BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

No: 1639 of 1999

BETWEEN:

WILLIAM B. LOCKE Jnr.	**PLAINTIFF**

AND

BELLINGDON LIMITED et al	**FIRST RESPONDENT**
EASTERN RESORTS LIMITED	**SECOND DEFENDANT**
PARADISE BEACH LIMITED	**THIRD DEFENDANT**
PATRICK LYNCH	**FOURTH DEFENDANT**
GORDON STEWART	**FIFTH DEFENDANT**
SANDALS RESORTS INTERNATIONAL LIMITED	**SIXTH DEFENDANT**

Before the Honourable Mr. Justice William Chandler, Judge of the High Court.

2006: July 18

Mr. C.G. Turney, Q.C. Attorney-at-law for the Plaintiff.

Mr. Ramon Alleyne in association with Mr. K. Boyce, Attorney-at-law for the Defendants.

JUDGMENT

INTRODUCTION:

[1] This matter involves an objection to an application for taxation of costs pursuant to an Order of Payne J. dated 8th day of June, 2001, and further orders of court dated 4th day of February 2002 and the 6th day of December, 2002 (the Orders of Court) certifying that costs were fit for two Counsel in respect of each defendant and referred to this Court for a ruling by the Registrar of the Supreme Court (the Registrar). Counsel for both sides have agreed that these are the relevant orders since the reference by the Registrar had attached to it only the order of 8th June, 2001.

The issues raised by this objection are:

(1) Whether costs can be taxed by the Registrar for Attorneys-

at-law other than those on the record, and

(2) Whether the form of bill of costs presented to the Registrar is

an acceptable one having regard to the fact that the legal profession in Barbados is a fused one as distinct from a divided profession like England.

These issues involve a consideration of Order 62 of the Rules of the Supreme Court of Barbados.

SALIENT FACTS:

[2] The brief salient facts relevant to this application are that the Defendants were awarded costs certified fit for two Counsel by order dated 8th day of June, 2001. They filed one bill of costs setting out their disbursements and, inter alia, Counsels' fees. The manner of setting out Counsels' fees is as follows:

Fee on Brief	
Mr. Richard Mahfood Q.C.	$600,000.00
Mr. Ramon Alleyne	$300,000.00
Sir Henry Forde Q.C.	$500,000.00
Mr. Brian Clarke	$250,000.00

Refreshers:

11 days for Senior Counsel @ $1,500.00	$16,500.00
11 days for Junior Counsel @ $750.00	$ 8,250.00
11 days for Senior Counsel @ $1,500.00	$16,500.00

11 days for Junior Counsel @ $750.00	$ 8,250.00
Mr. Richard Mahfood Q.C	$
Mr. Ramon Alleyne	$
Sir Henry Forde Q.C.	$
Mr. Brian Clarke	$

[3] The latter four items would represent the final fees to be inserted by the Registrar after a due consideration of the principles contained in Order 62 of the Rules of the Supreme Court and Counsel's submissions.

The bill of costs presented in respect of the orders dated the 4th day of February, 2002 and the 6th day December, 2002 is set out in similar manner to the order of 8th June 2001. The sums claimed in respect of the professional fees of Counsel are different and are set out hereunder:

Fees for

Mr. Richard Mahfood Q.C	$500 000 00
Mr. Ramon Alleyne	$300 000 00
Sir Henry Ford Q.C	$600 000 00
Mr. Brian Clarke	$250000 00
7 days for Senior Counsel @ $I 500 00	$10 500 00
17 days for Junior Counsel @ $ 750 00	$12 750 00
17 days for Senior Counsel @ $1 500 00	$25 500 00
7 days for Junior Counsel @ $ 750 00	$ 5 250 00

LEGAL SUBMISSIONS

[4] Mr. Turney submits that no particular form of the bill of costs is given either by Act of Parliament or by the Rules of the Supreme Court. He points out that some guidance on what matters should be contained in the bill of costs is provided by Order 62 of the Rules of the Supreme Court (RSC).

[5] He states that under the Bills of Costs filed in this matter, fees are claimed for Mr. Richard Mahfood and Sir Henry Forde Q.C. both of whom were not Attorneys-at-law on record, and that under the Rules of the Supreme Court, fees are only recoverable for Attorneys-at-law on the record.

[6] Mr. Turney submits also that the form of Bill of Costs used in this matter goes back to the days before fusion of the legal profession where allowance was made for instructing Solicitors. The Solicitor's invoice of fees was

produced and the fees taxed on proof of payment. He says that this form of bill is not possible under our rules.

[7] Mr. Alleyne, on the other hand, states that the Court certified the costs fit for two Attorneys-at-law for each defendant. That the matter under taxation was the case entitled No: 1637 of 1999 and that it was always known, that Messrs Clarke Gittens & Farmer, were the Attorneys-at-law on record acting on behalf of the Defendants. It followed that since it was known that Mr. Ramon Alleyne and Mr. Bryan Clarke are partners in the firm, there is no doubt as to their entitlement under the Bill. He submits that the form used has been in use in these Courts for years and there is nothing wrong with the form.

[8] He submits further that there isn't anything to preclude the taxation of costs for Sir Henry and Mr. Mahfood under our Rules of the Supreme Court.

Law

[9] It is clear that no specific form of the Bill is provided by Statute or the Rules of the Supreme Court. Order 62 Rule 18 of Rules of the Supreme Court provides "In every Bill of costs the professional charges and the disbursements, must be entered in separate columns and every column must be cost before the bill is left for taxation. The marginal note to Order 62 Rule 18 reads "Form of bill of costs" but no form is provided.

[10] Order 62 Rule 7 (2) provides the matters to which the Registrar of the Supreme Court shall have regard in taxation matters namely:

(a) The nature of the cause or matter, its novelty and complexity

and the interests, money or the value of the property involved; and

(b) The length of the trial and the general conduct of the

proceedings, and the Registrar may allow such sum as represents reasonable remuneration to the Attorney-at-law for the work done and the expense and time involved in

(c) taking instructions from his client and interviewing

necessary witnesses;

(d) preparing the Writ of summons or other originating process

and any necessary documents;

(e) necessary consultations and interlocutory proceedings;

(f) attendances

(1) at the Registry for filing documents;

(2) before the Court, a Judge or the Registrar, or

(3) on the other party in connection with the proceedings;

(g) the prosecution or defence of the suit and the obtaining

judgment, if any; and

(h) the execution of any judgment obtained.

[11] Provided that the form of bill presented contains the matters which are contained in Order 62 Rule 7 (3) , an irregularity in the form of bill is not fatal to the proceedings. See Order 2 Rule 2(1) of the Rules of the Supreme Court which provides:

> "Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these or any other rules of court, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein."

[12] The Court may allow such amendments or make such order generally as it thinks fit. See: Order 2Rule (2) of the Rules of the Supreme Court which is reproduced hereunder:

> "Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments, if any, to be made and to make such order, if any, dealing with the proceedings generally as it thinks fit".

[13] The net effect of these orders is that any irregularity in form does not nullify the bill but the Court may allow its amendment if it considers this necessary in the interests of justice.

[14] Mr. Turney further submits that, since Messrs Clarke Gittens & Farmer, were the Attorneys-at-law on the record who filed the proceedings they are the only ones whose fees can be taxed. Therefore, Sir Henry and Mr. Mahfood would have to obtain their fees from Messrs Clarke Gittens & Farmer, who would in turn, tax their costs inclusive of fees for Messrs Forde and Mahfood.

[15] Attorney on record is defined in Black's Law Dictionary 7th Edition P, 125 as:

> "The Lawyer who appears for a party in a lawsuit and who is entitled to receive, on the party's behalf, all pleadings and other formal documents from the Court and from other parties".

[16] Order 62 Rule 7 (1) provides that:

> "Subject to this rule, on the taxation of costs in any cause or matter, there may be allowed, unless the Court or a Judge otherwise directs, such reasonable amount in respect of the professional fees of the Attorney-at-law on record as the Registrar determines."

[17] This rule relates to a situation where the only Attorney-at-law engaged is the Attorney-at-law on the record, or where the Judge certifies that the costs are fit only for the Attorney-at-law on record. The words “unless the Court or a Judge otherwise direct “must be taken to relate to a situation where, an Attorney-at-law other than the one on the record is engaged and the Court certifies that the case is fit for the additional Attorney-at-law under order 62 Rule 7 (3) Obviously if the Court disallows costs then there can be no taxation since there is no entitlement.

[18] Mr. Turney’s submission that costs are only recoverable by the Attorney-at-law on record is posited on Order 62 Rule 7 (3). It seems to this Court, however, that it takes into account the provisions of Order 62 Rule 7 (1) but does not take into account the correct interpretation of Order 62 Rule 7 (3) vis a vis Order 62 Rule 7 (1). A literal reading of Order 62 Rule 7 (3) shows that the rule is not confined to costs being awarded to Attorneys-at-law on record.

[19] Order 62 Rule 7 (3) provides:

> “Where in any cause or matter Attorneys-at-law, other than the Attorney-at-law on the record, are engaged, the Court or Judge may certify that the case was a fit and proper case for one or more of the additional Attorneys-at-law and the Registrar shall on taxation of the costs in the cause or matter allow such additional amount in respect of the professional fees of such additional attorneys-at-law as the Registrar considers reasonable, having regard to the amount allowed in respect of the professional fees of the Attorney-at-law on the record”.

[20] The rules give a wide discretion to the Judge, before whom a matter is being heard, to certify that the case was a fit and proper case for one or more of the additional Attorneys-at-law “where in any cause or matter Attorneys-at-law, other than the Attorney-at-law on the record, are engaged.” Once the Judge makes the certification, the Registrar is duty bound to allow such reasonable amount in respect the professional fees of the additional Attorneys-at-law as to the Registrar shall be reasonable. In doing so, the Registrar must have regard to the amount allowed in respect of the professional fees of the Attorneys-at-law of record.

[21] In this regard, the Court notes that in Civil Appeals Nos. 31 and 34/2001entitled **William Everett Locke Jnr and Bellington Ltd et al. the Court of Appeal** of Barbados presided over by **Sir David Simmons K.A. B.C.H, CJ,** after dismissing the consolidated appeals in this matter ordered that the “Costs of the consolidated Appeals Nos. 31 and 34 of 2001 are certified fit for three Attorneys-at-law and allowed to the Respondents”.

[22] It is accepted that the Court in this matter ordered costs for each

Defendant certified fit for two Attorneys-at-law. This would include the Attorneys-at-law on record, Messrs Clarke Gittens & Farmer and leading Counsel whom they brought into the case.

[23] Once the Judge certified that the costs were fit for two Attorneys-at-law, the Registrar is bound to allow for both fees.

[24] Furthermore, as previously stated, Order 62 Rule 7 (3) makes allowance for costs to

be certified fit for additional Attorneys-at-law. This Court is of the opinion, and I hold, that the Rules of the Supreme Court clearly envisaged the situation, where costs are awarded for Attorneys-at-law other than those on record.

[25] It must also be remembered that, once an appearance is entered for

an Attorney-at-law, proceedings may thereafter be served on him even though he did not file the original proceedings. He is, to all intents and purposes, on record until released by order of Court.

[26] The Court notes that in England, where there is a divided profession, costs may be recoverable, if the Court so orders, where junior Counsel is instructed in addition to leading Counsel provided that certain conditions exist.

[27] I am of the view therefore, that the submission that the form used is improper, because only attorneys on record are entitled to have their fees taxed, is without merit and is overruled.

[28] Mr. Turney also submitted that, the form of taxation used could not be used under the Rules of the Supreme Court of Barbados since, this form of bill of costs predates fusion of the legal profession and relates to a time where they were instructing Solicitors and advocates.

[29] Order 62 speaks to costs being allowed to Attorneys-at-law and makes no distinction between Barristers and Solicitors. The distinction between Barristers and Solicitors was abolished in 1973 and the Rules of the Supreme Court came into existence in 1982 after fusion of the legal profession by virtue of the Legal Profession Act Chapter 370A of the Laws of Barbados which came into effect on 31st day of March 1973. The language of the Rules, which makes reference to “Attorneys-at-Law”, rather than “Solicitors” illustrates that the rules were designed to cater to a fused profession. So that there is no merit in the submission that the form of bill is irregular because it predates fusion, if the matters required to be included in the bill fall within Order 62 of the Rules of the Supreme Court.

[30] As previously noted, there is no prescribed form of bill of costs in the Rules of the Supreme Court. The form submitted here is in pari materia with forms used by Attorneys-at-law in several other matters**. In Grosvenor v The Advocate Co. Ltd at as (No.3 1971 30 Barb. L.R. 334 Payne J. (ag)** (as he then was) later Payne J. reviewed a bill of costs taxed by the Registrar of the Supreme Court. The taxed bill before the learned Judge was substantially in the same form as the form used here and set out Counsel’s fees as follows:

Brief fees for Counsel

(a) D.A.C Simmons Q.C	$ 75,000.00
(b) P.K.H Cheltenham	$ 37,000.00
	$112,500.00

Refreshers for 8 days of trial

(a)	D.A.C. Simmons Q.C.	$1500x8	$ 12,000.00
(b)	P.K.H. Cheltenham	$750x8	$ 6,000.00
	Total		$130,500.00

[31] There was only objection to the quantum awarded to counsel and not to the form of the bill. However, in construing the bill against the relevant Orders (62 RSC Rule 7 and 37) and in going through in detail the relevant considerations which the Registrar must advert to, in determining quantities, Payne J. tacitly approved the form used.

[32] Mr. Turney's final submission is that the form of bill presented shows that fees are being taxed for four attorneys-at-law as distinct from two, as ordered by the Court. Reference is made to that portion of the bill, previously reproduced in this Judgment, where professional fees are claimed for Mr. Mahfood Q.C. and Mr. Ramon Alleyne and Sir Henry Forde Q. C. and Mr. Brian Clarke.

[33] Mr. Alleyne's response to that submission is that the bill is clear that costs are being taxed for two Counsel in respect of each Defendant. He submits that reference must be made to the Order of Court, which certified costs fit for two Attorneys-at-law in respect of each Defendant. This would make it clear that costs are being awarded to two Attorneys-at-law as distinct from four.

[34] When regard is had to the form of the bill presented, it is not immediately clear or apparent that the professional fees being sought are with respect to two attorneys-at-law for each Defendant. Indeed under the heading "ALLOWANCES" on both bills of costs there appear the words "Professional fees for four (4) Counsel". More clarity would have been obtained if the claim with respect to the attorneys-at-law fees reflected for which Defendants the Attorneys acted and whether or not a distinction is to be made in the different considerations under Order 62 Rule 7(2) on taxation of fees with respect to senior and junior Counsel for each Defendant. In other words whether, there were different considerations with respect to the computation of the fees in terms of work done and the time spent doing such work for each defendant or whether the fees charged are globally computed for each of the Defendants.

[35] It is also noted that individual bills could have been presented with respect to each of the Defendants, which would have put the matter beyond doubt.

[36] These are issues, which would be of tremendous importance to the Registrar in determining the reasonableness of the fees to be charged with respect to the Attorneys-at-Law for each Defendant.

[37] It must be borne in mind that the Order of Court certified the costs fit for two Counsel in respect of each of the Defendants. This is the Order which invokes the jurisdiction of the Registrar and which will guide the Registrar in the taxation of costs. It ought not to be assumed that the Registrar will fail to take cognizance of the fact that costs were certified fit for two Attorneys-at-Law for each Defendant and not four Attorneys-at-law. Similar considerations apply to the issue of refreshers.

[38] In the premises, the Court is of the opinion that there may be some confusion as to whether fees charged are for two Counsel or four but this may be cleared up by an amendment to the bill to make the distinction between Senior or Junior Counsel in respect of each of the Defendants. Alternatively, this would be a matter of interpretation for the Registrar whether, in her discretion, on a consideration of the bill as a whole, fees were sought for two or four Counsel.

[39] It must be remembered that the bill, when presented, is subject to the exercise of the Registrar's discretion in allowing such fees as are considered reasonable and the form will, or may be, altered by the Registrar by inserting the fees allowed and for whom they are allowed on taxation.

[40] It must also be remembered that the file shows the appearances in the case with respect to each of the Defendants in the matter.

[41] The Registrar would therefore have had no doubt as to the Attorneys-at-law whose professional fees were to be taxed under the Order of Court. Thus, whilst the Court is of the opinion that there is some substance in Mr. Turneys' submission, that the bill as presented may give the impression that fees are being taxed for four Attorneys-at-law as distinct from two, it is not so fundamental as to require the bill to be struck out. It may be suitably amended to reflect that (1) that fees are being taxed for two Attorneys-at-law for each of the Defendants and (2) who are the respective Attorneys-at-law for each of those Defendants.

CONCLUSION AND DISPOSAL

[42] In the premises, I hold that the bill presented cannot be impugned on the ground that its form predates fusion of the Legal Profession and is in applicable to a fused profession. I further hold that, contrary to Mr. Turney's submission, the fees charged for Mr. Mahfood and Sir Henry Forde, QC may be validly presented in the bill, however, the issue of quantum is for the discretion of the Registrar after due consideration of Order 62 and the arguments of Counsel on both sides.

[43] The perceived irregularity that fees are being sought for four Attorneys-at-law does not make the bill unacceptable but may be dealt with by the Registrar making any suitable amendments as are required to clear up any perceived misconception.

Costs

[44] Having regard to the fact that I have found that the bill is not invalid but, as a draft, may be suitably amended; having regard also to the fact that no issue of costs would have arisen if these arguments were presented to the Registrar and considering also that each side has been partially successful in their submissions, I am of the opinion that each party should bear their own costs and I so order.

William Chandler

Judge of the High Court