

**COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCivApp. No. 59 of 2020**

B E T W E E N

**CHRISTOPHER STUBBS
SHANNA’S COVE ESTATE COMPANY LIMITED
Applicants**

AND

**ALLAN CRAWFORD
SHARON CRAWFORD
Respondents**

BEFORE: **The Honourable Sir Michael Barnett, P
The Honourable Mr. Justice Evans, JA
The Honourable Mr. Justice Turner, JA**

APPEARANCES: **Mr. Carlton Martin, Counsel for the Applicants**

 **Mr. Kahlil Parker, KC with Mrs. Giahna Soles-Hunt, Ms. Roberta
Quant and Ms. Lesley Brown, Counsel for the Respondents**

DATES: **29 January 2024**

Civil Appeal – Costs – Costs follow the event – Usual Order as to Costs – Court’s discretion to deviate from the usual order as to costs – Failure to comply with the Court’s order - Costs of an extension of time application – Costs of application for leave – Rule 24(5) of the Court of Appeal Rules

Following the grant of conditional leave, the applicants sought final leave but required extensions of time to prepare the Record of Appeal. The extensions sought were granted to facilitate the preparation of the Record.

Final leave was eventually granted, and the issue of costs was reserved.

Held: Costs of the extension of time applications to the respondents, to be taxed if not agreed. Costs of the application for leave are costs in the cause.

Costs are in the wide discretion of the court, but the general rule is that costs follow the event unless there is a reason to depart from it.

Costs of and occasioned by an extension of time applications are to be borne by the applicants.

Costs of the application for leave to appeal to the Privy Council are costs in the cause.

Elizabeth Collie v. Lady Henrietta St. George SCCivApp. No. 133 of 2021 mentioned

Keithrell Hanna v. Wendy Willis Johnson SCCivApp. No. 61 of 2022 mentioned

Rosina Smith v. Fidelity Bank (Bahamas) Ltd SCCivApp. No. 94 of 2021 mentioned

Scherer and another v Counting Instruments Ltd and another [1986] 2 All ER 529 considered

DECISION ON COSTS

Judgment delivered by The Honourable Sir Michael Barnett, P:

1. On 13 January 2022, this Court dismissed an appeal by the applicants, Christopher Stubbs and Shanna's Cove Estate Company Limited, against a judgment by Charles, J. (as she then was) dated 30 April 2020.
2. On 24 January 2022, the applicants made an application for conditional leave to appeal the 13 January 2022 decision to the Judicial Committee of the Privy Council. Conditional leave was granted on 4 May 2022 on the usual terms.
3. On 18 and 20 July 2023, as well as 11 September 2023, this Court granted additional extension of time applications to facilitate the preparation of the Record of Appeal.
4. On 25 September 2023, final leave to appeal was granted. In our written judgment, we were minded to order that the applicants pay the respondents' costs for the hearings on 18 and 20 July 2022 as well as 11 September 2023.
5. We reserved the issue of costs, pending receipt of written submissions by the applicants if they thought such an order as to costs was inappropriate. We have received those submissions and now deliver our decision on costs.
6. The applicants, in their submissions, argue that the preparation of the Record of Appeal and taking the appeal to the Privy Council should be costs in the cause. Additionally, they argue that they were successful on their application for final leave to the Privy Council and the respondents, being unsuccessful on their objection to refuse final leave, should pay their costs.

7. Further, they assert that the respondents contributed to the delay in finalising the Record of Appeal as the respondents wished to view and inspect the Record of Appeal. As a result, they, alternatively, submit that each party should bear its own costs.
8. We have considered those submissions.
9. It is settled law that orders for costs are in the wide discretion of the Court.
10. The normal rule is that costs follow the event unless there is a reason to depart from it. See **Scherer and another v Counting Instruments Ltd and another** [1986] 2 All ER 529.
11. At page 536 of **Scherer**, the English Court of Appeal held, inter alia, that a successful party's reasonable expectation of obtaining an order for costs is not a right, but nonetheless depends on the exercise of the court's discretion. The English Court of Appeal explained that a court's discretion is not well exercised unless there are grounds for its exercise. In exercising the discretion regarding costs, a court must act judicially. It must consider grounds which are connected with the case, which may extend to any matter relating to the litigation and the parties' conduct in it, including the circumstances which led to the proceedings.
12. Rule 24(5) of the Court of Appeal Rules provides:

“24. (5) The court may make such order as to the whole or any part of the costs of an appeal as may be just, and may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.”

13. This Court, differently constituted, in previous costs decisions, has ordered the costs of and occasioned by an extension of time application to be borne by the applicant. See **Elizabeth Collie v. Lady Henrietta St. George** SCCivApp. No. 133 of 2021; **Keithrell Hanna v. Wendy Willis Johnson** SCCivApp. No. 61 of 2022; and **Rosina Smith v. Fidelity Bank (Bahamas) Ltd** SCCivApp. No. 94 of 2021.
14. The applicants' repeated failure to comply with the Court's order by the date specified and the delay in commencing work on the Record of Appeal resulted in unnecessary adjournments. On 18 July 2023, the respondents objected to the grant of final leave because critical documents were still not contained in the Record of Appeal prepared by the applicants' lawyer. The respondents cannot be liable for costs on a valid objection. On 20 July 2023, after being instructed by this Court to meet and settle their differences, the parties agreed on a schedule of documents. This meeting was necessary as the applicants' lawyer was preparing the Record of Appeal without consulting Counsel on the other side. The adjournment on 11 September 2023

was requested because the applicants' attorney failed to immediately commence work in preparing the Record of Appeal and required more time.

15. In our view, these circumstances justify the Court making an order as made in the authorities cited in paragraph 13 above. We order the applicants to pay the costs incurred by the respondents on 18 and 20 July 2023 and 11 September 2023. Such costs are to be taxed if not agreed.

16. The costs of the application for leave to appeal is costs in the cause.

DISPOSITION

17. The applicants shall bear the respondents' costs in relation to the applications to extend the time to prepare the Record of Appeal on 18 and 20 July 2023 and 11 September 2023, fit for one Counsel, such costs to be taxed if not agreed. The costs of the application for leave to appeal to the Privy Council shall be costs in the cause.

The Honourable Sir Michael Barnett, P

The Honourable Mr. Justice Evans, JA

The Honourable Mr. Justice Turner, JA