

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANGUILLA

AXAHCVAP2016/0011

BETWEEN:

**IN THE MATTER of the Registered Land Act, Revised
Statutes of Anguilla, Chapter R30, Section 147**

and

**IN THE MATTER of an Appeal by Collins Richardson,
Carolyn Richardson (Administrator of the Estate of
John Samuel Richardson); Boswell Richardson;
Calvin Richardson; Leslie Richardson as
Administrator of the Estate Alma Richardson; Margie
Hughes as Administrator of the Estate of Evangeline
Hughes; Estell Hughes as Administrator of the Estate
of Samuel Benjamin Richardson; Calvin Richardson
as Administrator of the Estate of Victor Richardson;
Robert Austin Richardson as Administrator of the
Estate of Eneria Richardson; Royston Richardson as
Administrator of the Estate of James Richardson;
Oliver MacDonna as Administrator of the Estate of
Jane Rebecca Richardson and Sybil Ryhmer as the
Administrator of the Estate of Florence Richardson
against a decision of the Registrar of Lands dated 28th
September 2010 and 7th July 2011**

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mde. Gertel Thom
The Hon. Mr. Gerard St. C Farara, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Clyde Williams with Mr. J. Alex Richardson instructed by Alex Richardson & Associates, for the Collins Richardson Appellants/Respondents
Mr. Kerith Kentish instructed by Joyce Kentish & Associates for the 1st – 6th
Respondents/Counter Appellants/ the Benjamin Richardson Appellants

2020: June 25;
July 8.

Civil appeal – Interlocutory appeal – Whether the learned master ought not to have proceeded to hear the long-standing application for valuation of the claim after the trial – Rule 65.6(1)(a) of the Civil Procedure Rules 2000 – Whether the application to value the claims were overtaken by the judgment of Combie-Martyr J after the full trial of the claims – Costs – Quantification of costs on a prescribed costs – Whether costs ought to be quantified on a prescribed costs basis in relation to the Benjamin Richardson Appellants – Rule 65.5(2)(b) of the Civil Procedure Rules 2000 – Whether the Court of Appeal judgment delivered 24th May 2019 overturned the High Court’s costs order in favour of the Benjamin Richardson Appellants – Variation of order from assessed costs to prescribed costs

On 25th June 2020, the Court heard two interlocutory appeals, one by the Collins Richardson Appellants and the other by the Benjamin Richardson Appellants. Both appeals are against an order of a master of the High Court (“the master”) made on 6th December 2016, on an application filed on 18th February 2013, pursuant to rule 65.6(1)(a) of the Civil Procedure Rules 2000 (“CPR”), to value twelve claims in twelve separate but related matters (“the claims”). The application was heard by Combie-Martyr J [Ag.] (“the learned judge”) some three (3) years and ten (10) months after it had been filed, and approximately one (1) year and ten (10) months after the full trial of the claims in January 2015 and ten (10) months after the delivery of the judgment of the learned judge on 21st January 2016.

The application was made to determine the value of the claims for the purpose of prescribed costs in each of the twelve appeals/claims against the decisions of the Registrar of Lands rendered on 28th September 2010, dismissing the claims of the Collins Richardson Appellants for prescriptive title to land situate at Long Bay Estate in Anguilla.

Upon the application of the Benjamin Richardson Appellants, these twelve claims had been struck out by Mathurin J (as she then was) in October 2013, but were restored for trial before a different judge by the judgment of this Court on 25th June 2014. The claims were, by orders of the court below, consolidated to be tried before the learned judge. The learned judge, in effect, conducted 12 mini-trials within a trial. The testimony of witnesses on each of the twelve claims were taken separately and, as recorded in the judgment delivered 21st January 2016, the learned judge carried-out a separate analysis of the evidence in relation to each of the claims and rendered a separate decision thereon. The learned judge dismissed, in large part, the twelve separate claims by the Collins Richardson Appellants and awarded costs to the 1st to 5th and 7th respondents to be agreed or otherwise assessed. The Collins Richardson Appellants appealed the decision of the learned judge and the Benjamin Richardson Appellants counter-appealed. In a written judgment delivered by this Court on 24th May 2019, both the appeal and the counter-appeal were dismissed, and the appeal of the 7th respondent was allowed. Each of the Collins Richardson Appellants/Counter Respondents and the Benjamin Richardson Respondents/Counter Appellants were ordered to bear their own costs. Costs in the appeal and in the High Court were awarded to the 7th respondent on a prescribed basis.

On the hearing of the application for valuation, the learned master made a number of orders. Being dissatisfied with the order of the master, the Collins Richardson Appellants appealed against paragraph 2 of the master’s order and the Benjamin Richardson Appellants appealed or counter appealed against paragraphs 4 and 7. Three issues arose for

determination on appeal: (i) whether the Court of Appeal judgment delivered 24th May 2019 overturned the High Court's costs order made in favour of the Benjamin Richardson Appellants; (ii) whether the application to value the claims were overtaken by the judgment of Combie-Martyr J after the full trial of the claims; and (iii) whether, if the answer to (i) is no, the costs in the High Court ought to be quantified on a prescribed costs basis in relation to the Benjamin Richardson Appellants and pursuant to the default 'value' sum of EC\$50,000 in CPR 65.5(2)(b).

Held: dismissing the interlocutory appeal filed by the Collins Richardson Appellants and the counter-interlocutory appeal filed by the Benjamin Richardson Appellants; setting aside the order made by the learned master on 6th December 2016; and ordering that the appellants/respondents and counter-appellants/respondents shall bear their own costs in the appeal and counter-appeal, that:

1. It is clear that this Court, in its judgment in Civil Appeal No. AXAHCVAP2016/0002, having dismissed the appeal and counter appeal, affirmed the judgment of Combie-Martyr J and did so in terms and language which was unqualified. The clear effect of that ruling is that all aspects of the judgment below were upheld, including the learned judge's determination of the incidence of costs in favour of the Benjamin Richardson Appellants. The 7th respondent, being the only successful party in the appeal, was entitled to its costs in the appeal. Accordingly the Court, in awarding costs to the 7th respondent, was deliberate when formulating the costs order in saying explicitly that the costs below must be on the correct basis of prescribed costs. This in no way meant that the Court was overturning or altering the incidence of costs in the court below so as to only award costs to the 7th Respondent.
2. The application made pursuant to rule 65.6(1)(a) of the CPR to value the claims/appeals for the purpose of determining prescribed costs, not having been heard or determined prior to the trial, and only after delivery of the judgment of the court below on the twelve claims/appeals, was rendered otiose or overtaken and foreclosed by the said judgment, which was upheld by the Court of Appeal. In this instance, the parties themselves were clearly at fault in not pursuing the application and in not having it listed for hearing before the court in a timeous manner, in advance of the trial. Rule 65.6(1)(a) of the CPR not only stipulates that an application for a claim to be valued must be made before the trial, but contemplates that it ought to be heard and determined before commencement of the trial. Were it otherwise, this would undermine the purport of 65.6(1)(a) and the overriding objective to do justice between the parties.

Rule 65.6(1)(a) of the Civil Procedure Rules 2000 applied.

3. It would be in exceptional circumstances that a court ought to proceed to value a claim under rule 65.6(1)(a) after the trial, where the application had been made prior to commencement of the trial. The instant matter is not such an exceptional circumstance. The delay is of the kind which this Court deprecates and will not permit or sanction. It was not open to the Benjamin Richardson Appellants, having received the judgment of the court, to revive and to pursue their long dormant

application which they, by their own admission, had ignored or forgotten about, allowing it to be overtaken by the trial itself in which all the issues between the parties were fully ventilated and judgment rendered, including an award of costs on the full claims/appeals. Therefore, it was not open to the learned master in these circumstances to proceed to hear and to make orders on the application to value the claims/appeals, and in so doing he erred.

Rule 65.6(1)(a) of the Civil Procedure Rules 2000 applied.

4. While the judgment of this Court did not expressly make an order varying the basis of the costs order in the court below from assessed costs to prescribed costs, it is sufficiently clear that the Court had concluded that the correct approach was that of prescribed costs in accordance with rule 65.5. To conclude otherwise would be to make a nonsense of the ruling of the Court on the matter of costs, producing an unsatisfactory and disquieting dichotomy whereby one respondent's costs in the court below is to be quantified on one basis and the other respondents on a different basis. We are satisfied that this was not the purport of the judgment of the Court of Appeal, a matter on which counsel for both sides were *ad idem*. Accordingly, the quantum of costs in the High Court to be awarded to the Benjamin Richardson Appellants is to be determined under the prescribed costs regime.
5. The Benjamin Richardson Appellants have the benefit of a costs order in the High Court, which costs are to be quantified on the prescribed costs basis pursuant to rule 65.5(2)(b), that is, the default provision, whereby a claim is treated as a claim for EC\$50,000.00. The effect of the High Court order was to award costs to each of the Benjamin Richardson Appellants as defendants/respondents in the claims below, and not one costs order covering all of the Benjamin Richardson Appellants and all twelve claims/appeals. Accordingly, the Benjamin Richardson Appellants, as defendants/respondents, are entitled under the order of the High Court, to have their costs quantified in those of the twelve claims in which they were, individually or together with other Benjamin Richardson Appellants, defendants/respondents, on the prescribed costs basis, that is, a presumed value of EC\$50,000.00, pursuant to rule 65.5(2)(b). **Rule 65.5(2)(b) of the Civil Procedure Rules 2000** applied.

JUDGMENT

Background

- [1] **FARARA JA [AG.]:** On 25th June 2020, the Court heard two interlocutory appeals, one made by the Collins Richardson Appellants and the other by the Benjamin Richardson Appellants. Both appeals are against the order of the learned master ("the master"), made on 6th December 2016, upon the hearing of an application filed on 18th February 2013 by the Benjamin Richardson Appellants pursuant to rule

65.6(1)(a) of the **Civil Procedure Rules 2000** (“the CPR”), to value the claims/appeals in twelve (12) separate, but related, matters; namely, High Court Civil Claim Nos 69,70,71,72,73,76,77,78,79 and 81 of 2010 and 51 and 52 of 2011. The application to value the claims had been filed almost 4 years earlier. Importantly, the application was heard and the orders were made by the master, approximately one (1) year and ten (10) months after a full trial of the twelve claims/appeals before Combie-Martyr J in January 2015, and approximately ten (10) months after delivery of the judgment by Combie-Martyr J [Ag.] on 21st January 2016. In his submissions before us, Mr. Kentish, learned counsel for the Benjamin Richardson Appellants, posited that the reason why the application to value the claims had not been heard by the court prior to the trial, was because it had “fallen by the wayside”, the parties had proceeded on to trial, and they had forgotten about the application.

- [2] These appeals do not challenge the entire suite of orders made by the master. In their notice of appeal filed 15th February 2017, the Collins Richardson Appellants have appealed against only paragraph 2 of the order. The Benjamin Richardson Appellants, in their notice of appeal filed 15th February 2017 (and amended 27th February 2017), have appealed against only paragraphs 4 and 7. By paragraph 2, the learned master ordered that “the value to be placed on the claim with respect of each of the First to Fifth and Seventh Defendants (Joint Applicants) shall be in proportion to the acreage of land claimed by the Claimants against each of the Joint Applicants.” Paragraph 4 provides for the 1st to 5th and 7th Defendants (the Joint Applicants) to “bear the costs of the valuations pro rata by reference to the acreage of land claimed by the Claimants against each of the Joint Applicants”. By paragraph 7, the master made no order as to costs.
- [3] The application for valuation was for the quantification of prescribed costs in twelve claims/appeals against the twelve decisions of the Registrar of Lands rendered on 28th September 2010 dismissing the claims of the Collins Richardson Appellants for prescriptive title to certain portions of land at Long Bay Estate in Anguilla. These

twelve claims/appeals had been struck out by Mathurin J (as she then was) on 8th October 2013 upon the application of the Benjamin Richardson Appellants, but were restored for trial before a different judge by the judgment and order of the Court of Appeal delivered 25th June 2014.

- [4] The twelve separate claims or appeals by the Collins Richardson Appellants from the decisions of the Registrar of Lands, were consolidated to be tried together by orders of the High Court made on 18th May 2011, 26th October 2011 and 25th July 2012, as the first page of the judgment records. Importantly, the written judgment of Combie-Martyr J demonstrates that the learned judge in effect conducted twelve mini-trials, within a trial, spanning from 19th to 30th January 2015. Witnesses on each of the twelve claims/appeals were heard separately, and the learned judge conducted a separate analysis of the evidence relating to each of these claims and her separate decision on each such claim was recorded as part of the judgment.
- [5] The claims/appeals were heard before Combie-Martyr J in January 2015. The learned judge delivered a 67-page written decision on 21st January 2016. By this decision, the learned judge dismissed, in large part, the 12 separate claims by the Collins Richardson Appellants, *and awarded “costs to the respondents 1-5 and 7 to be agreed or otherwise assessed.”* (“the Decision of Combie-Martyr J”).
- [6] The Collins Richardson Appellants appealed the Decision of Combie-Martyr J and the Benjamin Richardson Appellants counter-appealed. In a written judgment of this Court,¹ both the appeal and counter-appeal were dismissed, and the appeal of the 7th Respondent challenging certain aspects of the Decision of Combie-Martyr J was allowed. Each of the Collins Richardson Appellants/Counter Respondents and the Benjamin Richardson Respondents/Counter Appellants were ordered to bear their own costs. Costs in the appeal and in the High Court, on a prescribed basis, was awarded to the 7th Respondent, their costs in the appeal being two-thirds of the costs below. There is no issue before us concerning the costs order made in relation

¹ AXAHCVP2016/0002 (delivered 24th May 2019, unreported).

to the 7th Respondent, and we were informed by learned counsel Mr. J. Alex Richardson, that the Collins Richardson Appellants have settled the costs of the 7th Respondent. At paragraph 53 of the judgment, this Court “noted” that the costs order made in the court below was on an incorrect basis (costs to be assessed) “instead of prescribed costs in accordance with CPR 65.5.” I will return to this aspect of the Court’s judgment.

The Collins Richardson Appellants’ Submissions

- [7] The Collins Richardson Appellants make three primary submissions. Their first primary submission is made as a preliminary point. It is that by the judgment of this Court in Civil Appeal No. 2 of 2016, the Benjamin Richardson Appellants are not entitled to an award of costs in the proceedings below. In short, learned counsel, Mr. Williams, submitted, that upon a proper reading of the judgment and orders, the Court deliberately only gave costs to the 7th Respondent, thereby overturning the costs order made in the Decision of Combie-Martyn J granting costs in the High Court to the Benjamin Richardson Appellants. In this regard, Mr. Williams relied on the conclusions and orders reached by the Court at paragraph 55(2) and (3) of the judgment, in submitting that the effect of the judgment was to award cost only to the 7th Respondent, both in the appeal and in the court below. Accordingly, it is Mr. Williams’ submission, that the judgment of this Court rendered both the appeal and counter-appeal against the costs order made by the master upon a hearing of the application for valuation of the claims, otiose, and the appropriate course of action would be for the parties to discontinue the appeal and counter appeal and bear their own costs.² If the Court was not with the Collins Richardson Appellants on this preliminary point, then they rely on their other submissions in answer to the Benjamin Richardson Appellants’ appeal.

² See para. 4 of the Collins Richardson Appellant’s Submissions in Limine.

[8] The Collins Richardson Appellants' second primary submission, is that rule 65.6(1)(a) of the CPR contemplates or requires that a valuation of a claim must take place before the trial, so as to enable that the parties to know what are the likely prescribed costs to be awarded against them in the event they were unsuccessful at trial. Accordingly, the master ought not to have proceeded to hear the long-standing application for valuation of the claim, after the trial and delivery of the Decision of Combie-Martyr J, which judgment has been upheld by this Court. The Collins Richardson Appellants' third primary submission is that this Court, having reviewed the costs order made by the High Court, changed the basis to one of prescribed costs, and not assessed costs as ordered in the court below.

[9] Mr. Williams in concluding, submitted on behalf of the Collins Richardson Appellants, that the appropriate order in this matter if the court was not with him on his preliminary point, is for the Benjamin Richardson Appellants' costs before the High Court to be not on the basis of assessed costs, as ordered by Combie-Martyr J, but prescribed costs as stated in the judgment of this Court and to be quantified on the default prescribed costs basis under rule 65.5(2)(b) of the CPR, that is, the sum of EC\$50,000.00. The effect of this submission would be for one set of prescribed costs for the Benjamin Richardson Appellants in the sum of EC\$7,500.00. This position was underscored by Mr. Richardson, learned co-counsel for the Collins Richardson Appellants, in his submissions in reply.

The Benjamin Richardson Appellants' Submissions

[10] Mr. Kerith Kentish, learned counsel for the Benjamin Richardson Appellants, argued strenuously that, Mr. Williams has misconstrued the relevant costs orders in the judgment of this Court, which, he submits, are clear on the issue of costs. He relied on the order of the Court dismissing the appeal and counter-appeal and affirming the Decision of Combie-Martyr J. This affirmation, he submits, includes the costs order made by the learned judge below in favour of the Benjamin Richardson Appellants, but subject to one modification, that is, the basis for quantification was changed from assessed costs to prescribed costs. He contends further that the

incidence of cost in the order of the court below had not been overturned or altered by the orders at sub paragraphs 55 (2) and (3) of this Court's judgment. By these orders, the Collins Richardson Appellants and the Benjamin Richardson Appellants, (respectively, the appellants/counter respondents and the respondents/counter appellants) were ordered to bear their own costs on the appeal, and the 7th Respondent was awarded their costs in the appeal and in the High Court on a prescribed basis. He submitted that the judgment of this Court addressed only the basis for quantification of the costs and not the incidence of costs in the High Court. In support of his submissions, learned counsel relied on paragraphs 50, 52 and 55(2) of the judgment.

[11] However, Mr. Kentish accepted in argument before us, that the effect of this Court's judgment was to change the basis for quantifying costs below to that of prescribed costs for all of the respondents in the appeal, and not just the 7th respondent. He argued quite forcefully that paragraph 53 in which this Court "noted" that the court below had incorrectly ordered costs to be assessed and the correct basis was prescribed costs, must be read with paragraph 55(3) whereby the court ordered costs in favour of the 7th Respondent on the prescribed costs basis. To conclude that only the 7th Respondent's costs in the court below was to be quantified under the prescribed costs regime, would, in Mr. Kentish's submission, make a nonsense of the judgment of the Court regarding costs, since it could not have been the Court's intention to change the basis of quantification of costs below for one respondent and not the others.

[12] As to the legal effect of rule 65.6(1)(a) of the CPR, Mr. Kentish submitted that this provision only requires a party to make an application for valuation of the claim before the trial. It did not provide that the application must be heard and disposed of before commencement of the trial. Accordingly, it was open to the master, who had not been rendered functus, to hear the application after the trial had concluded and the judgment was delivered by Combie-Martyr J. In his view, the Benjamin Richardson Appellants had done what was required of them under the CPR in filing

the application for valuation of the claims well before the trial, and it was the court that decided, as it was entitled to do, to first deal with the strike out application which had been filed the same day as the application to value the claim. As mentioned, Mr. Kentish admitted frankly that the application to value the claims had fallen by the wayside or was simply forgotten by the parties who had proceeded to trial. Indeed, the record of appeal shows that notice to hear the application to value the claim was issued on 22nd August 2016, well after delivery of the Decision of Combie-Martyr J.

[13] I can only comment here, that it is for the parties to civil litigation, and in particular, the party which has filed the application to value the claim, to diligently pursue it and to make every effort to have the court office list the application for hearing before a master or a judge in a timeous manner, and well before the commencement of the trial. This was clearly not done in this matter, leaving the most unusual and unsatisfactory position whereby the application to value the claims was listed and heard well after the conclusion of the trial and delivery of a reserved judgment, by which judgment the learned judge had fully disposed of all the issues between the parties and had made a costs order in the claims/appeals.

[14] In answer to certain questions by the court, Mr. Kentish conceded that the CPR contemplates that an application to value a claim ought to be heard before the trial commences. In my opinion, such an application ought to be filed early in the proceedings to be dealt with by the court as soon as practicable, either separately or at a case management conference. Rule 65.6(1) of the CPR requires a party to make such an application before the trial but, not surprisingly, does not specify a time frame within which it must be heard and determined. In my opinion, it is implicit in this provision that such application ought to be dealt with prior to the trial, and there is good reason, commensurate with the overriding objective, for reaching this conclusion. An application for valuation of the claim is solely for the purpose of calculating the prescribed costs which the parties to the litigation may be liable to pay at the conclusion of the matter. This enables the parties to assess their respective positions at the various stages of the litigation in light of the potential

costs exposure and liability at each stage as contemplated by rule 65.5 and Appendix C.

[15] During oral argument, Mr. Kentish submitted that at least the orders made by the master on the application to value the claims ought to stand as is. In doing so, he informed this Court that the Benjamin Richardson Appellants would withdraw their appeal against the order of the master, leaving the costs ordered made by Combie-Martyr J to stand, albeit to be quantified on a prescribed costs basis as stated by this Court. When pressed further by the Court as to whether the judgment and costs order of Combie-Martyr J (affirmed by this Court) had not foreclosed or overtaken any pending dormant application to value the claim, Mr. Kentish did not fully concede the point, submitting that the application was still alive, but the later in time orders of this Court with regard to costs would take 'dominance' over the prior order of the master.

[16] In direct response to a question from the Court, Mr. Kentish submitted that were the Court to conclude that the orders of the master cannot stand, the application for valuation of the claims having been overtaken by the judgment of Combie-Martyr J, the justice of the matter would require that the Benjamin Richardson Appellants should have their costs in the court below on the default prescribed costs basis of EC\$50,000.00 in each of the twelve claims/appeals. These, he continued, were separate claims/appeals, albeit consolidated before the learned judge for trial. There was, in effect, 12 separate mini-trials, one per claim, within the trial, with the judge hearing evidence and making separate decisions on each claim/appeal. As mentioned, the position of the Collins Richardson Appellants is that the costs awarded to the Benjamin Richardson Appellants in the court below ought to be quantified on the basis of one default sum of EC\$50,000.00 and not twelve separate costs sums.

Did the Court of Appeal Judgment overturn the High Court costs order for the Benjamin Richardson Appellants?

[17] We are not in agreement with the preliminary point and submissions made by the Collins Richardson Appellants to the effect that the judgment of this Court overturned the costs order in the court below made in favour of the Benjamin Richardson Appellants. Such an interpretation is not countenanced or supported by the relevant passages in the judgment of this Court. By the judgment, this Court affirmed the Decision of Combie-Martyr J. It did so in terms and language which was unqualified. The clear effect of that ruling is that all aspects of the judgment below was upheld, including the learned judge's determination of the incidence of costs in favour of the Benjamin Richardson Appellants.

[18] In our view, this position was in no way altered by the Court awarding costs to the 7th Respondent in the appeal and in the court below, albeit the 7th Respondent was already the beneficiary of a costs order below, but on an incorrect basis for quantification. It is pellucid from the judgment that this Court, having determined that the correct basis for the quantification of such costs was the prescribed basis, was deliberate when formulating the order granting costs to the 7th Respondents, in saying that the 7th Respondent would have 'prescribed costs in the court below', and costs in the appeal at two-thirds of the amount in the court below.³ The fact that the 7th respondent (being the only successful party in the appeal) was entitled to its costs in the appeal, meant that the Court had to explicitly say that the costs below must be on the correct basis of prescribed costs. This in no way meant that the Court was overturning or altering the incidence of costs in the court below so as to only award costs to the 7th Respondent. Accordingly, this limb of the Collins Richardson Appellants' point *in limine* fails. This still leaves a consideration of whether the effect of the judgment of Combie-Martyr J in the High Court rendered these appeals otiose, or put differently, whether the application for the claims to be valued was overtaken or foreclosed by the judgment of the court below on the twelve claims/appeals.

³ At para. 55(4) of the judgment of this Court dated 24th May 2019.

Was the application to value the claims overtaken by the High Court judgment?

- [19] In our considered view, the application made pursuant to rule 65.6(1)(a) of the CPR to value the claims/appeals for the purpose of determining prescribed costs, not having been heard or determined prior to the trial, and only after delivery of the judgment of the court below on the twelve claims/appeals, was rendered *otiose* or overtaken and foreclosed by the said judgment, which was upheld by the Court of Appeal. In this regard, the parties themselves were clearly at fault in not pursuing the application and in not having it listed for hearing before the court in a timeous manner, and in advance of the trial. They say simply that it was forgotten by the parties or it fell by the wayside as the parties proceeded to trial of these long-running family property disputes. While this may be some explanation as to why the application had not been pursued by the parties before trial, it does not render it an application which can be pursued at any time of the choosing of the applicants, or one with which the court ought to treat with or to proceed to hear several months after delivery of the court's final judgment in the twelve substantive matters.
- [20] As mentioned above, rule 65.6(1)(a) of the CPR not only stipulates that an application for a claim to be valued must be made before the trial, but contemplates that it ought to be heard and determined before commencement of the trial. Were it otherwise, this would undermine the purport of rule 65.6(1)(a) and the overriding objective to do justice between the parties. Further, it would be exceptional circumstances that a court ought to proceed to value a claim under rule 65.6(1)(a) after the trial, where the application had been made prior to commencement of the trial. Such exceptional circumstances, may include where there is an order for a bifurcation of the trial or the issues, whereby certain issues are to be decided first or the issues are to be decided in a particular order, and it would be prudent, in such circumstances, to delay the valuation of the entire claim for the purpose of prescribed costs. Another such example, would be where the valuation of the subject matter of the dispute and claim between the parties, is an essential evidential component of the claim itself, to be determined based upon expert

evidence or expert valuations, in circumstances where there will be competing valuations for the court to consider and make the appropriate findings of fact.

[21] The instant matter is not such an exceptional circumstance. The delay here is one which this Court deprecates and will not permit or sanction. The simple point is that the High Court having made a full determination of all twelve claims/appeals after a long trial, it was not open to the Benjamin Richardson Appellants, having received the judgment of the court, to revive and to pursue their long dormant application which they, by their own admission, had ignored or forgotten about, allowing it to be overtaken by the trial itself in which all the issues between the parties were fully ventilated and judgment rendered, including an award of costs on the full claims/appeals.

[22] Considering our conclusions on this aspect, it was not open to the learned master in these circumstances to proceed to hear and to make orders on the application to value the claims/appeals, and in so doing he erred. Mr. Kentish informed this Court that the learned master was aware when he heard the application, that the decision on the substantive claims/appeals had been rendered by the High Court. In our view, if correct, this ought to have caused the master some pause, and he ought to have either refused to deal with the application or dismiss it on the basis that it had been overtaken by the judgment of the High Court.

Prescribed Costs

[23] This leaves the matter of prescribed costs in the High Court in favour of the Benjamin Richardson Appellants. Strictly, the matter of costs has been decided by the combined effect of the judgment of *Combie-Martyr J* in the court below and the judgment of this Court in Civil Appeal No. 2 of 2016, as interpreted above. In my view, while the judgment of this Court did not expressly make an order varying the basis of the costs order in the court below from assessed costs to prescribed,⁴ it is sufficiently clear that the Court had concluded that the correct approach was that of

⁴ See para. 53 of the judgment of this Court dated 24th May 2014.

prescribed costs in accordance with rule 65.5. We agree with Mr. Kentish, learned counsel for the Benjamin Richardson Appellants, that to conclude otherwise would be to make a nonsense of the ruling of the Court on the matter of costs, producing an unsatisfactory and disquieting dichotomy whereby one respondent's costs in the court below is to be quantified on one basis and the other respondents on a different basis. We are satisfied that this was not the purport of the judgment of the Court of Appeal, a matter on which counsel for both sets of parties are *ad idem*. Accordingly, the quantum of costs in the High Court awarded to the Benjamin Richardson Appellants is to be determined under the prescribed costs regime.

The Benjamin Richardson Appellants have the benefit of a costs order made in their favour by Combie-Martyr J, which costs are to be quantified on the prescribed costs basis, pursuant to rule 65.5(2)(b), that is, the default provision whereby the claims are treated as a claim for EC\$50,000.00. In our view, the effect of the order of the High Court was to award costs to each of the Benjamin Richardson Appellants, as defendants/respondents in claims/appeals in the court below. There were twelve separate claims/appeals filed, albeit not involving the same respondents. In this regard, we do not accept the submission by learned counsel for the Collins Richardson Appellants that the effect of the said order was to award one set of costs to all the respondents. This does not accord with the award of costs to the 7th Respondent, which costs, we were informed, have since been settled separately by the Collins Richardson Appellants. Likewise, that interpretation does not accord with the fact that these were separate claims, separate mini-trials within one consolidated trial, where separate evidence on each claim/appeal was led by the parties, and each claim/appeal was separately determined and a decision rendered by Combie-Martyr J. Accordingly, the Benjamin Richardson Appellants, as defendants/respondent(s), are entitled under the order of the High Court, to have their costs quantified in those of the twelve claims in which they were, individually or together with other Benjamin Richardson Appellants, defendants/respondents, on the prescribed costs basis, that is, a presumed value of EC\$50,0000 per claim pursuant to rule 65.5(2)(b).

Conclusion

[24] The Collins Richardson Appellants have contended that the judgment of the Court of Appeal has rendered *otiose* both appeals against the costs order of the master, and the appropriate course of action is for all the parties to discontinue their appeals and bear their own costs. The Benjamin Richardson Appellants have elected before us, to withdraw their appeal. In our view, both appeals against the master's order ought to be dismissed, the application for valuation and the master's order thereon having been overtaken by the judgment of Combie-Martyr J, as concluded above.

[25] Accordingly, we make the following orders:

- (1) The interlocutory appeal filed by the Collins Richardson Appellants on 15th February 2017 and the counter-appeal filed by the Benjamin Richardson Appellants on 16th February 2017 are dismissed.
- (2) The order made by the learned master on 6th December 2016 on the application for valuation of the twelve claims/appeals is set aside.
- (3) The appellants/respondents and counter-appellants/respondents shall bear their own costs in this appeal and counter-appeal.

I concur.
Dame Janice M. Pereira, DBE
Chief Justice

I concur.
Gertel Thom
Justice of Appeal

By the Court

Chief Registrar