

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 975 of 2000

BETWEEN

BARRY CARDINAL

Applicant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Respondent

Before the Honourable Mr. Justice Ventour

Appearances:

Mr. S. Jairam SC and Mr. M. George for the Applicant
Mr. Thorne for the Respondant

REASONS

On 30th June, 2000 the parties entered into a consent order on liability with respect to the Notice of Motion filed by the Applicant on the 26th day of April, 2000. Although it was agreed at that the time of the making of the consent order that this Court will assess the damages suffered by the Applicant as a consequence of the infringement of the Applicant's constitutional rights it was subsequently agreed by the parties on 20th July, 2000 and an Oder was made accordingly, that damages would to be assessed by the Master in Chambers and that the question of costs will be dealt with by the Master.

However, on September 20, 2000 Counsel for both parties appeared before me and requested that that part of the Order made on 20th July, 2000 with respect to the issue of costs be recalled and an application was made for this Court to determine the question of costs after hearing arguments and submissions.

The Court obliged and proceeded to recall and amend the order accordingly and after hearing arguments and submissions on behalf of the Applicant and the Respondent this Court ordered that costs on the issue of liability were to be paid by the Respondent to the Applicant fit for senior and junior Counsel.

In deciding the question of costs as I did, I applied the principle stipulated in Order 62 Rule 28 (2) of the Rules of the Supreme Court of Trinidad and Tobago which state as follows:

“..... costs to which this rule applies shall be taxed on the party to party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.”

The question that this Court had to ask itself then, was whether the retention of senior and junior Counsel was necessary or proper for the attainment of justice or for enforcing the rights of the Applicant with respect to the Notice of Motion. In other words did the Applicant act reasonably in retaining senior Counsel in the matter.

Counsel for the Applicant argued that the Applicant acted reasonable when he sought to retain senior Counsel to enforce his constitutional rights and referred the Court

to several authorities to support his submission. On the other hand Counsel for the Respondent contended that the retention of senior Counsel by the Applicant cannot be justified having regard to the nature of the Application.

Having regard to the submissions made I considered it important to look carefully at the reliefs claimed in the Notice of Motion filed and the evidence adduced to support the reliefs claimed. While I agree that the reliefs claimed by the Applicant were no more than the normal reliefs sought on constitutional motions I found that the grounds upon which the Applicant relied were such that the employment of leading Counsel was necessary to ensure that the case was fully and properly presented to the Court.

The Applicant was charged with murder and it would appear from the grounds upon which the Applicant sought reliefs that the preliminary enquiry with respect to Information Number 1419 of 1993 had not been determined even though the indictment preferred by the Director of Public Prosecution contained two counts of murder. As to whether the Applicant constitutional rights were in fact infringed I consider it to be of great public importance and I did not think that the Applicant acted unreasonable in the circumstances when he took the decision to engage senior Counsel to enforce his rights under the Constitution.

In referring to the taxing officer's task in the case of **Reg. -vs- Dudley Magistrate's Court, Ex parte Power City Stores Ltd. (1990) 154 J.P.654**, Woolf, LJ said at pages 657 to 658:

“He has to ask himself, first of all, whether the expenses are ones which are properly incurred by the Defendant. Looking at the situation in this case the cost of instructing leading counsel, in my view, could not be described as

other than expenses properly incurred, subject to the amount of those cost being reasonable. Having regard to the nature of the case, which I have already described, it is quite impossible for it to be said that the Defendants were acting improperly in instructing leading counsel. Having come to the conclusion that the expenses are properly incurred the Court's next task is to consider the amount which is reasonably sufficient to compensate the Defendant for those costs. That is a question of quantum."

I agree that whether or not the Court makes an order for costs fit for senior and junior Counsel in constitutional motions would depend on the facts of each case. In that regard Fairwell, J. comments on the necessity of engaging senior Counsel in the case of **Re: Potts, Ex parte Epstein –vs- The Trustee & The Bankrupt (1935) 1 Ch. 334** appear very instructive indeed. The learned Judge said at page 340:

"The truth of the matter is that each case must depend upon its own facts and in order to see whether the employment of leading counsel is justified or not, one has to consider the whole of the facts remembering always that leading counsel may be a luxury for which an opponent..... should not be made to pay, and that, on the other hand, in some cases the employment of leading Counsel may be a proper precaution to take, in order to ensure that the case or the person in question may be fully and properly presented to the Court, and that the Court may have every assistance possible in a difficult case in arriving at a proper conclusion."

With the greatest respect I endorse the statement of Fairwell, J. and I believe that in all the circumstances the employment of senior Counsel by the Applicant was

reasonable. It is in those circumstances that I exercised my discretion in making the order for costs for both senior and junior Counsel.

Dated this 16th day of May, 2001

**Sebastian Ventour
Judge**

hgf