

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

**MONTSERRAT**

**MNIHCVAP2019/0002**

**BETWEEN:**

**TERRENCE WADE**

Appellant

and

**JAMES WEEKES**

Respondent

**Before:**

The Hon. Mde. Louise Esther Blenman

Justice of Appeal

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mde. Margaret Price-Findlay

Justice of Appeal [Ag.]

**Appearances:**

Mr. Jean Kelsick for the Appellant

Mr. Kenroy Hyman for the Respondent

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2020: June 25.

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*Civil appeal – Costs – Assessment of costs – Whether learned master erred in quantifying costs on a prescribed costs basis – Rule 65.3(b) of the Civil Procedure Rules 2000 – Whether there is any provision in Part 65 or any other part of the Civil Procedure Rules 2000 which permits the court to make an order for reasonable costs – Quantification of costs on an interlocutory application – Rule 65.11(7) of the Civil Procedure Rules 2000*

**ORAL JUDGMENT**

[1] **MICHEL JA:** The matter before this Court is an appeal against the decision of a master dated 1<sup>st</sup> March 2019, whereby the master ordered that the appellant is entitled to prescribed costs on a trial in which the appellant prevailed in the High Court and was awarded costs. The costs order made by the trial judge was the following: “Weekes shall pay Wade’s reasonable costs of this action (which will include the earlier hearings and findings as to injunction and recusal).”

- [2] Arising from this order, the matter was brought before a master for assessment of costs, whereupon the master made an order that the claimant (the appellant in this appeal) is entitled to prescribed costs on the judgment.
- [3] The appellant appealed against the order of the master, essentially on the basis that, in the circumstances of this case, the appellant ought to be entitled to an award significantly higher than what he would get under the prescribed costs regime.
- [4] The appellant filed written submissions in support of his appeal in which he concluded that the master's decision to quantify costs on a prescribed costs basis, was clearly wrong and that this Court should set aside the costs order and remit the assessment of the costs to the master.
- [5] The respondent filed written submissions in response to the appellant's submissions, in which he maintained that, in accordance with the **Civil Procedure Rules 2000**, ("the Rules or the CPR"), the appellant was entitled to no more than prescribed costs.
- [6] We have read the submissions filed on behalf of both the appellant and the respondent and have listened to the oral submissions of counsel for the appellant. We did not call upon counsel for the respondent to respond.
- [7] Having reviewed the submissions, both written and oral, and having regard to the judgment of this Court in the case of **Unicomer (Saint Lucia) Limited v Comptroller of Inland Revenue**,<sup>1</sup> this Court is of the view that, there being no reason to disapply rule 65.3(b) of the CPR, the only order which was open to the court below to make in this case was an order for prescribed costs in accordance with rule 65.5 of the CPR.
- [8] The Court agrees with counsel for the appellant that the order made by the trial judge was not in accordance with the Rules and that there is no provision in Part

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<sup>1</sup> SLUHCVP2016/0007 (delivered 18<sup>th</sup> April 2018, unreported).

65 or any other part of the Rules to make an order for reasonable costs. In accordance with rule 65.3(b), the general rule is that costs ought to be quantified on the basis of either prescribed costs or where applicable, budgeted costs. But, if there is a basis to disapply the general rule, only then can the court make an assessed costs order. In the present case, the trial judge, not having given any reasons for disapplying rule 65.3(b), should have made a prescribed costs order on the substantive trial and it ought not to have fallen to the master to make a specific order as required to be made by the Rules.

[9] In relation to the interlocutory proceedings, the Court agrees with Mr. Kelsick that there ought to be separate costs orders in respect of each of these proceedings, which in this case are the application for the interim injunction and the recusal application, but the Court also agrees with Mr. Hyman that the quantification of the costs on these interlocutory applications should be in accordance with rule 65.11(7).

[10] This Court takes the view that the master, faced with the faulty order of the trial judge, was led into error and exercised her discretion improperly when she simply ordered prescribed costs on the judgment, without making any order with respect to the interlocutory applications. We accordingly allow the appeal and set aside the order of the learned master and, in the exercise of our discretion afresh, we make the following orders:

- (1) The appellant shall have prescribed costs on the substantive claim below, pursuant to rule 65.3(b) of the CPR.
- (2) The appellant shall have costs on the application for the interim injunction and on the recusal application in accordance with rule 65.11(7) of the CPR.

- (3) The appellant is awarded his costs on the appeal, being two thirds of the amount awarded in the court below.

I concur.  
**Louise Esther Blenman**  
Justice of Appeal

I concur.  
**Margaret Price-Findlay**  
Justice of Appeal [Ag.]

**By the Court**

**Chief Registrar**