

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

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

Claim Number: **NEVHCV2020/0083**

Between

Leroy Browne

Claimant

-and-

**Fabiola Grant
Abyki Sealey
Sequel Sealey**

Defendants

Before: His Lordship Justice Ermin Moise

Appearances:

Ms. Kurlyn Merchant of counsel for the claimant

Ms. Marlene Uter-Bent of counsel for the defendants

2022: September, 26th

Decision on Costs

- [1] On 26th October, 2021 I gave judgment in favour of the claimant in this case. However, given the substance of the case and the findings made, I invited the parties to file further submissions on the issue of costs. I indicated then that I was minded to make no order as to costs and allow each party to bear their own costs of the litigation. Counsel for both parties duly filed the submissions as requested. In light of that, it is left for me to apologize for the length of time taken to render my decision on this issue. A number of unforeseen events have taken place since the delivery of the judgment in the substantive matter which has caused some delay. I hope therefore that this has not caused too much of an inconvenience to the parties.

- [2] As both counsel have pointed out, the general rule, as contained in Part 64.6(1) of the CPR is that where the court comes to make an order for costs it ***“must order the unsuccessful party to pay the costs of the successful party.”*** Sub-Rule (2) goes on to state that ***“[t]he court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs”***. In the case of ***Delta Petroleum (Nevis) Limited v OOJJ’s Ltd***¹ the court there highlighted the issues relating to the very question as to who is in fact the successful party. the following was stated in paragraph ...:

“...the court may of course depart from the general rule, but it remains appropriate to give real weight to the overall success of the winning party... the question to be determined then is who is the successful or winning party, as only then is the Court likely to approach costs from the right perspective. The question of who is the successful party ‘is a matter for the exercise of common sense’, given that ‘success’, for the purposes of the CPR, is ‘not a technical term but a result in real life. On the basis of the foregoing, I accept that the issue of whether the appellant in the case at bar, Delta Petroleum (Nevis) Limited, was the successful party is a matter that must be looked at in a realistic and commercially sensible way.”

- [3] In my view, there is no doubt that Mr. Browne is the successful party in this case. Although the court did not grant him any damages, it seems clear to me that the substance of the claim was one of possession. He wished to have Ms. Grant out of his property so that he can take possession of it. He was successful in that regard. Ms. Grant also sought declarations and orders that she had an equitable interest in the property. She was unsuccessful in proving this at trial. Mr. Browne is therefore clearly the successful party here. The claim against the 2nd and 3rd defendants was not fully ventilated as they had both vacated the premises by the time of trial.
- [4] The question is whether the court should depart from the general rule in this case and on what basis is it entitled to do so. The factors which the court must consider in making an order for costs are further outlined in Rule 65.6(5) and (6). The court is there encouraged to take into account all of the circumstances of the case in arriving at a decision. Sub-Rule (6) in particular states as follows:

¹ SKBHC VAP2013/0016

In particular [the court] 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.

[5] In light of the guidance provided, counsel for Mr. Browne has submitted a number of factors which ought to be weighed in his favour insofar as it relates to an award of costs. It is submitted that he had in fact been demanding vacant possession of his home for in excess of 2 years prior to lodging this claim. Litigation was therefore not his first course of action in the pursuit of his rights. Secondly, it is argued that Ms. Grant made no demands for a half share of the property until her counterclaim was filed. Thirdly, the case concerned Mr. Browne's ownership of his home and his entitlement to vacant possession. Yet, it is submitted, that the litigation eventually ventured into issues relating to his person, private life. Counsel submits therefore that Ms. Grant's affidavits were geared more towards embarrassing Mr. Browne due to the breakdown of the relationship rather than the actual issue at hand. He incurred costs in this litigation and should therefore be entitled to it.

[6] On the other hand, Counsel for Ms. Grant argues that costs should not be awarded due to Mr. Browne's conduct. Counsel argues that it is a common feature in matters involving parties who were or are involved in an intimate relationship and who may have a child or children together, for the court to depart from the general rule and make no order as to costs. For that proposition

counsel refers to the cases of *Liburd v Rouse*², *Julia L. Stowe v Berthia M. Stowe*³ and *Paul Webster v Lois Dunbar*⁴ in which such orders had been made. However, even after assessing these cases I would not go so far as to say that it is a common feature for the court to deny costs in cases of such a personal nature. It all depends on the circumstances of the case. However, I do agree that perhaps the nature of such cases make it even more important to consider the issue of costs more closely so as to ensure that the overriding objective of fairness is not undermined.

[7] Counsel for Ms. Grant also referred the court to the case of *Groupama Insurance Company Ltd v Overseas Partners Re Ltd & Anor*⁵ where it was determined that the issue of the party's conduct in determining a costs order should relate to conduct in the cause itself and not necessarily in the transaction which gave rise to the litigation. Counsel readily concedes that this is the standard by which the court should assess the submission. However, counsel points to three facts which should nonetheless weigh in favour of making no order as to costs. These are:

- (a) that the Claimant calculated to deceive and did deceive the 1st Defendant about their relationship and the acquisition of the property;
- (b) the court found that the Claimant was insensitive in his behaviour towards the 1st Defendant and completely deceived her about his commitment to their relationship; and
- (c) the Claimant was married when he embarked on a relationship with the 1st Defendant and got married again to someone else during their brief relationship leading the court to state that such conduct is reprehensible and is to be frowned upon.

[8] Counsel therefore submits the following at paragraphs 22 and 23 of her submissions:

Although conduct and misconduct in the transaction are not sufficient reasons for the court to depart from the general rule, the court can have regard to such conduct and exercise its discretion in relation thereto. Such conduct may not be the main reason for the court's decision but can impact the court's decision to the extent necessary.

² SKBHCV 2012/0093

³ SVG Civil Claim No. 477 of 2001

⁴ HCV AP 2011/004

⁵ [2003] EWCA Civ 1846

It is humbly submitted that the court has good reasons to depart from the general rule that costs should follow the event and not award costs to the Claimant against the 1st Defendant given all the circumstances.

[9] In the claim itself, I did make certain findings and observations regarding the manner in which Ms. Grant was treated in that relationship. It seemed clear to me that Mr. Browne's behavior was somewhat deceptive and that he had led Ms. Grant to believe that he had a greater commitment to the relationship than what truly obtained. He admitted that he offered to marry her knowing full well that he was married at the time. Although counsel for Mr. Browne has argued that his personal life was not an issue at stake here, I am of the view that understanding the nature of the relationship was necessary in order to address the substantive issues in this claim. The issues were not unnecessarily salacious or prolix in any way. Ms. Grant's family did not simply move into Mr. Browne's house. There was at least a license to remain there on the basis of that relationship in which Ms. Grant was somewhat financially dependent on Mr. Browne. They also had a child together and Mr. Browne appeared to have also been the one mainly responsible for his financial upkeep.

[10] Ms. Grant's daughter signed off on a loan to purchase furniture in her own name and the family mainly resided here while Mr. Browne remained based primarily overseas. I found that on balance Ms. Grant would have been led to believe that they were about to share a life together. Mr. Browne certainly gave her that false sense of security. He then married someone else during the subsistence of their relationship and then asked her to vacate the premises.

[11] Although the evidence was not sufficient to prove an equitable interest in the property, it was enough to raise a concern as to whether the justice of the situation now required that Ms. Grant bears the costs of this litigation. I agree that she would have been best advised to vacate the premises much earlier. She too grossly exaggerated the amount of money she have saved and contributed to this property. It was proven in evidence that she is a woman of limited means. However, I do agree that although the conduct which the court has frowned upon on the part of Mr. Browne was not conduct in the cause, there is sufficient discretion provided in the CPR and the

case law to allow the court to depart from the general rule of awarding costs in his favour and I am minded to do so. It would seem to me to be the fairest approach to take.

[12]As it relates to the 2nd and 3rd Defendants, I would also be minded not to award costs. They had only resided on these premises because they lived with their mother. By the time the matter came to trial they had both vacated. The substance of this dispute was between Mr. Browne and Ms. Grant. It would not further overriding objective to award costs against her children in these circumstances, notwithstanding the fact that they were adults in age by that time.

[13]In the circumstances I would make no order as to costs

**Ermin Moise
High Court Judge**

By the Court

Registrar