



Neutral Citation Number: [2023] CA (Bda) 17 Civ

Case No: Civ/2021/012

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA
SITTING IN ITS ORIGINAL CIVIL JURISDICTION
BEFORE THE HON. CHIEF JUSTICE HARGUN
CASE NUMBER 2019: No. 320**

Sessions House
Hamilton, Bermuda HM 12
Date: 7/07/2023

Before:

**THE PRESIDENT, SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL, SIR MAURICE KAY
and
JUSTICE OF APPEAL, GEOFFREY BELL**

Between:

CHEYRA BELL

Appellant

-v-

**(1) THE ATTORNEY-GENERAL
(2) THE DEPARTMENT OF CHILD AND FAMILY SERVICES
(3) THE HEAD OF PUBLIC SERVICE
(4) THE PUBLIC SERVICE COMMISSION**

Respondents

Dantae Williams, Marshall, Diel & Myers, for the Appellant Lauren Sadler-Best, of the
Attorney-General's Chambers, for the 1st - 3rd Respondent Richard Horseman, of Wakefield
Quin Ltd, for the 4th Respondent

Hearing date(s): On the papers

APPROVED RULING ON COSTS

KAY JA

1. In this appeal judgement was handed down on 17 February 2023.
2. This Court dismissed the Appellant’s appeal against the decision of the Chief Justice in the Supreme Court, whereby he had rejected the Appellant’s application for judicial review against all four Respondents in relation to her summary dismissal. The background to the case is fully set out in the judgment of the Chief Justice and of this Court.
3. The parties having been unable to agree an order for costs following the dismissal of the appeal, we invited and received written submissions. Having considered the written submissions, this is our ruling on costs.

Costs in this Court as between the Appellant and the First, Second and Third Respondents

4. There is no doubt that the Respondents were the successful parties and that the Appellant was the unsuccessful party in this Court. The appeal was comprehensively dismissed. There is equally no doubt that the starting point in relation to costs is that in civil proceedings costs follow the event and that this applies “*in judicial review proceedings, as in other types of cases*”. See *Gina Tucker v Public Services Commission and Board of Education* [2021] Bda LR 67 paragraph 42 per Scott Baker P. We accept that the circumstances of a particular case may compel a departure from this norm in the interest of justice. We also acknowledge that, pursuant to what has become known in this jurisdiction as the *Barbosa* principle¹, an applicant who has failed to establish or enforce a constitutional right may be protected from the rigour of the conventional starting point. This indulgence may also extend beyond constitutional cases in the strict sense to some applications for judicial review which raise issues of general public importance.
5. It is plain to us, however, that this case does not fall within these exceptional categories. It is not in any sense a constitutional case, a case involving fundamental rights or one raising issues of general public importance. It is a bog standard public sector employment case, albeit one with no discernible merit. In the circumstances, there is no reason to depart from the usual starting point of costs following the event. In their written submissions, the First, Second and Third Respondents seek “at least 75% of their costs.” We consider that the appropriate order is for, “costs to be taxed, if not agreed”. We do not consider it appropriate to discount the order.

Costs in this court as between the Appellant and the Fourth Respondent.

6. Subject to the question of the dual party principle, the same applies *mutatis mutandis* to the Fourth Respondent, which was also totally successful in resisting the appeal.
7. It is common ground that “*the usual rule is that an unsuccessful applicant for judicial review ought only to pay one set of costs, even if he has joined more than one respondent to his*

¹ *Minister of Home Affairs & Attorney General v Michael Barbosa* [2017] CA (Bda) 5 Civ

application". See *Tucker* (supra). However, as was recognised in *Tucker*, a second respondent may be entitled to his costs, if he can show "*that there was likely to be a separate issue on which he was entitled to be heard. That is to say an issue not covered by (the first respondent) or....he has an interest which requires separate representation.*" See Smellie JA at [49] of *Tucker* citing *Bolton Metropolitan District Council v The Secretary of State for the environment* [1995] 1 WLR 1176.

8. In our view, this is a classic case justifying a second order for costs. The Appellant chose to attack all levels of the decision making process. The Public Services Commission is a separate statutory body operating at a different level with its own distinct procedure. It was entirely appropriate, and probably necessary, for it to be separately represented in relation to its discrete issues and interest. We are satisfied that it is entitled to recover its costs of the appeal, to be taxed if not agreed.

Costs in the Supreme Court

9. This issue relates only to the costs of the First, Second and Third Respondents. The Fourth Respondent's costs in the Supreme Court were resolved by agreement prior to this appeal.
10. The First, Second and Third Respondents applied to the Supreme Court for their first instance costs. Written submissions were filed, but the application remained and remains unresolved in that jurisdiction. Ms. Sadler-Best invites us to rule on this inchoate application. However, this Court does not exist to complete the unfinished business of the Supreme Court. If the application is to be pursued, it must be in that jurisdiction.

BELL JA

11. I agree.

CLARKE P

12. I also agree.