

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO: NEVHCV2009/0180

BETWEEN:

DWIGHT C. COZIER

Claimant

and

**MARK BRANTLEY
GAWAIN FRAITES**

Defendants

Appearances:

Mrs. Angela Cozier for the claimant

Ms. Dia Forrester with her Ms. Michelle Slack for the 1st defendant

2020: June 8
September 28,
November 9
2021: February 15

JUDGMENT ON ASSESSMENT OF COSTS

- [1] **GILL, M.:** On June 18, 2019, Moise J. (Ag.), as he then was, dismissed the claimant's action for libel against the 1st defendant, and ordered that the 1st defendant's costs be assessed, if not agreed, pursuant to Rule 65.12 of the Civil Procedure Rules 2000 as amended (CPR 2000). The parties did not agree and the 1st defendant filed his application on July 15, 2019. The 2nd defendant is not a participant in these proceedings. The 1st defendant filed a bill of costs claiming EC\$172,042.11, including legal fees and disbursements. The claimant objected strenuously to this application on the basis that the amount submitted by the 1st defendant is unconscionable,

unreasonable and disproportionate, and in contravention of CPR 65.12(4). It should be noted that the claimant has appealed the decision of the learned trial judge. On an application by the claimant/appellant, the Court of Appeal refused a stay of proceedings. Accordingly, this court proceeds with the assessment of costs.

Background

- [2] The claim in this matter was filed on December 8, 2009. Judgment in favour of the 1st defendant was delivered over 9 years later. The case file shows that this matter was vigorously contested over the period, and that state of affairs continues with this application. Both parties filed numerous applications and various courts, including the Court of Appeal, were continuously engaged for the duration of this matter. The case record is voluminous.
- [3] The claimant at the material time was a junior cabinet minister of the Nevis Island Administration. The defendant, an attorney at law, was then an opposition senator in the Nevis Island Assembly and deputy political leader of the Concerned Citizens Movement (CCM), and the managing partner in the law firm of Daniel, Brantley & Associates (now Daniel Brantley), his legal practitioners in this matter. He is currently the Premier of the island of Nevis. The claimant sued the defendants alleging the publication of defamatory words in relation to him on a website. The learned trial judge found words in an article by one Brian Newman, who is not a party to this action, published on the website were capable of being defamatory, but that the 1st defendant was not liable for republishing the words of Brian Newman. Further, His Lordship ruled that the words attributable to the 1st defendant were not capable of being defamatory, and went to say that had he found the words so capable, he would have found in favour of the 1st defendant by accepting the defence of justification.
- [4] The Brian Newman post alleged, among other things, that Mexican workers who were in Nevis assisting in the rebuilding of the Four Seasons Hotel were staying at Pinney's Beach Hotel owned by Hon. Dwight Cozier. The 1st defendant responded to the post of someone who had responded to Brian Newman's post. The claimant asserted that he was not the owner of Pinney's Beach Hotel. However, the learned trial judge noted that the claimant accepted that he was the majority shareholder in a family company called Ramsbury Properties Limited, a gentleman contacted him

in connection with leasing a building owned by the company to house Mexican workers, he passed the gentleman on to the managing director of the company and a contract was signed for the purpose of housing Mexican workers. At paragraph 41 of the judgment, His Lordship stated, “The sting of this comment has nothing to do with Pinney’s Beach Hotel and more to do with the fact that the claimant is a minister in the government and a contract was granted for the housing of Mexican workers in a property owned by his company. If, to his mind, there is nothing wrong with Ramsbury Properties Limited housing Mexican workers in these circumstances, I can find nothing which makes the mention of Pinney’s Beach Hotel more libelous in any way.”

- [5] At the assessment hearing, both the 1st defendant and the claimant were cross-examined, following which the parties filed closing submissions as ordered by the court.

Issue

- [6] The court must determine the quantum of costs to be awarded to the 1st defendant.

The Law

- [7] In conducting the assessment, I am directed by CPR 65.2 of the CPR 2000. By virtue of CPR 65.2(1), the sum to be allowed is –
- (a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and
 - (b) which appears to the court to be fair both to the person paying and the person receiving such costs.
- [8] CPR 65.2(3) sets out the factors to be taken into account in determining reasonableness. It states as follows:
- In deciding what would be reasonable the court must take into account all the circumstances, including –
- (a) any order that has already been made;
 - (b) the care, speed and economy with which the case was prepared;
 - (c) the conduct of the parties before as well as during the proceedings;
 - (d) the degree of responsibility accepted by the legal practitioner;
 - (e) the importance of the matter to the parties;

- (f) the novelty, weight and complexity of the case;
- (g) the time reasonably spent on the case; and
- (h) in the case of costs charged by a legal practitioner to his or her client –
 - (i) any agreement about what grade of legal practitioner should carry out the work;
 - (ii) any agreement that may have been made as to the basis of charging; and
 - (iii) whether the legal practitioner advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.

[9] The court has to consider whether the sum claimed by the 1st defendant is reasonable and proportionate in the circumstances of this case. The approach to be adopted was set out in **Lownds v Home Office**.¹ Referring to a provision similar to CPR 65.2(3), Lord Woolf CJ pronounced:

“...what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which CPR 44.5(3) states are relevant. If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonably incurred and the costs of that item should be reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work in relation to each item was necessary and, if necessary, that the cost of the item is reasonable.”²

Analysis

[10] I will proceed to consider the factors set out in CPR 65.2(3).

Any order that has already been made

[11] The court made several orders over the years in this matter. In the bill of costs, the 1st defendant listed several items for which costs orders were made in proceedings leading up to trial. In relation to these items, the claimant submitted that the court has already dealt with costs and given orders

¹ [2002] 4 All ER 775

² Ibid at 782, paragraph 31; see also **Kandy & Kandy Limited and others v Harjeev Singh Kandhari** [2016] ECSCJ No. 99, Claim No. BVIHC (Com) 2014/0127, 2014/0128, 2014/0129, per Leon J. (Ag.) at paragraph 53 citing BVIHCP2013/0006 **Andriy et al v Oledo Petroleum Ltd**

and directions, which were never appealed or set aside. Therefore, the claimant contended, these orders of the court are binding on the parties.³ The claimant identified matters in the bill of costs in which the court did not award any costs, ordered each party to bear his own costs, ordered the 1st defendant to pay the claimant costs, and ordered that there be no order as to costs. The claimant is adamant that the costs exhibited for work done in these matters should be disregarded and disallowed as an abuse of the process of the court.

[12] The 1st defendant submitted that the existence of prior orders does not mean that on an assessment, a litigant does not set out the full costs of what was incurred during the course of the proceedings. He proffered that as an applicant seeking to have his costs assessed, he must state what were his legal fees incurred and his disbursements. He submitted further that notably, there is no provision of the CPR that states that if there is an order for costs made on an application, that on an assessment of costs at the end of the trial, the court must not consider those matters in determining the costs payable when the matter has ended. The 1st defendant argued that if the legislature wished to place that fetter on the court's exercise of its discretion, then the same would have been done.

[13] Having said that, the 1st defendant submitted that the court may discount the overall costs awarded by setting off any prior court order made in relation to costs. He advanced that the court's position is that costs for matters arising in case management are treated as being in the cause, to be determined at trial, and that it is logical that costs associated with preliminary objections taken at trial will be left for the quantification of costs at the end of the proceedings.

[14] I disagree with the 1st defendant's submissions on this issue. In my view, the purpose of CPR65.2(3)(a) is precisely for the court to consider what order it ought or ought not to make in the case of what has **already** been done. Where the court makes an order in relation to costs, the question of whether or not a party should include an item in its bill of costs depends on the order. Where the court, on an application, orders the losing party to pay costs of the application to the winning party, and that order is not appealed successfully or set aside, the winning party is not entitled to claim costs in relation to that application in an application for assessment of costs. As

³ See **Grafton Isaacs v Emery Robertson** [1984] UKPC 22, [1985] 1 AC 97

submitted by the claimant in this case, the court has already dealt with it. Likewise, if there is an order for each party to bear his own costs, or an order that there is no order as to costs, the issue of costs in the particular application has been settled by the court. As posited by the claimant, a decision not to give costs is a costs decision. The situation is different where the court makes an order for costs in the cause. This will entitle the winning party to the costs of the application in question, on the assessment, but that is only when the court makes that order. In my view, this would also apply where the court does not address the issue of costs, and fails to make a costs order, unless a matter under CPR 65.11(3) dictates that the court must order the applicant to pay costs.

- [15] The 1st defendant is asking the court to award him costs of EC\$172,042.11 as being reasonable and proportionate. In calculating that figure, he has included items for which cost orders have already been made. In the event the court carries out an item-by-item approach, any necessary deductions will be made after consideration of the individual orders.

The care, speed and economy with which the case was prepared

- [16] As mentioned earlier, this matter took over 9 years from commencement to judgment. The parties blame each other for this lengthy process in light of the several applications and objections over the years. Notwithstanding this stance, the 1st defendant summarised that the matter has not been plagued with adjournments. He recognised that neither party sought adjournments of hearings or such that may be surprising given the 9-year span of the matter to get to trial. He stated that due to his obligations as Head of State (the Head of State is actually the Governor-General of St. Kitts and Nevis), he sought to vacate the initial trial dates in 2018, but the court, in its wisdom, instead, moved those trial dates to earlier dates, allowing the trial to proceed. The court is in a quandary in making a determination under this head, except to say that the parties appear to have taken advantage of all avenues legally available to them in this matter.

The conduct of the parties before as well as during the proceedings

- [17] It is evident that this case was strongly contested. The 1st defendant stated that at all stages of the proceedings, the claimant behaved in an unreasonable and uncooperative manner. He pointed out that the claimant challenged every application, appealed numerous orders, took unnecessary

objections and protracted, and continues to protract, this matter unnecessarily. He alleged that it is the claimant's conduct and line of opposition that caused more and more costs to be incurred, even on this application. The 1st defendant reminded the court that in cross-examination, the claimant said he did not understand that he is responsible for paying costs and that he did not feel that he should have to pay costs. On the other hand, the 1st defendant contended that he, the 1st defendant, has stuck within what the law provides, advanced applications challenging the pleadings of the claimant, which resulted in key paragraphs of the statement of claim being struck out, with him being able to advance a defence of justification. Collectively, he submitted, all matters proved salient in the dismissal of the claim.

[18] The claimant retorted that the 1st defendant seems to be suggesting that the claimant was not entitled to defend himself against the applications brought by the 1st defendant, which included an application to strike out the very claim. He further stated that the 1st defendant appears to be suggesting that the claimant should cooperate and acquiesce to whatever applications the 1st defendant brought, including a striking out of the claim. The claimant submitted that this would be an appalling suggestion to the court, and difficult to understand, were it not for the display of arrogance and entitlement to his own way clearly demonstrated by the 1st defendant himself through his closing submissions, referring to himself as the 'Premier of the island' and 'Head of State'. The claimant asserted that this application does not take into consideration the unreasonable conduct of the 1st defendant in pursuing his numerous applications, causing the matter to drag on for 10 years before going to trial in what can only be described as obvious delaying tactics.

[19] In particular, the claimant urged the court to frown on what he called the unreasonable actions of the 1st defendant in failing to plead justification, and then waiting 2 years to seek to amend the defence, delaying the proceedings significantly. The claimant alleged that based on a letter dated 1st February 2012, the information that the 1st defendant added in his further amended defence was within his knowledge since then, but the application to amend the defence was made on 7th March 2014. This issue was dealt with by Blenman JA. in the appeal from the decision of the learned master in refusing permission to the 1st defendant to amend his defence to include the defence of justification. In the judgment of the Court of Appeal, Her Ladyship stated:

“Turning to the issue of promptitude and considering whether or not Mr. Brantley was prompt in applying to amend his defence, the learned master, in exercising her discretion, gave too little weight to the history of the case. Mr. Brantley filed his defence on 13th January 2010 however, he sought to amend it in March 2014. That may at first appear to be an inordinate length of time and contrary to what is to be considered prompt. However, as the chronology and case history of this matter indicate, between 2010 and 2014 there have been several applications all within the letter of the law and none of which was deemed frivolous. Mr. Cozier’s appeal of the strike out decision of Master Lanns took approximately 11 months to be completed. The subject matter of those applications and the appeal warranted that the appellant refrain from seeking to amend his defence since it may not have been necessary to do so, if the words were found not to be defamatory and or the claim was struck out in full and or the portion of the claim which was struck out was reinstated on appeal. By raising the preliminary issue of authorship and filing the strike out application, he sought to pursue avenues available to him to establish his legal rights. These steps were bona fide and cannot be considered as delay tactics for which he should be penalised. The court took 20 months after the hearing on the preliminary issue of authorship before delivering its decision. Further, a decision was delivered on his application to strike out the claim just over 7 months after it was filed. The history of this case is very important in any consideration of the timing of the appellant’s request to amend his defence.”⁴

Therefore, this court is in no position to, and cannot, agree with the claimant that there was unreasonable delay by the 1st defendant in seeking to amend the defence.

[20] On the several attacks made against each other in relation to each other’s conduct, it is unfortunate that the extremely combative nature of this case has given rise to this protracted state of affairs. Nonetheless, each party was entitled, within the bounds of the law, to file as many documents as he felt necessary to secure his interests in pursuing or defending the claim. Any unnecessary, unreasonable or abusive applications **so deemed** suffer the adverse cost consequences.

The importance of the matter to the parties

[21] As a junior cabinet minister, the holder of a Master of Laws degree, an author, a majority shareholder in a media company and a shareholder and director of a family company who alleged that the words that offended him meant, among other things, that he was guilty of insider trading and rape in its normal meaning or some other form of rape similar to the normal meaning, that he defrauded the treasury and that he dishonestly and fraudulently competed with the Nevisian business community, no doubt the matter was of significant importance to the claimant. He has

⁴ SKBHCVP2014/0027 at paragraph 20

pursued the matter vigorously and has expressed his intention to take the matter to the Privy Council (in cross-examination). At the start of the claim, the 1st defendant was the Leader of Her Majesty's Opposition. He has been the Premier of Nevis since 2017. He submitted that having this matter dismissed was extremely important to him as Premier of the island of Nevis and member of the Federal Government, and he would certainly not want the taint of an adverse ruling on him wherein he is accused of defaming another. It is clear to the court that this matter was of great importance to both parties.

The novelty, weight and complexity of the case

[22] The 1st defendant acknowledged that the matter touched on traditional aspects of defamation in relation to whether the words complained about were defamatory, publication and the defences of fair comment and justification. However, he submitted, it was by far not the simplest of cases. He explained that this matter had several non-traditional factors arising in the modern world as it related to defamatory remarks made on an online forum on the worldwide web. He further submitted that the court had to deal with the design and programming of the online forum, which automatically reposted all prior postings to determine whether the 1st defendant could be found to have been responsible for republication of the original post, which made this matter complex.

[23] The claimant countered by submitting that the simple issue in this claim, and what is presently before the Court of Appeal, is whether the 1st defendant republished the words complained of by the claimant and that the issue of republication has been a consideration in defamation law for many years.

[24] Having read the judgment of the learned trial judge, I am not convinced that he was dealing with any novel or complicated point surrounding the online publication. It may well be that this speaks to the simple eloquence of a judge writing for the benefit of a wide-ranging audience. The section of the judgment on republication demonstrates the use of the common law in resolving this issue. Therefore, notwithstanding the element of publication on the worldwide web, I am of the view that the issues in this case were not significantly novel, weighty or complex.

The time reasonably spent on the case

[25] The 1st defendant submitted that the court should ask itself if this matter was deserving of taking 9 years to get to trial and now be in its 12th year still being aggressively contested by the claimant. He posited that this matter should have ended in 2012 when he drew to the claimant's attention that it was now beyond doubt that when he was a minister, he benefitted from leasing premises to Mexican workers to rebuild the Four Seasons Resort. That did not happen. Consequently, the 1st defendant stated, he had to spend many more years on this matter, taking steps to ensure that the full circumstances of this case were before the court, which steps the claimant sought to dismiss on each occasion. Whereas the 1st defendant lamented the unnecessary duration of the matter as a result of the claimant's persistence, and whereas it is obvious from the record that a substantial amount of time was spent in the preparation and conduct of this case, the 1st defendant has not provided the court with any basis on which to determine the time the legal practitioners spent on this case.

In the case of costs charged by a legal practitioner to his or her client – (i) any agreement about what grade of legal practitioner should carry out the work; (ii) any agreement that may have been made as to the basis of charging; and (iii) whether the legal practitioner advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case

[26] There is no evidence in this case of any agreement about what grade of legal practitioner should carry out the work and no evidence in relation to (iii) above. As regards (ii), the 1st defendant's affidavit in support of the application sets out the arrangement he had with his attorneys. At paragraph 11(1) of the affidavit, he affirmed as follows:

"Exhibit MB1 contains my itemised Bill of Costs, outlining legal fees incurred throughout the proceedings together with disbursements. Additionally, it identifies all the material filed by me over the 10 year period. To control my fees and expenses in this matter, I agreed on fixed fees with my legal practitioners for services to be provided. An hourly billing fee arrangement was not under consideration at the time, though I am very much aware that the time and commitment of the various members of my legal team over the 10 year now 11 year period far exceeds the costs I incurred and now claim. My team extended great care and economy in the preparation of the case. The fees incurred were all reasonably incurred and were based on flat fees and not hourly billing. There were numerous occasions when more than one attorney attended hearings on my behalf, and or attended to the preparation of documents on my behalf, but that did not change the fixed fee arrangement I had in place for flat fees based on tasks

performed. Great care and economy were extended in the preparation of the case. The fees incurred were all reasonably incurred and were based on flat fees and not hourly billing.”

[27] Under cross-examination, the 1st defendant maintained that he had a flat fee arrangement with his attorneys for the various tasks performed, and not an hourly billing arrangement.

[28] The claimant contended that the bill of costs is remarkable in its lack of detail. Specifically, the claimant spelled out that the bill of costs did not disclose how the sums therein were calculated [in clear contravention of CPR 65.12(4)], the identity of the legal practitioner performing the work and the seniority of such practitioner, or the rate expected of such practitioner. The claimant submitted that this is prejudicial to him, and robs the court of the opportunity to examine the particular cost to see if it is reasonable in the circumstances. He observed that not only was the 1st defendant unable to speak to the time spent by his lawyers in this matter, but he was unable to provide a retainer agreement if, as he testified, the legal fees which he was being charged were not on an hourly basis, as contemplated in a proper assessment under the rules of court, but by way of a flat fee. He submitted that this effectively makes a proper assessment impossible, as there is no way to compare the ‘flat fees’ with the cost of hourly work to determine if they were reasonably incurred. In this respect, the claimant argued, the cost billed on 7th March 2019 for court attendance for full trial in the amount of US\$10,000.00 can only be considered unreasonable in the circumstances as there is no way for the court to properly assess same.

[29] In relation to the objection that the bill of costs does not state which legal practitioner attended the various matters during the claim, the 1st defendant drew the court’s attention to the fact that the court’s record reflects who attended the various matters as the filed documents and court orders contain that information. The 1st defendant is of the view that the absence of these details in the bill of costs is inconsequential as the court is in possession of the entire file in these proceedings.

[30] Further, the 1st defendant proffered that there is no mandate that litigants are to engage counsel on a timed basis. He argued that it is unreasonable for the claimant to contend that not knowing the length of time spent on a matter robs him of the opportunity to examine if costs are reasonable. He reiterated that the flat fee arrangement resulted in significant cost saving in this matter, given the plethora of matters that had to be addressed. In addition, he submitted that a litigant is not required

to present the terms of his or her retainer agreement to the court as that is a confidential document and the absence of same is not fatal. He posited that a litigant is expected to indicate what costs are incurred and the court has to determine if they are reasonable and proportionate, having regard to the case and the matters to be considered as set out in CPR 65.2(3).

[31] In relation to the US\$10,000.00 charged for the trial, the 1st defendant urged that when considering fees for trial, the court has to consider preparation for trial, examination-in-chief and cross-examination during trial, objections during trial and closing arguments. In this matter, he pointed out, the claimant's case as pleaded raised numerous legal and factual issues that had to be addressed. He maintained that the fees charged were reasonable to the tasks that had to be undertaken having regard to the exhaustive nature of the claim that had to be met by him.

[32] By virtue of CPR 65.12(4), an application for assessment of costs must be accompanied by a bill or other document showing the sum which the court is being asked to assess the costs and how such sum was calculated. The 1st defendant's application was supported by an affidavit exhibiting a bill of costs. The bill of costs itself does not show how the sums listed were calculated. The affidavit states that the 1st defendant had a fixed fee or flat fee arrangement with his attorneys. That is his answer to the question as to how the sums were calculated. That is the evidence before the court. His submission is that he is not required to produce his retainer, which is a confidential document. Therefore, the court is left with the bill of costs with no hourly rates and the affidavit evidence and oral testimony of the 1st defendant to assess the bill. Having emphatically stated his case on the implementation of a flat fee agreement, I do not think that this court should insist that the 1st defendant submit any further evidence. He has stated categorically that there was no hourly billing arrangement.

[33] Whereas I accept that there is no requirement for counsel to charge a litigant by the hour, it is helpful to a court in a costs assessment. Conversely, it presents a challenge to the court for the litigant to simply attach a global figure to a task performed by counsel and ask the court to deem it reasonable, especially where substantial costs are being claimed, as is the case here. The 1st defendant is literally asking the court to go through the record and virtually relive (or more applicable to this court, live through) the 9 to 10 years of litigation in this matter to conduct this

assessment. The court must be assisted to a far greater extent to properly assess the reasonableness and proportionality of the sums set out in the bill of costs.

The global approach

[34] Notwithstanding the aggressively contested nature and the duration of this case, having considered the relevant factors, I am of the view that the sum of EC\$172,042.11 claimed for costs in this case is disproportionate. This was an ordinary claim in defamation. In the apparent highly charged political atmosphere surrounding the claim, the parties were within their rights to file and/or object to or defend any proceeding in order to secure their interests. It is unfortunate that, given the nature of the justice system, it has taken this long.

Has each item been reasonably incurred?

[35] Having determined that the bill of costs is disproportionate, the authorities dictate that I consider each item to determine whether it was reasonably incurred. The bill of costs is laid out over 6 pages, 5 if the heading is excluded. The items are not numbered but are listed according to dates from 18th December 2009 to 20th March 2019. A manual count gives over 60 items to consider.

[36] First, I will deal with the items objected to by the claimant where he argued that cost orders have already been made. Based on my earlier pronouncements on this issue, where cost orders have already been made, these items will be disallowed. I am of the view that a costs order includes disbursements. The claimant objected to the following items in the bill of costs.

- i. Costs exhibited for work done in relation to a preliminary objection by the 1st defendant.
The judgment of Lanns M. was delivered on 22nd December 2011. The learned master ordered each party to bear his own costs. This is a costs order. The items for work done from 8th March 2010 to 22nd December 2011 in relation to that objection are disallowed. These are in the sums of US\$4650.00 and EC\$74.00.
- ii. Application to strike filed by the 1st defendant. The judgment of Lanns M. was delivered on 15th April 2012. Again, the master ordered each party to bear his own costs. The judgment was appealed. The Court of Appeal dismissed the appeal against the order for costs. Therefore, the order of the learned master stands. On the appeal, the Court of Appeal ordered that there be no order as to costs as there was partial success. The

items exhibited for work done for the strike out application are disallowed. These are the items listed on 19th March 2012, 8th May 2012, 10th May 2012 and 9th November 2012 in the sum of US\$5650.00 and EC\$653.00.

- iii. Application to amend the defence. The judgment of Actie M. was delivered on 26th September 2014. Costs of \$750.00 were awarded to the claimant. The 1st defendant appealed. The Court of Appeal overturned the judgment of Actie M. and awarded costs of \$2000 to the claimant. Therefore, costs exhibited in relation to the application to amend the defence were already dealt with by the Court of Appeal and are disallowed. These are the items dated 7th March 2014, 18th March 2014, 11th April 2014, 14th April 2014, 24th April 2014, 9th May 2014, 12th May 2014, 14th May 2014, 15th May 2014 and 9th October 2014 in the sums of US\$6200.00 and EC\$192.00. I do not agree with the claimant that the items listed on 9th September 2015 and 14th September 2015 in relation to the preparation, filing and service of the amended defence should be disallowed.
- iv. Application to strike out amended defence. On 16th November 2015, Corbin-Lincoln M. ordered 1st defendant to file a further amended defence and awarded costs to the claimant in the sum of EC\$500.00. This costs order was not appealed. The costs exhibited for 16th November 2015 of US\$2000.00 for court attendance to oppose the application to strike out the amended defence are disallowed. However, the 1st defendant is entitled to costs for the actual filing and serving of the further amended defence on 30th November 2015 and 1st December 2015.
- v. I disagree with the claimant that since the court compensated the claimant in costs for the avoidable prejudice suffered as a direct result of the 1st defendant's delay in amending his defence, to the effect that the lists of documents, witness statements, pre-trial memoranda and pre-trial submissions had to be done over, and the parties had to go back to case management and pre-trial review, no costs should be awarded to the 1st defendant in this regard. Therefore, the 1st defendant is entitled to costs for the period 11th January 2016 to 5th July 2017. The court allowed the 1st defendant to introduce a viable defence as pronounced by the learned trial judge. The 1st defendant should not be denied his costs for ensuring that a proper defence was before the court.

- vi. Sub-judice objection and preliminary objections by both parties. Judgment was delivered 8th October 2018 by Charles-Clarke J. Her Ladyship ordered that there be no order as to costs. This is a costs order. The order was not appealed. The costs exhibited for 23rd May 2018 (preparation for trial and attendance at court for trial for determination of preliminary objections, preparation on sub-judice objection and bundle of authorities), 24th May 2018 (preparation of submissions on preliminary objections and bundle of authorities) are disallowed in the sums of US\$7500.00 and EC\$1548.00. I do not agree with the claimant that the 1st defendant is not entitled to costs of the review of the decision of Charles-Clarke J. (item for 8th October 2012).
- vii. Application to vacate the trial date. Moise J. did not make any order as to costs on the 1st defendant's application to vacate the trial date. On 5th March 2019, His Lordship brought forward the trial date and did not make any order as to costs. By virtue of 65.11(3)(b), any costs for this particular application would be to the claimant. Therefore, the costs claimed for items on 28th February 2019 and 5th March 2019 in the sums of US\$1150 and EC\$184.00 are disallowed.

[37] There was much contention on the item listed for 7th March 2019 – court attendance for full trial – US\$10,000.00. Having considered the submissions, I am of the view that this is excessive and disproportionate, given that it was a 2-day trial on an uncomplicated defamation action.

[38] The other items in the bill of costs are costs exhibited as global figures for tasks performed in the numerous proceedings over the years. Save and except the assertion of a flat fee arrangement, the court is not assisted with any method of calculation as to how these figures were arrived at. It cannot be that the court is expected to go through the voluminous record with “a fine-toothed comb” to find out, for example, which attorney or attorneys, at what level, conducted which matter, and what amount of work was put in for any given task or court appearance. Still, the 1st defendant is entitled to his reasonable costs for the many items listed. Given my stance on these items, I will not adopt a line-by-line approach on paper, although indeed, I have taken each item into consideration. The court is not in a position to determine whether or not to make deductions, and if so, how much from the amounts claimed.

Conclusion

[39] The lack of methodology on the part of the 1st defendant as to how the sums in the bill of costs were computed makes it difficult for the court to come to a conclusion on the reasonableness of the amounts claimed. It is evident that over the course of the proceedings a great deal of preparation and numerous court hearings were necessary. The history of this matter is certainly appreciated by this court. Whereas the bill of costs and submissions spell out the work done, the court is seriously disadvantaged in assessing the reasonableness of the items claimed. Although the 1st defendant kept insisting that the flat fee arrangement in this matter was low and hourly billing would have generated a far higher bill, the court was not provided with any basis for this contention. In the premises, I cannot conclude that most of the amounts claimed in the bill of costs were reasonable and proportionate.

[40] Having considered the factors in CPR 65.2(3) and scrutinised the bill of costs, and having assimilated the written and oral submissions of the parties, I conclude that a reasonable amount to award the 1st defendant in this matter is EC\$50,000.00.

Order

[41] It is hereby ordered as follows:

1. The claimant shall pay the 1st defendant costs assessed in the sum of EC\$50,000.
2. The claimant shall pay the 1st defendant costs of the application for assessment of costs in the sum of EC\$1500.00.

Tamara Gill

Master

By the Court

Registrar