

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

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

Claim Number: **SKBHCV2018/0218**

Between

NASSIBOU BUTLER

Claimant

-and-

REMEO TWEED

Defendant

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Mr. Brian Barnes of counsel for the claimant

Ms. Derriann Charles of counsel for the defendant

2022: March, 4th
September, 12th

JUDGMENT

[1] **Moise, J:** The claimant, Mr. Nassibou Butler (Mr. Butler) is an attorney at law, licensed to practice in Saint Christopher and Nevis. The Defendant, Mr. Remeo Tweed (Mr. Tweed) is a former client of Mr. Butler. On 22nd August, 2018, Mr. Butler commenced this action seeking damages on account of outstanding legal fees which he claims is owed to him for services rendered to Mr. Tweed. Mr. Tweed does not deny that the services were rendered. However, after a careful assessment of his pleadings I am of the view that Mr. Tweed raises three main issues in his defence. The first is that Mr. Butler had not in fact completed the work; as he failed to pursue enforcement of various cost orders granted in Mr. Tweed's favour by the court. Secondly, he asserts that the fees claimed by Mr. Butler are unreasonable and exorbitant. Lastly, Mr. Tweed argues that he has in fact paid reasonable fees to Mr. Butler and no longer owes him any money, or at the very least, the fees owed are significantly less than what has been pleaded in the claim.

- [2] Having examined the evidence and considered the submissions in the matter, I have concluded that Mr. Tweed does in fact owe Mr. Butler. However, I agree with Mr. Tweed that the fees which are claimed by Mr. Butler are not reasonable and therefore ought to be discounted. I have therefore entered judgment in favour of Mr. Butler in the sum of \$34,000.00EC rather than the sum of \$85,125.00EC as he has pleaded in his case. These are the reasons for my decision.

The Facts

- [3] Mr. Tweed was the respondent to divorce proceedings in claim number SKBHMT2005/0005. For reasons which are inexplicable, the settlement of ancillary matters emanating from this divorce was subject to a multiplicity of separate summonses, claims, and various appeals. However, of particular importance is that on 23rd March, 2012, a summons for determination of the now divorced couples' ownership of property was filed before the court. At the time of the summons, Mr. Tweed's ex-wife (Mrs. Tweed) resided on the premises situated at Palmetto Point/Ottley's Yard in Saint Kitts. On 26th July, 2013, Errol Thomas J. delivered a judgment in which numerous orders were made regarding the separation of the matrimonial property. The first of those orders was as follows:

“The Respondent is entitled to be registered as sole, legal and beneficial owner of the property situate at Palmetto Point/Ottley's Yard as the Petitioner has failed to show a common intention and that she suffered any detriment in this regard.”

- [4] Although Mr. Butler is recorded there as being counsel then on record for Mr. Tweed, Thomas J in his closing remarks noted that ***“[t]his has been a long and complex case involving many issues and many attorneys-at-law. In the circumstance, the Court must record its deep and sincere appreciation to all the attorneys who have been involved for their contribution in terms of scholarship to a situation involving two parties with so much potential given their respective ages. In the end justice must prevail and the attorneys have contributed substantially in this regard.”***
- [5] From the evidence presented in this case and the remarks of Thomas J, it seems apparent to me that Mr. Butler was involved in the process of obtaining ancillary relief and appeared as counsel for Mr. Tweed at some point in those proceedings. However, it is unclear as to precisely when he was

initially instructed, as Mr. Tweed had in fact been represented by previous counsel at some point in those proceedings. The second issue which is apparent was that the settlement of ancillary matters was long and complex. It would have therefore been clear that the parties had been through some rather protracted and substantive litigation as it relates to the ownership and separation of the matrimonial property. The legal fees owed to Mr. Butler for those proceedings are not the subject of the claim now before me.

- [6] However, Mr. Butler also claims that Mr. Tweed subsequently instructed him to seek enforcement of the first of the orders made by Thomas J. Although he had been declared the lawful and exclusive owner of that property and entitled to be registered as such, the order of the court had made no provision for its enforcement and it is not clear to me as to whether any thought had been given to the enforcement of the order during the very proceedings in which ancillary matters were adjudicated upon.
- [7] Mr. Butler's claim is that, based on the instructions of Mr. Tweed, he commenced a separate claim, number SKBHCV2013/0343, before the high court in which he sought vacant possession of the premises from Mrs. Tweed. Although this claim was lodged in 2013, it did not come to trial until December, 2014 and the court rendered its judgment on 6th February, 2015. In a 5 page judgment Carter J noted that ***"[t]he matter has proceeded to decision by way of written submissions, the parties having agreed that the affidavit filed in support of the fixed date claim form by the claimant and that in response by the defendant, would stand as evidence in chief."*** It appears therefore that when this matter came to trial there was not much to be dealt with by way of cross examination. A perusal of the judgment does not give one the impression that the issues for determination in SKBHCV2013/0343 were complex in any way. It simply dealt with the request for vacant possession now being made by Mr. Tweed. In light of that, paragraph 3 of Carter J's decision is worth mentioning. It states as follows:

"It is a curious matter in that this Court has already pronounced upon the property rights as between these parties who were previously married. In the matter of Tweed v Tweed, Claim no. SKBHMT2005/0005, (hereinafter referred to as "the matrimonial proceedings") a Decree Absolute was pronounced on the 20th day of October 2006 and the marriage between the present claimant and defendant was thereby dissolved. A

summons for determination of property interest was filed in the matrimonial proceedings on the 2nd March 2006. On the 26th July 2013, after what the Learned trial Judge described as being “a long and complex case involving many issues and many attorneys-at-law”, Thomas J. (Ag.) in giving judgment on the summons declared inter alia, that:

“The Respondent [the claimant in the instant matter] is entitled to be registered as sole, legal and beneficial owner of the property situate at Palmetto Point/Ottley’s Yard as the Petitioner has failed to show a common intention and that she suffered detriment in this regard.””

[8] I express a similar sentiment to Carter J. It is more than curious to me as to why all of these matters, including enforcement, could not have been resolved in the matrimonial proceedings, which itself was commenced over 17 years ago; given that the issues relating to the ownership of property were dealt with by way of summons before the presiding judge. Perhaps one must consider why is it that after such an extensive and complicated ancillary relief process, a separate action is sometimes needed to be filed to seek vacant possession of the premises. I am not sure that I understand precisely why the court procedures cannot ensure that an order for vacant possession could not be sought and granted during those very proceedings. It would certainly save significant time and cost if thought is given to those issues. However, Mrs. Tweed persisted in her desire to remain in possession of the premises, notwithstanding her failure to successfully appeal the decision and a further claim was filed against her in 2013 in which vacant possession was being sought.

[9] Carter J, in her own judgment concluded that Mr. Tweed, ***“... as the sole legal and beneficial owner of the property is prima facie entitled to possession of the property. In his judgment with respect to this matrimonial property, Thomas J. did not make an order for possession. However, the effect of a finding that the claimant is the sole legal and beneficial owner of the property is that the defendant has no legal basis upon which to remain on the property.”*** The Learned Judge therefore granted the order for vacant possession.

[10] It is an agreed fact that even after this order was granted Mrs. Tweed did not relent and did not voluntarily vacate the premises. In fact she filed a notice of appeal, which Mr. Tweed successfully defended. On 23rd April, 2015, a writ of possession was obtained from the High Court registry. This writ was executed on 9th May, 2015 and commenced at 8:00am. It is Mr. Butler's evidence that he attended the execution of the writ at Mr. Tweed's request. This he stated lasted over 12 hours due to Mrs. Tweed's resistance and the need to obtain further assistance from the police. He also states that he stayed until midnight in order to oversee the changing of locks and securing of the premises after Mrs. Tweed was evicted. However, I must note that there was evidence before me which indicated that the eviction process had in fact ended before 6pm on that date.

[11] For reasons which are not adequately explained, Mr. Butler never issued an invoice to Mr. Tweed until over a year and a half later. It was not until 28th November, 2016, did Mr. Butler issue an invoice for the sum of \$30,350.00EC. He states that this was specific to the work done in the enforcement proceedings. In addition to that, he states that this invoice did not reflect the "totalisation" of the work. Therefore, just under 9 months later, on 4th August, 2017, another invoice was issued to Mr. Tweed; this time in the sum of \$85,125.00EC. This was described as a "totalized" bill for the work done. There was therefore an increase of close to \$55,000.00EC from the bill which had initially been issued on 28th November, 2016.

[12] In the current proceedings, Mr. Butler also insists that his bill is justified as he is entitled to charge fees at a rate of \$950.00EC per hour given his years of experience as an attorney at law and the nature of the work carried out on Mr. Tweed's behalf. Needless to say, Mr. Tweed was not happy with this development and he insisted that he would not pay such sums to Mr. Butler. In fact, as counsel for Mr. Butler puts it, Mr. Tweed "angrily and orally" terminated Mr. Butler's services as his attorney without making any further payment towards the bill.

[13] For his part, Mr. Tweed states that from the very date on which the order of Thomas J was obtained he instructed Mr. Butler to pursue the enforcement of the order, including the order for costs. He makes various allegations regarding certain comments made by Mr. Butler to the attorney on the other side at the time. Mr. Butler denies those allegations and I do not think it is necessary for the court to address those issues, as they are of no influence to the decision I have come to. What is of note however, is that Mr. Tweed expresses dissatisfaction with the fact that the full

enforcement of the matter had not been brought to an end with the payment of costs awarded to him still outstanding.

[14] Mr. Tweed also references a number of payments that had in fact been made to Mr. Butler over the years. This included a \$1,000.00EC payment made in September, 2017 and a \$15,000.00EC payment made in April of 2016. Mr. Butler asserts that those payments were allocated to another case in which he represented Mr. Tweed. Mr. Tweed also asserts that Mr. Butler had in fact taken action against him in the Magistrate's Court for the recovery of fees. However, it does not appear to me that these claims necessarily relate to the outstanding fees for what is the subject of the claim before me. On balance I find that Mr. Butler had performed the work on Mr. Tweed's behalf and the question for determination is what is owed to him at this point. However, it is not an easy issue to determine given the state of the evidence.

[15] As counsel for Mr. Tweed rightly pointed out, the parties had not entered into any formal retainer regarding the payment of fees. Mr. Butler appears to have been in the habit of preparing invoices some months after the fact. Even during the course of the trial it seemed somewhat difficult to determine precisely what the various fees paid to him were being applied to, given the number of cases in which he represented Mr. Tweed as his attorney. It is therefore left for the court to do the best it can in the circumstances to determine what are reasonable fees for the services rendered in those enforcement proceedings and how much of it, if any, has already been paid by Mr. Tweed.

The Submissions

[16] Counsel for both parties have accepted that in the absence of any formal written contract the court must determine what is a fair and reasonable sum which ought to be paid to Mr. Butler for the services rendered to Mr. Tweed. It is for the court to first determine whether the amount claimed in the bill is reasonable in general. If this is not the case, then the court would need to determine what a reasonable hourly rate is for the nature of the work performed by Mr. Butler. The court should then go on to consider the itemization of the bill in order to determine whether the line items presented by Mr. Butler are reasonable. However, before doing so I wish to make some general observations regarding the nature of this case and the approach which counsel would wish for the court to take.

[17] In my view, one must not lose sight of the fact that this claim is in effect a claim for breach of contract for services rendered. It is my view that an attorney at law is entitled to determine within himself what the value of his services to the client is likely to be. There is nothing inherent in the law which prohibits an attorney from charging whatever fees he wishes to charge to his client, as long as the client is willing to pay those fees and they are in keeping with the general guidelines of reasonableness as outlined in section 29 of the Code of Ethics attached to the **Legal Profession Act 2008**. The section states as follows:

- (1) An attorney-at-law is entitled to reasonable compensation for his services but should avoid charges which either overestimate or undervalue the service rendered.*
- (2) An attorney-at-law shall not charge in excess of the value of the service rendered because of the ability of a client to pay, however, he may consider the indigence of a client as a factor in charging below the value of the service rendered, or not charging at all.*
- (3) An attorney-at-law should avoid controversies with clients regarding compensation for his services as far as is compatible with self-respect and his right to receive compensation for his services.*

[18] These are the general principles which an attorney must bear in mind when determining what fees are appropriate for the services he has rendered to a client. However, the difficulty with this case is that the parties never attempted to place any of their obligations into writing beforehand and it is apparent that Mr. Butler may not have informed Mr. Tweed about his hourly rates before the litigation had commenced. This is therefore an issue which is worth some criticism.

[19] In my view an attorney who represents a client in such litigation over time should avoid doing so without being open and transparent from the very inception regarding the rate of fees he is likely to charge. In numerous judgments on assessment of costs, this court has expressed the concern that exorbitant and unreasonable cost bills can be a significant hindrance to access to justice, as it can discourage persons from seeking to commence or defend legitimate cases in the courts for fear of being unable to meet the cost of litigation. Legal fees therefore have a substantial impact on access to justice. Therefore, when the court assesses the cost of litigation, the standard is not that which

the most expensive lawyer is desirous of charging, but that which is reasonable had the work been done by a reasonably competent attorney.

[20] To put it differently, the primary purpose of the justice system is not to make lawyers wealthy, but to provide access to justice for all citizens. Whilst the attorney earns his living from the services rendered and is entitled to at least enjoy a reasonable standard of living through his trade, the costs of litigation endorsed by the court must never be such that it is unreasonable and outside of the reach of the average citizen. The code of ethics encourages the lawyer to not inflate his bill merely because the client is wealthy and, on the other side of the spectrum, he may consider not charging any fees at all where the client is indigent. This encourages some measure of pro-bono assistance to those who are the poorest among us and also ensures that persons are not discouraged by the daunting prospect of unnecessarily exorbitant legal bills.

[21] Therefore, in rendering services to a client it is vital that attorneys at law also advise the client on the fees which he is likely to be charged; or at least the hourly rate of those fees if he so chooses to charge by the hour. In my view, even outside of this, he is also duty bound to inform the client as to the rate the court is likely to award in legal costs if the case is successfully prosecuted. That way, the client would be capable of counting the cost of the litigation and making an informed decision as to whether he would wish to carry on with the services of the attorney or seek legal representation elsewhere. It may also inform the client as to whether the litigation is even worth pursuing when balanced against the potential cost of doing so. It is not that the attorney is duty bound to compromise on the fees he thinks he is worth; especially in light of the factors outlined in section 10 of Part B of the Code of Ethics. But it is that the client, as much as is possible, must be given an opportunity to agree on those fees as part of the contractual arrangement beforehand, whilst also balancing what he is likely to recover in legal costs if it is to be awarded by the court.

[22] Something must therefore be said about clients being handed such extensive legal bills after the fact. This is not a practice which the court would wish to sanction. Equity cannot avail an attorney in such circumstances where the duty is being left to the court to assess the reasonableness of the bill in the absence of a written agreement, which had been acknowledged and agreed to by the client. The code of ethics also encourages the lawyer to avoid unnecessary controversies when it relates to the fees charged. This is because it is not in the public interest, neither in the interest of the

profession in general, for extensive litigation to take place over the payment of legal fees in circumstances where the bill is on the face of it exorbitant and the attorney has simply not done enough to give the client a clearer picture of what that bill was likely to be beforehand.

[23] One must also consider the fact that a claim for vacant possession of property is not a claim for a specified sum of money. Despite the fact that Carter J referred to an assessment of the costs owed pursuant to rule 64.4 of the CPR, it must also be observed that the primary procedure of awarding costs at the end of a claim is for costs to be prescribed. There being no evidence that an application had been made to place a value on the claim before trial, it is likely that the actual costs of the litigation under part 65 of the CPR may even be as low as \$7,500.00EC after the default value of \$50,000.00EC would have been applied. Therefore it means that on balance, although Mr. Tweed is being presented with a bill of \$85,150.00EC as the costs of this litigation to him, he is perhaps likely to only recover \$7,500.00EC in legal costs from Mrs. Tweed¹, plus whatever costs would be associated with the failed attempt at appealing Carter J's decision. It is doubtful that an attorney in such circumstances can satisfy the court that he has in fact fulfilled his obligations to Mr. Tweed if he had not given any consideration to those issues and adequately advised the client on them. There are issues, or perhaps even gaps, in the evidence in this case which are of concern to this court; as cases of this nature can have a broader impact on attorney-client relations and access to justice to the court in general.

[24] Whilst the court agrees that the only approach which can be taken at this stage is to assess the bill presented to Mr. Tweed in light of the approach taken in an assessment of costs and the code of ethics prescribed under the LPA, it is important to express the concerns raised so as to ensure that clarity is brought to this issue. The litigant must have a clearer indication of the cost of litigation to him prior to commencing the work on his behalf. It is appreciated that one may not be fully capable of outlining beforehand the full breadth of the litigation which is likely to take place. However, if the desire is to charge an hourly rate, then this must at the very least be communicated to the client; even to the extent of placing it in writing for the client's acknowledgement. In the absence of any written agreement the court is unlikely to endorse a bill which goes outside of the precedent which it has set for what amounts to reasonable fees in the past.

¹I say so without any prejudice to an actual assessment of the costs at a later date. I merely wish to point out the possibility here that legal costs in that claim may very well be as low as \$7,500.00EC

[25] In returning to the submissions filed in this case, counsel for Mr. Butler refers firstly to the case of The ***Nevis Island Administration v La Copproprete Du Navire J31***² where the then Chief Registrar considered an hourly rate of **\$648.00EC** to be reasonable for a junior counsel to charge. Reference was also made to the case of ***Mark Brantley v Hensley Daniel et al***³ in support of the proposition that Mr. Butler is entitled to charge fees at a rate of \$950.00EC an hour, given his years of experience as an attorney. He states therefore that it is for Mr. Tweed to then prove that the hours spent on work as outlined in the witness statement of Mr. Butler is unreasonable.

[26] However, with due respect to counsel, I am not of the view that the submission adequately outlines what this court has consistently determined to be reasonable hourly rates for an attorney at law to charge. Firstly, it must be noted that in ***Nevis Island Administration v La Copproprete Du Navire J31*** the Chief Registrar was careful to point out that the daily rate applied in that case was beyond what had been set in previous precedents by the court. There was an increase in the rate purely on the fact that the respondent had acted in an unreasonable manner which unnecessarily complicated the litigation. That rate therefore is not in keeping with the precedent which had been set. Whilst I agree that Mrs. Tweed could have cooperated more with the process, I fail to see anything about the enforcement proceedings which made it that much more complicated than normal so as to warrant such an increase. I will address those issues later on, but I simply state at this stage that I see no reason to adopt an hourly rate which is so far beyond what this court has consistently stated is reasonable.

[27] Secondly, in the case of ***Mark Brantley v Hensley Daniel et al***, Williams J did in fact determine that a rate of \$550.00EC was reasonable for senior counsel to charge and two-thirds of that for Junior Counsel. Therefore I see no reason to rely on this authority for the proposition that Mr. Butler is entitled to charge \$950.00EC per hour for his work. This is in no way designed to diminish the value of his years of experience, but simply to point out that there is no precedent for the hourly rate he has claimed and no reason to go beyond established examples.

²CIVIL APPEAL NO.07 OF 2005

³NEVHCV2011/0130

[28] Counsel for Mr. Tweed on the other hand refers the court to the case of ***Paradise Beach Holdings Limited v. Nevis Paradise Limited et al***⁴ where the master reviewed the various authorities on this topic. Indeed, I can find no authority for the proposition that an hourly rate of \$950.00EC has ever been determined to be reasonable in what is a matter of little novelty or complexity. This case currently before me relates to an order for possession and the execution of a writ of possession. In ***Paradise Beach Holdings Limited*** the court determined that a rate of \$600.00EC an hour was reasonable given the relative complexity of that case. I repeat my earlier finding that notwithstanding Mrs. Tweed's reluctance to vacate the premises, I see no reason in this case for a rate beyond what this court has been likely to award in the past. This did not make the legal or procedural issues any more complex. Perhaps it may have been more time consuming; but that does not make it complicated. I would adopt a rate of \$500.00EC an hour as this, to my mind, is reflective of what is reasonable, given the nature of the proceedings. It is therefore left for me to consider the line items referred to in Mr. Butler's bill.

The Line Items

[29] The first observation I would make in relation to the line items identified by Mr. Butler is that they were contained in paragraph 70 of his witness statement. None of what is contained therein was adequately described in the two separate bills presented to Mr. Tweed. In fact neither the bill dated 28th November, 2016, nor the one dated 4th August, 2017 outlined what Mr. Butler's hourly rate was. The bills also did not highlight the hours Mr. Butler spent on the various aspects of the claim. I must therefore repeat my earlier criticism of the ad hoc manner in which these bills are presented. Surely the client must be given a clearer indication of the substance of the bill in order for him to be able to make sense of it himself. Even the court struggles to fully appreciate the substance of what Mr. Tweed is being charged for, far less a litigant who is being asked to pay such an exorbitant amount of money for the eviction of someone from property of this nature.

[30] Firstly, Mr. Butler claims that a total of 10 hours was spent on "numerous interviews and consultations with the defendant on various occasions." However, later on in his affidavit he claims for another 2 hours of consultation with the defendant to explain the nature of the writ of execution.

⁴ [NEVHCV2017/0093 and SKBHCVAP2017/0010]

I find the number of hours to be inflated. Again, it must be observed that this claim related to the eviction of Mrs. Tweed from the premises. Mr. Butler does not appear to have kept or presented a record of any of those interviews and consultations and I do not understand what is inherent in an eviction that would require 12 hours of consultations with the client. I find that a total of 6 hours would be more than reasonable time spent in consultation with Mr. Tweed. I would therefore reduce those hours to 6.

[31] Mr. Butler then claims another 10 hours as time spent on “initial research and review of instructions”. Again there is not much by way of explanation as to what this entailed. Thomas J had declared Mr. Tweed to be the owner of the property. A claim for possession of this nature can hardly be said to require over 10 hours of research as there is nothing novel about it; especially in light of the fact that his ownership and entitlement to the property had already been determined in what was described as rather complex proceedings. The instructions to Mr. Butler also seem to me to have been rather clear. The number of hours presented here also appears to me to be inflated. A total of 4 hours appears to me to be reasonable for this item.

[32] I see no issue with the 3rd item on Mr. Butler’s list. Although I do harbor some doubts about it, a total of 6 hours for the preparation and filing of the claim is not a submission I am prepared to interfere with. However, Mr. Butler claims for 2 hours spent interviewing and consulting with a bailiff to serve the claim form on Mrs. Tweed. Quite frankly, for my part, I see nothing novel or complicated about engaging a process server to serve a claim which requires 2 hours of an attorney’s time at a rate of \$950.00EC per hour. If Mr. Butler is to be believed it would mean that he is charging the client \$1,900.00EC simply to engage the services of a process server to serve the claim. I would therefore disallow this expense altogether as it is beyond unreasonable.

[33] I would not interfere with item number 5 on Mr. Butler’s list. In item number 6, Mr. Butler claims a total of 8 hours spent on perusing and reviewing an acknowledgement of service and affidavit of service in addition to the affidavit in response to the Fixed Date Claim. Again, I must express my concern with this. It is not that the court wishes to be overly critical, but it is difficult to appreciate what it is about an acknowledgment of service and an affidavit of service which requires hours of perusal and study by a senior attorney. By including such items in this way it gives the impression of an attempt to unnecessarily inflate this bill. The perusal of the affidavit in reply would certainly be

important, but as to whether 8 hours is necessary to do so is a question the court is prepared to ask. In total I believe that 4 hours is sufficient time for the issues contained in this item. That would exclude altogether the perusal of the acknowledgment and affidavit of service.

[34] In items number 7 and 8, Mr. Butler claims a total of 11 hours in preparation for and attendance at the First Hearing. Despite my misgivings, I would not interfere with this item. I would also not interfere with items 9 to 15 on Mr. Butler's bill. However, I do believe that item 16 is unreasonable in general. Mr. Butler claims a total of 16 hours spent at the execution of the writ. Again if one is to take this claim at face value it means that at a rate of \$950.00EC Mr. Butler is claiming \$15,200.00EC in fees to simply attend the execution of this writ of possession against Mrs. Tweed. The evidence presented in this case does not point to anything substantive done by Mr. Butler during this time. It appears to me that his general role was to observe the proceedings. Despite the fact that Mr. Butler would have attended this event at Mr. Tweed's request, I must repeat my earlier observation that he ought to have been informed of the financial implications of this request beforehand. I see no reason for the attendance of an attorney at the execution of a writ in the first place. However even if he does attend, there is nothing complicated which the attorney must partake in during this execution. Even at a rate of \$500.00EC an hour this amounts to \$8,000.00EC to simply observe the execution of the writ. Even that cannot be justified as being reasonable in the circumstances.

[35] However, Mr. Tweed must bear some responsibility for demanding the services of an attorney for such an extended period of time outside of working hours, when in reality Mr. Butler's presence was unnecessary. There is nonetheless no need for an hourly rate to be applied here. I would therefore award a flat fee of \$4000.00EC for Mr. Butler's attendance. That, to my mind, is even more than reasonable.

[36] Therefore, the total number of billable hours I have arrived at amounts to 60. At a rate of \$500.00EC per hour this amounts to \$30,000.00EC. I would add to that the sum of \$4,000.00EC for Mr. Butler's attendance at the execution of the writ of possession. In total therefore I would award the sum of \$34,000.00EC as fees in this case. However, I must confess that, in my view, even this award amounts to a sum at the higher end of the scale of what is reasonable. I would however not interfere with Mr. Butler's bill any further but continue to encourage a different approach to legal

fees on such issues. For a litigant to have to pay in excess of \$30,000.00EC to evict someone from his own property is a matter which may very well concern even the most objective and open minded members of our society. The court therefore continues to express its concern with this.

[37] I also wish to note at this stage that counsel for Mr. Butler had requested that this court deals with the issue of liability and schedule the matter for a further hearing on the assessment of the bill. However, for the following reasons I see no basis upon which to take that particular course of action. Firstly, there had been no order for the bifurcation of the claim in this way. Secondly, Mr. Butler had presented sufficient evidence for the court to assess the fees which he has claimed. Lastly, there must be finality to the myriad of cases surrounding Mr. Tweed and his divorce from Mrs. Tweed. While this is in fact a separate claim with different parties, the issues all step from one particular source; which is a divorce which had been granted as far back as 2006. I can see no merit in a litigant being put through this extensive and unyielding litigation to not only separate the property between himself and his ex-wife, but also face further court action by his own attorney for the payment of legal fees in this way. This is all the more reason to ensure that the client is fully apprised of what he is likely to face in legal fees beforehand so as to avoid the unnecessary controversy in pursuing payment of those fees by way of separate court action. In general, this is a course of actions which attorneys must do their best to avoid.

[38] Finally, I note that Mr. Tweed has referred to previous payments of \$1,000.00EC and \$15,000.00EC to Mr. Butler. He would wish for this to be deducted from the sums which this court has assessed. However, I accept that on balance these sums have been applied to previous work done by Mr. Butler on Mr. Tweed's behalf and I would therefore not apply these payments to the bill which is the subject of this claim. I would therefore make the following orders:

- (a) Judgment is entered in favour of the claimant in the sum of \$34,000.00EC with interest at the statutory rate from the date of this judgment;
- (b) The defendant will also pay prescribed costs on the judgment in accordance with the provisions of the CPR.

[39] In closing I also wish to apologize to the parties for the length of time it has taken to deliver this judgment. This only contributes to the very delay which has been criticized in the judgment and for that I sincerely hope that it has not had an adverse effect on either party.

**Justice Ermin Moise
High Court Judge**

BY THE COURT

REGISTRAR