

APPEARANCES: Ms. Christina Galanos, Counsel for the Appellant
Mr. Kirkland Mackey, Counsel for the Respondent

DATES: 14 December 2022

Civil appeal - Costs

By judgment dated 10 November 2022 this Court allowed the appellant's appeal and set aside the finding of the judge below that certain lands, which were not the subject of the quieting petition, belonged to the Crown. The Court further quashed the order of the court below requiring the appellant to pay the respondent's costs. The parties were invited to make submissions as to the proper costs order in these circumstances.

The appellant submits that costs should follow the event; that the respondent should be made to bear the costs of the appeal and part of his costs in the court below. The respondent submits that the appellant should pay part of its costs of the appeal as the Court affirmed part of the judge's finding in relation to the land which was the subject of the petition.

Held: the respondent is to pay the appellant's costs of the appeal, to be taxed if not agreed. The taxed costs will be reduced by 30% to take into account the costs which the appellant should pay for the costs incurred in his claim to land at Plan 520 EX.

With respect to the costs of the appeal, the respondent, having decided to resist the appeal and losing, costs must follow the event. As to the costs of the trial below, the appellant should bear some costs incurred by the challenge to the Crown's right to the land at Plan 520EX.

DECISION ON COSTS

Delivered by the Honourable Sir Michael Barnett, P:

1. On 10 November 2022 we allowed an appeal by the appellant by setting aside a finding by the trial judge that certain lands, which were not the subject of a quieting action, belonged to the Crown. We set aside the declaration made to those lands and quashed the order of the court requiring the appellant to pay the costs of the Crown incurred in the quieting action.
2. We invited the parties to make submissions as to the proper order for costs. The parties have provided written submissions.

3. The background to the appeal is set out in the judgment of this Court and I do not propose to repeat it in this judgment.
4. The appellant invites the court to require the Crown to pay the costs of the appeal. The reason is that the appellant succeeded on its appeal and costs should follow the event. The appellant also asks the Court to require the Crown to pay part of its costs in the court below. The basis for this claim is that the Crown improperly laid claim to the land at Plan 521EX in the court below.
5. On the other hand, the Crown submits that the appellant should pay part of the Crown's costs of the appeal as this Court affirmed that part of the judge's finding in relation to the land which was the subject of the petition, that is the land at Plan 520EX.
6. In this appeal the challenge was only in relation to that part of the order relating to property which was not the subject of the petition. There was no challenge to the finding at paragraph 115 that:

“115. In my judgment, the Crown has the superior title to the Rolle Claimant to the Land (Filed Plan 520EX) which is not representative of Crown Grant C-129.”

7. Ground one of the amended Notice of Appeal was in the following terms:

“The learned Judge erred in fact and/or law on her finding that the Rolle Claimant did not have documentary title to the land contained in Plan 521EX (which the Learned Judge found was not the land in the Petition, which was before her).”

8. The Crown sought to defend that part of the judge's decision. It did not concede the point. Having decided to resist the appeal and losing, costs must follow the event. Had the Crown not determined to defend the judge's decision in relation to land at Plan 521EX, which was not the subject of the petition, we would have made no order as to the costs of the appeal.
9. As to the costs of the trial below, the appellant asks this Court to require the Crown to pay part of the appellant's costs in the trial below. It must be recalled that in the trial below both the appellant and the Crown were adverse claimants. Neither of them presented the Petition. However, in the trial below the appellant did make a claim against the land which was the subject of Plan 520EX. That claim was rejected. So, while we set aside that part of the judge's order requiring the appellant to pay the Crown's cost of the trial below, some account must be taken of those costs in respect of the claim to property at Plan 520EX to which the appellant did not succeed.
10. It is settled law that costs are in the discretion of the court having regard to fairness.

11. In our view it would not be fair to require the Crown to pay the appellants costs in the trial below. It was the Petitioner who brought the petition and lost. The costs incurred by the Crown in the Court below were caused by the Petitioner. However, the appellant did claim land at Plan 520EX and challenge the Crown's right to the land at Plan 520EX in the trial below and lost that claim. If costs follow the event, the appellant should bear some costs incurred by that challenge.
12. In the exercise of our discretion, we think that the proper order to make is that the Crown shall pay the appellant's costs of the appeal, to be taxed if not agreed. The taxed costs will be reduced by 30% to take into account the costs which the appellant should pay for the costs incurred in his claim to land at Plan 520EX.

The Honourable Sir Michael Barnett, P

The Honourable Madam Justice Crane-Scott, JA

The Honourable Mr. Justice Evans, JA