

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE  
Sub-Registry San Fernando

No. S. 264 of 1988

IN THE MATTER OF THE WILLS AND PROBATE ORDINANCE  
AND IN THE ESTATE OF BOBBY ALI HOSEIN DECEASED

Between

ROSA FARIDA HOSEIN

Plaintiff

And

KAMAL HOSEIN  
(executor of the Will of  
Bobby Ali Hosein, deceased)

Defendant

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**JUDGMENT/COSTS**

**Before the Honourable Mr. Justice V. Kokaram**

**Appearances:**

Mr. Devindra Rampersad for the Plaintiff

Mr. Edwin Roopnarine and Ms. C. Sinanan for the Defendant

1.1 Upon delivery of the judgment of this Court on the trial of the location and extent of the area originally occupied by Bobby Ali Hosein deceased and which is referred to as the “house spot”<sup>1</sup>, the Court invited both parties to address it on the issue of costs.

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<sup>1</sup> See written judgment delivered 8<sup>th</sup> March 2006

- 1.2 Both parties correctly submitted that an award of costs is made in the exercise of the Court's discretion based on the material before the Court. In exercising this discretion it was submitted that the Court can take into account the conduct of the parties in the litigation.
- 1.3 The Plaintiff contended that the Court must take into account the conduct of the Defendant as a dilatory testator that had not administered this estate since 1973. It was further submitted by the Plaintiff that the Defendant is not in the position of any normal Defendant but holds a special position of a trustee and that it amounted to more than mere negligence for this Defendant not to have moved the Court properly for directions as to the administration of the estate or even to lead any evidence in this case to support his contention as to the location of the house spot. The Plaintiff accused the Defendant of prolonging the case unnecessarily having regard to the length of time engaged by the main action<sup>2</sup>. In light of these submissions the Plaintiff submitted that the Defendant should pay the Plaintiff's costs.
- 1.4 In support of this contention the Plaintiff referred to the authorities of *Green v Challenor* (1840) 9 LJ Ch 183. In this case however it appears that costs followed the event and where the Defendant failed in his attempt to prevent the Plaintiff from benefiting from his/her entitlement under the will, the Defendant bore the costs personally. In the present case, however as decided in the judgment of this Court, it is the Plaintiff who has failed to prove her claim as to the limited extent of the "house spot" and it is the Defendant who succeeds in demonstrating that the "house spot" includes the curtilage and more than just the land upon which the houses rests.
- 1.5 The Defendant, submitted that the Court in the exercise of its judicial discretion in awarding costs must take into account the facts and determination of this matter.

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<sup>2</sup> See paragraph 1.3 of the judgment delivered on 8<sup>th</sup> March 2006

- 1.6 In response to the question from the Court as to whether costs should be paid personally or from the estate of the deceased, the Plaintiff submitted that the estate should bear the burden of the costs as the matter before the Court was an administration action and was so intitled. The Defendant submitted that costs, should be paid personally. A view incidentally which was consistent with *Green v Challenor*.
- 1.7 The Court agrees that the Defendant as executor must be careful in the manner in which he conducts himself as an executor to the estate. His role is to protect the interests of the estate. However there are no facts nor materials before this Court to demonstrate any act or conduct on the part of the executor to disentitle him to the costs of this action. The fact that the Defendant did not give any evidence in this matter is the exercise of a right that any litigant possess and ultimately in this case led to a more economical use of the Court's time and resources in bringing an end to this aspect of the action. There is nothing in principle in this case to prevent this Court from awarding costs on the basis that costs should follow the event. In principle, the Defendant has succeeded in its definition of the "house spot" although the final dimensions of that spot did not coincide with that of the Defendant with regard to the Southern boundary.
- 1.8 The Court however takes into account the following factors in determining the amount of costs to be awarded in this case. The Defendant's claim with regard to the Southern boundary was in the Court's view too liberal. The Plaintiff by submitting a survey plan through Mr. Ramrekah and demarcating DS 1 as a proposed "house spot" in effect acted upon and demonstrated its willingness to "agree" to the excision of a larger parcel of land to the Defendant by way of compromise as pleaded in paragraph 7 of its Statement of Case. Such an offer the Court regards as analogous to an offer to compromise the action, which a Court is entitled to take into account in exercising its discretion on an award for costs. See *Cutts v Head* [1984] 2 W.L.R. 349. The Court also takes into account the nature of this dispute which is one between two family members in which there is clearly

a high degree of acrimony preventing to date any useful invocation of alternative dispute resolution procedures. Indeed the Court is mindful that this judgment will not finally dispose of all the issues in this action.

1.9 Taking into account the facts and circumstances of this case the Court therefore orders the Plaintiff to pay the Defendant one half of the Defendant's costs to be taxed in default of agreement. The Plaintiff will bear these costs personally and it will not be borne by the estate. The Court will not saddle the estate with the costs of this litigation. Although arising out of an administration action in form, in substance it was a dispute between two beneficiaries over competing interests in land which was not for the benefit of all beneficiaries under the will. The Plaintiff assumed the burden of demonstrating that the Defendant was entitled to a restricted version of the "house spot" which ultimately failed. The Court also notes that the Plaintiff herself sought personal orders for costs against the Defendant in the main action.

1.10 Order:

The Plaintiff do pay to the Defendant one half of the Defendant's costs to be taxed in default of agreement.

1.11 Upon application by the Plaintiff's Attorney-at-Law, leave is granted to the Plaintiff to appeal against this order on costs.

Dated this 8<sup>th</sup> day of March 2006

Vasheist Kokaram  
Judge.