

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Civil Suit No. CV1889 of 2006
CV2111 of 2006

**In the matter of arbitration between Barrack
Construction Ltd. and the National Housing
Corporation**

**And in the matter of the award by Sir Denys
Williams, sole Arbitrator**

**And in the matter of Section 23 of the Arbitration
Act Cap 110**

BETWEEN:

BARRACK CONSTRUCTION LIMITED

**CLAIMANT /
JUDGMENT CREDITOR**

AND

NATIONAL HOUSING CORPORATION

**DEFENDANT/
JUDGMENT DEBTOR**

Before Master Deborah Holder, BSS, Master of the High Court

2016: November 2

2018: February 7

Appearances:

**Mr. Aidan Rogers and Ms. Shelly-ann Seecharan, Attorneys-at-Law for the
Claimant/Judgment Creditor**

**Mr. Adrian King in association with Ms. Henrietta Bourne-Forde and Ms.
Nicole Gibson for the Defendant/Judgment Debtor**

DECISION

Introduction

- [1] In this matter the Claimant/Judgment Creditor is seeking interest on costs granted to its lawyers by the sole arbitrator **Sir Denys Williams**.
- [2] By judgment summons dated 16th August, 2016, amended 26th August, 2016 and further amended on 20th September, 2016 the Claimant/Judgment Creditor states:

“On the 7th September, 2016 following the decision of the sole Arbitrator **Sir Denys Williams** the Judgment Creditor was awarded \$34,490,518.00 together with interest on that sum at the rate of 10% per annum from the 25th July, 2002 to the 6th September, 2006 and thereafter at the rate of 8% per annum until payment. Costs in the sum of \$6,158,200.00 were also awarded to the Claimant, which included the sums of \$5,807,250.00 for the legal and consultant team, \$350,000.00 representing reimbursement to the Claimant one half of the arbitrator’s total fee of \$700,000.00 and \$950.00 for disbursements during the arbitral proceedings.”

- [3] It is also stated:

“And as you have only made arrangements for the payment of the arbitral award but failed to pay the sums awarded as costs as ordered, the Judgment Creditor has requested this judgment summons be issued against you.”

Background

- [4] The parties entered into a contract for the construction of a five storey office complex at Warrens. Their agreement permitted them to settle disputes by arbitration. A dispute arose and the Claimant/Judgment Creditor referred the matter to arbitration. On the 7th September, 2016, the sole arbitrator **Sir Denys Williams** entered judgment for the Claimant/Judgment Creditor.
- [5] He stated at pages 23 – 24 of his decision dated 7th September, 2006:

“My award is therefore BDS \$34,490.518.00.

Section [23] of the Arbitration Act Cap 110 provides that a sum directed by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Section [35] of The Supreme Court of Judicature Act Cap 117 provides that interest on debt or damages may be awarded at a rate not exceeding eight percent.

In the circumstances of this case in which Barrack lawfully terminated its contract at the end of June 2002, the award should bear interest at the rate of ten percent from the date on which the matter was submitted to arbitration until the date of award and thereafter at eight percent per annum until payment.

It must be noted that interest is not to be paid on interest so that interest is not to be paid on any part of the award which comprises interest.”

- [6] On 18th July, 2008 the High Court granted leave to the Claimant/ Judgment Creditor to enforce the said arbitral award together with costs as an order of the court.
- [7] A bill of costs was submitted to the Registrar of the Supreme Court and a decision was made as to the amount of costs to be paid to the Claimant/Judgment Creditor. There was an application by the Defendant/Judgment Debtor for review.
- [8] On 3rd February, 2016 the Registrar certified costs for the Claimant/Judgment Creditor arising from suits 1889 of 2006 and 2111 of 2006.
- [9] The Claimant/Judgment Creditor is claiming interest on costs granted to its attorneys on the basis of **section 23** of the **Arbitration Act Cap 110**.

[10] The Defendant/Judgment Debtor indicated that efforts were being made to liquidate the debt but objected to the Claimant/Judgment Creditor's application for interest on costs awarded to its lawyers.

Defendant/Judgment Debtor's Submissions

[11] Mr. King argued that the arbitrator made specific orders with respect to the award, the manner in which interest was to be applied, making specific reference to the **Arbitration Act Cap 110**. He said that the arbitrator also gave cogent and clear legal reasons how and why interest should not be applied in accordance with the legislation as existed at the time.

[12] He rejected the suggestion that **section 23** was authority for the proposition that the costs for the attorneys attracted interest in the same manner as the judgment debt. He submitted that in the circumstances of this case **section 23** cannot be read alone because the arbitrator made specific reference to the payment of interest on the arbitral award.

[13] He argued that Part V of the Act, which dealt specifically with costs, fees and interests, set out broad parameters within which the arbitrator could exercise his discretion with respect to orders of costs and fees. He said that the Act made a clear distinction between an arbitral award, costs and fees. He was of the view that **section 23** applied only to the arbitral award and not to the fees or costs associated with the arbitration itself.

[14] He also argued that the arbitrator's wide discretion is further buttressed by **section 36** of the Act which is included under the Miscellaneous provisions.

[15] Mr. King submitted that **section 36** was critical to the analysis and disposition of this matter since the arbitrator made specific orders with respect to the statutory application of interest in the award to the Claimant/Judgment Creditor but made no order whatsoever with respect to interest on its attorneys' costs. He felt that if the arbitrator intended to

award interest on costs he would have specifically made an order in those terms.

- [16] He was of the view that the Claimant/Judgment Creditor was not entitled to rely on the direct terms of the arbitrator's decision for payment of interest and where the arbitrator was silent, rely on the provisions of the Act to support its application for interest on costs to its attorneys, when this was clearly contrary to the arbitrator's intention.
- [17] He further submitted that **section 23** was solely and specifically designed for instances where the arbitrator made no reference whatsoever to interest. He said that if the arbitrator had made no reference to interest the Claimant's case for the application of **section 23** would have been legitimate.
- [18] Mr. King said that **section 20** of the **Arbitration Act** created a statutory mechanism for the issue to have been revisited, resolved and corrected. Under that section the arbitrator was given the power to correct any clerical mistake or error arising from any accidental slip or omission.
- [19] In conclusion he emphasized that the Claimant must not be allowed to approach the court ten years after the decision was made to apply for interest on attorneys' costs when that was clearly contrary to the arbitrator's intention.
- [20] He felt that the court was bound to apply **section 19** of the Act which provided that unless a contrary intention was expressed, every arbitration agreement shall be deemed to contain a provision that the arbitrator's award was final and binding on the parties.
- [21] He urged the court to reject the Claimant's application for interest to be added to the costs of its attorneys and emphasized that interest on costs of

its attorneys was not recoverable unless specifically ordered by the arbitrator in his decision on 7th September, 2006.

Claimant/Judgment Creditor's Submissions

- [22] Ms. Seecheran contended that the Judgment Debtor's interpretation of **section 23** was not consistent with any reasonable reading of the section, which was very clear. She said that its objection had the effect of introducing ambiguity where none existed. She urged the court to take a careful note of the words used in **section 23**.
- [23] She argued that there was no legal support for the contention that **section 23** only applied to an award proper and not to costs or fees associated therewith. Further that the Judgment Debtor gave no cogent reasons why **section 23** should not apply and in any event it "misapplied" **section 23**.
- [24] She said that the Act did not define "award" but that the literature on commercial arbitration spoke of awards of costs, awards of damages and awards generally.
- [25] She submitted that **section 21** of the **Arbitration Act Chapter 110** which conferred the power to award costs made it clear that an order for costs formed part of the award. **Section 21.2** referred to "costs directed by an award to be paid."
- [26] She relied on the definition of "award" found in Black's Law Dictionary, 8th edition at page 147 which was

"n. A final judgment or decision especially one by an arbitrator or jury assessing damages. Also term arbitrament."

She suggested that the Judgment Debtor did not provide any authority for its interpretation of the word "award" and that it advanced a definition which was outside the norm.

- [27] She was of the opinion that, within the context of the Act, the word “award” referred to final judgment or decision of the arbitrator and that that was the only reasonable interpretation open to the court.
- [28] She referred to the language used in **section 21 (1) (2) and (5)** and was of the opinion that it clearly demonstrated that “an award” included costs.
- [29] Ms. Seecharam also considered the word “sum”. She said that there was nothing to indicate that it referred only to damages otherwise the draftsman would have said “damages” directed to be paid by an award.
- [30] She contended that the Judgment Debtor had misapplied **section 36**. She agreed that **section 36** conferred a discretion with respect to orders for costs. However, she felt that this was merely a reference to the fact that costs were awarded on the same principles which governed an order for costs in the High Court in that the arbitrator had to determine which party was to pay costs, the amount and the terms of his order.
- [31] Counsel was of the view that **sections 23 and 36** were not mutually exclusive and that the Judgment Creditor’s entitlement under **section 23** was not nullified under **section 36**. She argued that **section 23** was clear and unambiguous and that interest automatically attached to every award of money and could only be displaced by an express statement of the arbitrator. Therefore, interest started to run from the date of award at the interest rate payable on the judgment.
- [32] She emphasized that interest is not discretionary and that under the **Arbitration Act** there was no requirement that it be claimed or specifically ordered.
- [33] She described an arbitration as an ad hoc court and said that the Act envisaged that the arbitrator might not be a lawyer and a party might be unrepresented, consequently Parliament had automatically awarded

interest. She contrasted that with **section 35** of the **Supreme Court of Judicature Act Cap 117A** where the award of interest is discretionary thus the judge must specifically address his mind to it.

[34] She also added that failure to specifically address interest cannot prejudice a right to which the Judgment Creditor is entitled and which was granted by Parliament.

[35] She was of the view that the arbitrator, having increased the Judgment Creditor's statutory entitlement under **section 23** of the Act from eight percent to ten percent, was obliged to make an express award. If he intended to modify the Judgment Creditor's entitlement to interest on costs he would have had to do so expressly, as he did with the award on damages. She argued that he clearly intended the statutory position to apply to that aspect of the award, therefore he was not required to make an award of interest on costs.

[36] She rejected the submission that **section 20** of the **Arbitration Act** was applicable. She did not agree that the arbitrator made any errors or omissions therefore there was nothing for him to correct. Once the award was given **section 23** was triggered. And, in any event he was functus officio after he delivered his decision and **section 20** could not cure his lack of jurisdiction.

[37] In support she cited Mustill and Boyd, The Law of Practice of Commercial Arbitration in England, Second edition page 25 paragraph 4.

[38] Ms. Seecheran urged the court to dismiss the Defendant/Judgment Debtor's objection.

Issue

[39] The issue is whether the Claimant/Judgment Creditor is entitled to interest on costs awarded to its attorneys pursuant to **section 23** of the **Arbitration Act Chapter 110**.

Law

[40] **Arbitration Act Chapter 110**

20. Unless a contrary intention is expressed in the arbitration agreement, the arbitrator or umpire shall have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Part V

Costs, Fees and Interest

21. (1) Unless a contrary intention is expressed therein, every arbitration agreement shall be deemed to contain a provision that the costs of the reference and award shall be in the discretion of the arbitrator or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be paid or any part thereof, and may award costs as between solicitor and client.

(2) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxable in the Court.

(5) Where no provision is made by an award with respect to the costs of the reference, any party to the reference may within fourteen days of the publication of the award or such further time as the Court may direct, apply to the arbitrator for an order directing by and to whom those costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

23. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Part VIII

Miscellaneous

36. Any order made under this Act may be made on such terms as to costs or otherwise as the authority making the order thinks just.

Discussion

- [41] In Barbados there is no legislation which provides for the payment of interest on costs, unlike the U.K where their **C.P.R.** and **Arbitration Act 1996** specifically provide for it.
- [42] Barbados' position is not unique in this region. In Grenada there is no law which allows for the payment of interest on costs and neither is there an established practice of so doing. Therefore where a Judgment Creditor who was awarded prescribed costs claimed an entitlement to interest from the date of judgment until the date of payment, the High Court rejected the application. The court held that the **1838 Judgments Act UK** was not received as part of the laws of Grenada (*Bradford Noel v. FirstCaribbean International Bank (B'dos) Ltd. GDAHC 2004/0109*).
- [43] Under **section 36** of the **Arbitration Act Chapter 110** the arbitrator has the discretion to make an order "on such terms as to costs" as he thinks just. Mr. King suggests that this section is critical. Whether or not interest on costs was raised or contemplated during the arbitration process is not known. But it appears that nine years ago when the award was made an order of the court, this matter was not specifically addressed by the Claimant/Judgment Creditor.
- [44] Consequently the Defendant/Judgment Debtor argues strongly that the Claimant/Judgment Creditor is now, ten years after the award was made, trying to benefit from the statute while relying on the direct terms of the arbitrator's decision for payment of interest.

- [45] I am mindful that the construction/interpretation of **section 23** which Ms. Seecheran urged on the court will increase the financial difficulties of the cash-strapped Defendant/Judgment Debtor who assured the court of its efforts to liquidate the debt.
- [46] However, in spite of the inordinate delay in seeking to clarify this matter, the court's duty is to give effect to Parliament's intention.
- [47] In *Katrina Smith v Albert Selby [2017] CCJ 13 (AJ)* Sir Dennis Byron while discussing the principles of statutory interpretation said:
- “[10] ...It must be remembered that the court's responsibility is to give effect to the intention of Parliament not to correct legislation to ensure that it is just and expedient.”
- [48] During the course of their submissions counsel referred to **sections 19, 20, 21, 23 and 36** of the **Arbitration Act Chapter 110**.
- [49] After considering these sections I wish to say at the outset that I am not satisfied that **section 19** of the Act, which was raised by Mr. King, is useful in the resolution of this matter. The section is clear and unambiguous and whether or not the arbitrator's award is final, is not an issue in this matter. The arbitrator did mention **section 23**, which is in dispute, therefore it is essential to carefully consider how the section is to be construed.
- [50] Likewise, **section 20** of the Act which is concerned with the power to correct any clerical mistake or error is also not useful or applicable to the resolution of this matter. There is no evidence of an “accidental slip or omission.”
- [51] Therefore, I will not be discussing these sections.
- [52] It should also be noted that **sections 21 (1)** and **21 (2)** and **21 (5)** are useful only insofar as they demonstrate to the court the manner in which the legislature treated or used the word “award”.

- [53] In *Katrina Smith v Albert Anthony Peter Selby* (Supra) the Caribbean Court of Justice advised that “when interpreting any part of a statute [the court] should review other parts of the Act which throw light upon the intention of the legislature and may show how the provision ought to be construed.”
- [54] The interpretation of **section 23** of the **Arbitration Act** is critical to the resolution of this matter.
- [55] Both counsel paid specific attention to the meaning of the word “award” and Ms. Seecheran also gave some consideration to the meaning of the word “sum”.
- [56] How does one determine what the Legislature intended?
- [57] In the case of *Aron Salomon (a Pauper) v. A. Salomon & Company Ltd.*, [1896] AC 22 at page 38, Lord Watson said:

“Intention of the Legislature” is a common but very slippery phrase, which popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.”

- [58] “Intention” was also explained in *Black – Clawson International Ltd. v. Papierwerke Waldhof – Aschaffenburg* [1975] AC 592 at 613, in the House of Lords by **Lord Reid**. He said:

“We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said. In comparatively few cases where the words

of a statutory provision are only capable of having one meaning, that is an end of the matter and no further enquiry is permissible.”

[59] It is also important to note that:

“The meaning of an ordinary word of the English Language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what the unusual sense is”. (See *Brutus v. Cozens* [1972] 2 All ER 1297) at 1299. **Per Lord Reid**).

[60] **Lord Reid’s** comment was explained by **Lord Hoffman** in *Moyna v. Secretary of State for Work and Pensions* [2003] 4 All ER 162 at 169 as follows:

“[24] Lord Reid was here making the well-known distinction between the meaning of a word, which depends upon conventions known to the ordinary speaker of English or ascertainable from a dictionary, and the meaning which the author of an utterance appears to have intended to convey by using that word in a sentence. The latter depends not only upon the conventional meanings of the words used but also upon syntax, context and background. The meaning of an English word is not a question of law because it does not in itself have any legal significance. It is the meaning to be ascribed to the intention of the notional legislator in using that word which is a statement of law. It is because of the nature of language that in trying to ascertain the legislator’s meaning, it is seldom helpful to make additions or substitutions in the actual language he has used.”

[61] The principle to be utilized in this process can be found in the words of **Lord Reid** in *Pinner v. Everett* [1969] 3 All ER 257 at 258 – 259:

“In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when the meaning leads to some result

which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase”.

Additional advice can also be found in the following:

“Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider the consequences of doing so would be inexpedient or even unjust or immoral.” *Duport Steels Ltd. v. Sirs [1980] 1WLR 142 at 157).*

[62] Among the entries for the definition of the word “sum” in the Oxford Advance Learner’s Dictionary (6th edition) page 1302, when used as a noun, are (1) “an amount of money” and (2) “the number you get when you add two or more numbers together.”

[63] The word “award”, at page 71, when used as a noun is defined as “the amount of money that a court decides should be given to somebody who has won a case;” and when used as a verb it is defined as “to make an official decision to give something to somebody as a payment, prize etc:”.

[64] The entries in Collins English Dictionary, 10th edition page 114 when used as a verb include:

“**2** *law* to declare to be entitled, as by decision of a court of law or arbitrator.”

When used as a noun:

“**5** *law* **a** The decision of an arbitrator **b** a grant made by a court of law, esp. of damages in a civil action.”

[65] In A Dictionary of Law 5th edition page 51 it is stated that:

“The judgment of an arbitrator is called his award.”

- [66] In **section 21 (1)** the word “award” is used firstly as a noun and then as a verb while in **section 21 (2)** it is used as a noun. In **section 23** both “sum” and “award” are used as nouns.
- [67] It is my opinion that the word “award” in **sections 21 (1), 21 (2), 21(5) and 23** of the Act refer to the arbitrator’s “decision” or “judgment”. It is in his decision or judgment that the arbitrator sets out the amount of money to which the successful party is entitled. When the word is used as a verb in **section 21 (1)** it means “give” or “declare entitled”.
- [68] The words used in **section 23** are not unusual or complicated. Having considered them with the benefit of the ordinary meaning attributed to them, “the intention of the legislature” becomes apparent.
- [69] The case *In the matter of the Arbitration Acts 1954 to 1980: Tadgh Horan v. Thomas Quilter [2004] IIR 431* offers assistance in the interpretation of **section 23**. In this case the Court of Appeal of Ireland examined **section 34** of the **Arbitration Act 1954** which was identical to **section 23** of the **Arbitration Act Cap 110 of Barbados**. According to **Denham J section 34** was at the heart of their case.
- [70] It should be noted that their **section 29 (1)** is almost identical to our **21 (1)** except that the words “with the consent of the parties” are included as follows:
- “Unless...and may, with the consent of the parties, tax or settle the amount of costs to be paid or any part thereof, and may be paid as between solicitor and client.”
- [71] **Section 29 (2) (a)** of the **1954 Act of Ireland** is similar to **section 21 (2)** of the Barbados Act and in my opinion has the same meaning.
- [72] There is legislation in Ireland which provides for interest on attorneys’ costs. The parties agreed that the order of a court for payment of costs

triggers interest from the date of the order but the Defendant argued that this did not apply to an award of costs of an arbitrator.

- [73] It is in these circumstances that the Court of Appeal had to determine the meaning of their **section 34**.

Facts

- [74] The parties were veterinary surgeons who entered into a partnership. Differences arose which they referred to arbitration. The arbitrator held a number of hearings, made two interim awards and a final award. The interim award expressly reserved the question of costs for a future award. At paragraph 5 in the final award he said: "I award the applicant his costs of the reference together with witnesses' expenses."
- [75] The Plaintiff applied to the High Court to enforce the same as a judgment of the court and the High Court ordered that the Plaintiff be at liberty to enforce the arbitrator's award in the same manner as a judgment of court. Counsel for the Plaintiff applied for interest on the bill of costs and witnesses' expenses from the date of the arbitrator's award. **O'Higgins J** refused to grant interest on the arbitrator's award but allowed interest to accrue from the date of his order.
- [76] The sole issue on appeal was whether interest on the sum of £30,331.65, the amount of the Plaintiff's bill of costs, should run from the date of the award, that is, 26th November, 1996 or the date of the High Court judgment enforcing the award, that is, 2nd July 2001.
- [77] Counsel for the Plaintiff submitted that the arbitrator's award is of the same nature, effect and consequence as a court order. Therefore the court should grant interest on costs of the arbitrator's award from the date of the final award and not from the date of the High Court order giving power to

enforce the award, either (i) on the basis of the **Debtors (Ireland) Act 1840**, or (ii) on the basis of **section 34** of the Act of 1954.

[78] Counsel for the Defendant submitted that (1) there was no statutory definition of “award”. (2) The arbitrator’s award did not have the standing as a judgment or order. (3) Since leave of the court was required to enforce the award, interest only attached from the date the High Court made the order. (4) **Section 34** of the **Arbitration Act of 1954** did not refer to interest on costs.

[79] **Denham J**, after quoting the section said:

“23. The award in this case did not otherwise direct. Thus the case turns on the construction of s.34 of the Act of 1954. The critical words are “a sum directed to be paid by an award.”

“24. The question is whether these words include costs, so that they shall, pursuant to the further words of s.34 of the Act of 1954, “carry interest as from the date of the award and at the same rate as a judgment debt.”

“Sum”

“25. At first glance the word “sum” might appear to mean a definite amount of money, an amount of money calculated by the arbitrator. This meaning would require that the amount be ascertained at the time of the award. As costs are not ascertained at the time of award, but at a later date it might be inferred that the word “sum” does not include costs.

26. Although the exact amount of money involved in an order for costs is not defined at the time of the award, it is a definite award of the costs. While the amount of costs may have been agreed it is more probable that they have not. If it were necessary in the construction of the section that an amount of money be awarded by the arbitrator to attract interest then if the amount of costs had been agreed it would attract interest but if it had not then no interest would lie. This construction would appear to create an injustice.”

[80] He consulted Stroud's Judicial Dictionary (6th edition) for the entries relating to the word "sum" and he continued:

"30. Section 34 of the Act of 1954 contains the term "sum" *simpliciter*. On its face it is describing money. It does not expressly refer to a specified sum or a certain sum. It is a sum adjudged to be paid by the arbitrator. I am expressly satisfied that its plain and simple meaning is that it refers to money. I would construe the section as referring to money directed to be paid by an award. I am satisfied that the precise amount of the money does not have to be specified in the award, as the circumstances may require an arbitrator to make an order linked to the circumstances of a case. Taking this approach it is money which would carry interest from the date of the award at the same rate as a judgment debt."

"Award"

[81] **Denham J** consulted The Concise Oxford Dictionary (8th edition) and Arbitration Commentary and Sources (Dublin 2003). He felt that the word "award" had a clear meaning. He continued:

"33. I am satisfied that the term "the award" of the arbitrator refers to the decision of the arbitrator.

34. Thus, in light of this construction of the Act of 1954, the words of s.34 have a plain meaning. It means that money directed to be paid by a decision of an arbitrator shall, unless the decision otherwise directs, carry interest as from the date of the decision and at the same rate as the judgment debt."

[82] **Denham J** was satisfied that the High Court erred in not including interest from the date of the award and he allowed the appeal and varied the order to enable interest to run from the date of the arbitrator's award.

[83] He made the following point *obiter*:

“36. To avoid doubt it would appear to be good practice for the written decision of an arbitrator, the award, to deal expressly with interest.”

[84] **Hardiman J** said:

“68. I believe that s.34 of the Act of 1954 extends to costs as well as to any other sum ordered to be paid in an arbitration award. This I believe is the true meaning of the section and is commendable alike to justice and to common sense.” I would therefore allow the appeal to the extent of ordering that interest on the sum ordered to be paid run from the date of the arbitrator’s final award, rather from the date of the High Court order.”

[85] I have quoted extensively from the decision of **Denham J** because I believe that this decision adequately construes **section 23**.

Conclusion

[86] One can only speculate as to whether or not the award of interest on costs was within the arbitrator’s contemplation. His words are all that one can rely on to determine what he meant.

[87] Both counsel took the liberty to refer to the arbitrator’s vast judicial experience in support of their arguments. I too will suggest that because of his experience he would have been familiar with the legislation or lack thereof as well as whether there was a practice of routinely awarding interest on costs.

[88] While I agree with Mr. King that the arbitrator’s award is final and Ms. Seecheran is also in agreement with this, what he wrote is open to interpretation by the court.

[89] In my opinion there is no conflict between **section 36** which empowers the arbitrator to make orders as to costs as he sees fit and **section 23**. I therefore agree that **section 36** does not nullify **section 23**.

- [90] The argument that the case for application of **section 23** would have been legitimate where the arbitrator made no reference to interest whatsoever may be indicative of Mr. King's tacit acceptance that the section can refer to interest on costs.
- [91] In keeping with the advice which was given *obiter* by **Denham J** to deal expressly with interest, the arbitrator specifically dealt with interest on damages, increasing the Judgment/Creditor's entitlement. However, by not expressly excluding interest on attorneys' costs he has allowed **section 23** to speak for itself.
- [92] As stated previously, there was pre-existing legislation in Ireland with respect to interest on costs but *Tadgh Horan v. Thomas Quilter (Supra)* was not determined on that legislation but on the plain meaning of the words used in their **Arbitration Act of 1954**.
- [93] I see no reason why this decision should not be applied to the present matter.

Disposal

- [94] After due consideration of the arguments and the relevant law, I am persuaded that “a sum directed to be paid by an award”, in **section 23** of the **Arbitration Act Chapter 110**, includes costs.
- [95] Consequently I hold that the arbitrator did award the Claimant/Judgment Creditor interest on its attorneys’ costs from the date of the decision and at the same rate as the judgment debt.
- [96] As a result of this, the outstanding interest as well as any interest that will accrue in the future must also be liquidated by the Defendant/Judgment Debtor.
- [97] I have made no order as to costs.

DEBORAH HOLDER, BSS
Master of the High Court