substantially different costs order.

- [64] In respect of the costs order in the present claim, the defendant contended that costs ought to be assessed on the basis of CPR 65.5(2)(a). That is, based on the amount ordered payable to the claimant and to be paid from the estates of Gregory Johnny and Velina Johnny. Therefore, the claimant ought to recover prescribed costs in the sum of \$24,623.95 based on the sum awarded to the claimant as his entitlement under the estates.³⁸
- [65] Notwithstanding the preceding posture adopted by the defendant with respect to an award of costs in the present claim, the defendant in effect submitted that in any event the defendant ought not to be ordered to pay the entirety of the costs. Mr. Dexter Theodore, KC (Mr. Theodore KC), counsel for the defendant relied on the provisions of CPR 64.6(6) in particular CPR 64.6(6) (a), (b), (d) and (e) in support of this argument.
- [66] Mr. Theodore, KC, contended that the claimant failed to give reasonable notice of his intention to issue Claim No. SLUHCV2014/0256. There was no pre-action protocol letter sent to the defendant.
- [67] Additionally, Mr. Theodore KC contended that the claimant's conduct was significant in that the court having rendered its decision in Claim No. SLUHCV2010/0066 on 26th February 2014, the claimant had by 16th April 2014 filed the present claim. According to Mr. Theodore KC, the claimant's conduct in filing the present claim was indicative of his failure to take into account the time and effort reasonably involved in rendering an account in respect of the estates of persons who had died a considerable time ago.
- [68] Mr. Theodore KC further submitted that the defendant had never evinced an intention not to provide the accounting; and that in all the circumstances of the case

³⁸ At para 10 claimant's affidavit 8th February 2022

the claimant acted unreasonably in failing to give the defendant adequate time to comply with the court's judgment in Claim No. SLUHCV2010/0066 prior to filing the present claim. Therefore, in Mr. Theodore KC's view, the filing of the present claim was wholly unnecessary.

[69] The order made by Wilkinson J. in her judgment dated 26th February 2014 as it related to costs was that:

"Prescribed costs is awarded to Mr. Shaheel Jagroop and same is payable by the estate of Mr. Gregory Johnny."

[70] At paragraph [42] of the judgment dated 8th August 2019, the learned judge said:

"The court does not believe that the present suit under consideration is a waste of the estates' funds as it is clear that there is a contest between the parties as to accounts. The court is therefore prepared to allow the costs for this suit and it is to be paid by the estates of Mr. Gregory Johnny and Mrs. Velina Johnny."

[71] Then at paragraph [45] of the judgment the learned judge said:

"Although the court would have liked to have closed off this matter with a final order, it is afraid that it cannot do so."

[72] The learned judge then went on to make a costs order in the following terms:

"The legal costs associated with SLUHCV2010/0066 ... are not to be borne by the estates of Mr. Gregory Johnny and Mrs. Velina Johnny. They are for the personal account of Ms. Johnny."

A date for the payment of money due to Mr. Shaheel Jagroop from the estates of Mr. Gregory Johnny and Mrs. Velina Johnny is to be fixed by the court which will make final order on the account of the estate of Mrs. Velina Johnny.

Costs of this suit are to be borne by the estates of Mr. Gregory Johnny and Mrs. Velina Johnny and are to be fixed after the amount for the estate of the estate of Mrs. Velina Johnny is settled by the court."

[73] There are two observations made with respect to the order made by the learned judge in the present claim as set out hereunder.

[74] Firstly, the learned judge appeared to have changed the previous order that she made in Claim No. SLUHCV2010/0066 wherein she stated that prescribed costs is

awarded to Mr. Shaheel Jagroop and the same was payable by the estate of Mr. Gregory Johnny. The learned trial judge could not have presumed to change her costs order subsequently in substantially different proceedings notwithstanding that it involved the same parties and the same subject matter.

[75] There was no appeal against the decision of the learned judge. Therefore, the original costs order must stand the same not having been set aside on appeal. In the premises, the court finds that the costs payable to the claimant in Claim No. SLUHCV2010/0066 is prescribed costs payable out of the estate of Mr. Gregory Johnny.

[76] Accordingly, costs to be awarded in Claim No. SLUHCV2010/0066 fell to be determined in accordance with CPR 65.5(1), CPR 65.5(2) and CPR 65.5(3). Therefore, the claimant was entitled to costs in the sum of \$7,500.00 as calculated in accordance with Appendix B.

[77] It is obvious from the observations made by the learned judge in the present claim as to the lack of finality in determining the amount payable to Shaheel Jagroop out of the respective estates that the costs in the present claim could not have been quantified until that exercise of finalising the accounts had been completed; that is, that the accounting was fully completed and the court was able to determine the actual amount due to Shaheel Jagroop. Therefore, it would appear that in the present case costs must be quantified in accordance with the provisions of CPR 65.5 on the basis of prescribed costs.

[78] Additionally, the value of the claim in the present proceedings will be quantified on the basis of the amount ordered to be paid to the claimant and shall be payable out of the estates of Gregory Johnny and Velina Johnny. Therefore, the court will fix such costs to be awarded to the claimant on the basis of CPR 65.5(2)(a), that is, on the basis of a sum stipulated by the court as the value of the claim.

[79] Mr. Theodore, KC has submitted that in respect of the present proceedings the court should apply the provisions of CPR 65.5(4) and award the claimant a portion only

of such costs taking into account the matters listed in CPR 64.6(4) and (5); and in particular CPR 64.6(6)(a), (b), (d) and (e).

[80] CPR 64.6(3) gives the court power to order a party to the proceedings to pay costs from or up to a certain date only; costs relating only to a certain distinct part of the proceedings; or only a specified proportion of another person's costs.

[81] Pursuant to CPR 64.6 (4) the court may not make an order under CPR 64.6(3)(a) or (3)(b) unless it is satisfied that an order under CPR 64.6(3)(c) would not be more practicable.

[82] According to CPR 64.6(5), in deciding who should be liable to pay costs the court must have regard to all the circumstances.

[83] The circumstances to which the court must pay regard are set out at CPR 64.6(6) which states:

“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;
(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.”

[84] Mr. Theodore KC relied extensively on the provisions of CPR 64.6(6) (a), (b), (d) and (e).

[85] In the exercise of the court's discretion, the general costs rule is that the unsuccessful party will be ordered to pay the costs of the proceedings to the successful party. The court is, however, given very wide discretionary powers to vary the application of the general rule. These include the power to order a successful party to pay all or part of the costs of an unsuccessful party or make no

order as to costs or to pay only certain portions of another person's costs. Importantly, the judge, in the exercise of his or her discretion, must give real weight to the principle that costs follow the event. In exercising this discretion as to costs, the court is required to have regard to all the circumstances and to act judicially.³⁹

[86] The question that arises on Mr. Theodore KC's submissions with respect to costs is whether there are reasons for departing from the general rule in the present case.

[87] The general principle is 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 reasons 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.⁴⁰

[88] In this case a departure from the general rule is not obvious, therefore, before making such a costs order the court must properly address its mind to the applicable principles or a consideration of the factors as set out in CPR 64.6.

[89] Mr. Theodore KC appeared to have focused his submissions on the claimant's conduct before and during the litigation of the proceedings.

[90] In exercising these discretions as to costs the court is required to have regard to all the circumstances. Particular consideration must be given to the conduct of the parties both before and during the proceedings and the manner in which a party has pursued the case in general and particular issues within the case. Thus the order can be affected by whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings. The Court is also required to consider whether it was reasonable for a party to pursue a particular allegation or raise a particular issue and whether the claimant gave reasonable

³⁹ Webster Dyrud Mitchell (A Partnership) and another v Jenny Lindsay [2021] ECSCJ No. 691

⁴⁰ The Attorney General and another v Anton Tonge [2103] ECSCJ No. 285; Rochamel Construction Limited v National Insurance Corporation [2003] ECSCJ No. 83

notice of intention to pursue a claim. The Court also has power to order costs against a person who is not a party, but only on giving prior notice and an opportunity to be heard.⁴¹

[91] These discretions are aimed at assisting the court to further the overriding objective of dealing with cases justly. Dealing justly with cases includes ensuring that the parties are on an equal footing, that expense is saved, that cases are dealt with proportionately to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party, that the matter is dealt with expeditiously and fairly and that an appropriate share of the court's resources is allotted to it while taking into account the need to allot resources to other cases. The parties are required to assist the court to further this objective.⁴²

[92] This gives rise to a number of concepts some of which are relevant to the award of costs in this case. Claimants should be discouraged from bringing proceedings or making allegations which are spurious, in the sense that they are unsupported by evidence. A person should not be forced to waste expense to defend a claim that is not being prosecuted. Defendants should be encouraged to admit, at an early stage of the proceedings, allegations or claims which they cannot rebut.⁴³

[93] In the present case, the claimant pursued allegations which could clearly be seen as spurious and at times vexatious. There were copious affidavits filed which had to be answered by the defendant. Many of these affidavits were repetitive in substance, and were not based on any identifiable factual basis but rather on the assumptions and suspicions of the claimant. In many instances, the allegations raised by the claimant not only had a tendency to prolong the proceedings, but also caused the court to embark on a fishing expedition particularly by making disclosure orders against third parties which turned out to be entirely superfluous. Needless to say that all of the above resulted in the incurring of unnecessary and unwarranted costs by the defendant. Therefore, the court is inclined to uphold Mr. Theodore KC's

⁴¹ Per Byron CJ in *Rochamel Construction Limited v National Insurance Corporation* at para 8

⁴² *Infra* at para 9

⁴³ *Infra* at para 10

submissions on this point and will order that the claimant is not entitled to an award of all of the costs recoverable in the present claim.

Order

[94] In the circumstances, the court makes the following orders:

1. The court declares that there are no further assets forming part of the estates of Gregory Johnny and Velina Johnny available for distribution to the claimant.
2. That the defendant is entitled to pass the accounts of the estate; and that there is no further accounting required to be conducted by the defendant.
3. That the costs payable to the claimant in Claim No. SLUHCV2010/0066 shall be prescribed costs in the sum of \$7,500.00 and shall be payable out of the estate of Gregory Johnny.
4. The costs of the present claim shall be prescribed costs calculated at \$24,623.95 in accordance with the amount paid out or distributed to the claimant as his share of respective estates; and such costs shall be payable out of the estates of Gregory Johnny and Velina Johnny.
5. With respect to the costs order made at paragraph 4 above, and for the reasons already stated by the court in this decision, the claimant shall only be entitled to recover 50% of the costs to which he would have been entitled.
6. The court, in its discretion, makes no order with respect to any interest claimed by the claimant.

Shawn Innocent
High Court Judge

By the Court


Dp. Registrar