

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

GRENADA

CLAIM NO: GDAHCV2017/0353

Between

**Francis Banfield Chambers
(A Firm of Legal Practitioners)**

Claimant

and

Attorney General of Grenada

Defendant

BEFORE: Her Ladyship, the Honourable Agnes Actie
(High Court Judge)

VIA ZOOM

APPEARANCES:

Mr Nazim Burke for the claimant

Mr A. Olowu for the defendant

PRESENT:

Kenrick Banfield, claimant's representative

DATED: The 6th day of March, 2023

ENTERED: The 10th day of March, 2023

RULING

1. The claimant in statement of claim filed on September 15, 2017, and amended 5th April 2018 seeks the sum of \$1,271,340.10 being costs for professional legal services provided to the Government of Grenada or in the alternative a sum determined to be reasonable compensation for professional services rendered on a quantum meruit basis together with interests and costs.

2. The defendant admits that the claimant provided the legal services but challenged the amount claimed. The defendant seeks an order that the claim be dismissed or in the alternative that an assessment of the Bill of Costs in accordance with Section 50 of the Legal Profession Act.
3. Mr Alva Browne, Former Permanent Secretary, Ministry of Legal Affairs filed a witness statement for trial on June 30, 2021. Mr Browne admits that Cabinet approved the claimant's office to act as Junior counsel with lead counsel Mr Ramesh Maharaj SC. He further stated that Cabinet approved a retainer of USD \$20,000.00 for Mr Maharaj SC and EC \$25,000.00 for the claimant. Mr Maharaj SC was paid the sum of \$531,208.85. Mr Browne stated that the claimant's bill and statement of costs were unfair and unreasonable and surmised that "from our assessment a total reasonable bill for services rendered to be in the sum of \$124,650.50".
4. The claimant in a notice of application filed on 12th January 2023 seeks a declaration that the conclusion for the estimated sum of \$124,650.50 made by Mr. Alva Browne amounts to an admission of part of the sum due to the claimant. The claimant seeks such a declaration pursuant to Part 26.1 (2) (i) and (w) and Part 38.3 of CPR 2000 and Section 18 of the Evidence Act.
5. The defendant alleges that Part 26 does not avail the claimant as the applicant has not asked the court to determine a preliminary issue. The defendant contends that the claimant has not engaged Part 14 that deals with Judgment on Admission. The defendant further contends that the witness statement filed by the Permanent Secretary is not an admission within the contemplation of Part 14 and also not an admission within which judgment can be pronounced without full examination of the whole witness statement at trial.
6. The use of witness statements was in issue in this jurisdiction in the Court of Appeal decision in **Sgl Holdings Inc. V Aiham Shammas**¹ where George-Creque, J.A (as she then was) stated:

Use of the witness statements

14. Learned Queen's Counsel Ms. Edwards on behalf of SGL contends that it was wrong for the learned master to make use of the witness statements which had been filed following the Case Management Order in readiness for trial in determining Shammas' application for summary judgment. In short, she says, that a witness statement is not evidence until its content is given at trial. She

¹ GDA HCVAP 2010/002

relies on rule 29.2(1) CPR 2000 which, in essence, says that any fact which needs to be proved by evidence of witnesses is to be proved at trial by oral evidence given in public. She also relies on rule 29.8(1) the gist of which is that if a party has served a witness statement the witness must be called to give evidence unless the court orders otherwise; as well as on rule 29.12(1) which says that a witness statement may be used only for the purpose of the proceedings in which it is served.

15.

16.

17. To my mind, to preclude a judge or master from a consideration of witness statements where they have been filed, on considering whether to grant summary judgment, merely because the witness statements are not sworn affidavits but statements of the witness which will be tendered as evidence in the trial, would be to adopt too rigid an approach which places form over substance to no useful purpose. On the other hand, the witness statements, which under the more modern approach are seen as an amplification of one's pleaded case, is perhaps the best source, coupled with the pleadings, from which the judge or master may be better placed to determine whether, a trial is necessary since he/she is able to assess what evidence will be led at the trial and whether on the strength of that evidence, a party has any real prospect of succeeding either on his claim or defence. This exercise does not entail the acceptance of what is contained in the witness statements as truth but calls for the weighing of the evidence of a Claimant as against that of a Defendant. I do not consider the master's approach in taking into account the witness statements as being improper.

7. The court is of the view that the conclusion reached, and the amount stated by the Permanent Secretary in his witness statement is an admission which the court can accept even without full ventilation at a trial. However, the court allowed the evidence in examination- in- chief. Mr Alva Browne asserts the amount stated as a reasonable sum due and payable to the claimant.
8. Counsel for the defendant further challenged the procedure and Rule adopted by the claimant. Counsel posits that the claimant should have engaged Part 14. to seek Judgment on admissions and not Part 26. Part 14.7 deals with admission of part of claim for money only. This Rule provides for where the only remedy which the claimant is seeking is the payment of money and the defendant admits a specified sum of money and the amount or proportion admitted in satisfaction of the claim is accepted then judgment can be entered.

9. The court accepts that the claimant has not pursued the procedure outlined in Part 14. However, the wrong procedure does not in anyway restricts the court in dealing with the matter neither does it invalidate the application. Rule 26.9 confers jurisdiction to put matters right where there was a failure to comply with procedural aspect of a rule. Lord Collins in **Texan Management Limited v Pacific Electric Wire & Cable Company Limited**² states “It has often been said that, in the pursuit of justice, procedure is a servant and not a master”. The claimants having accepted the sum assessed by the Permanent Secretary and accordingly judgment on admission is entered in favour of the claimant in satisfaction of the whole claim.

IT IS HEREBY ORDERED THAT

1. Judgment is entered in favour of the claimant in the sum of \$124,650. 50 with interest at the rate of 3% from 30th June 2021 until judgment and at the rate of 6% from the date of judgment until payment in full.
2. Prescribed costs in sum of \$13,560.94.
3. The matter is removed from the court's list.

BY THE COURT

REGISTRAR

² [2009] UKPC 46