[2015] JMCA App 54

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT COURT CIVIL APPEAL NO 114/2012

APPLICATION NO 158/2015

BETWEEN	**HENLIN GIBSON HENLIN (A FIRM)**	**1ST APPLICANT**
AND	**CALVIN GREEN**	**2ND APPLICANT**
AND	**LILIETH TURNQUEST**	**RESPONDENT**

Written submissions filed by Mrs Nesta-Clair Hunter instructed by Ernest A Smith & Co for the applicant

Written submissions filed by Miss Danielle Turnquest instructed by Turnquest-Wilson & Franklin for the respondent

10 and 17 December 2015

IN CHAMBERS

F WILLIAMS JA (AG)

[1] This is an application (notice of which was filed and served on 24 August 2015), by Henlin Gibson Henlin (a firm) and Mr Calvin Green, the applicants, for, *inter alia,* the following orders:

> "(i) That there be a stay of execution of the order of the Default Costs Certificate issued by the Registrar on the 13th August 2015 pending the hearing of the application filed herein.

(ii) The Default Costs Certificate be set aside as being irregularly obtained.

(iii) The Default Costs Certificate was [sic] [intending to say the points of dispute were] filed in time.

(iv) The Respondent is hereby directed to file a Notice of Taxation in response to the Applicants' Points of Dispute filed herein on the 8th July 2015.

(v) Costs of this application be costs [to] the applicants ..."

Jurisdiction

[2] The starting point in relation to the court's jurisdiction in this matter is rule 1.18(1) of the Court of Appeal Rules (the CAR). That rule reads as follows:

> "(1) The provisions of CPR Parts 64 and 65 apply to the award and quantification of costs of an appeal subject to any necessary modifications and in particular to the amendments set out in this rule."

[3] Of particular relevance is rule 65.22 of the Civil Procedure Rules, 2002 (the CPR), which will be discussed in greater detail later on in this judgment. For present purposes, it suffices to say that that rule, at 65.22(2) empowers the registrar to set aside a default costs certificate which was irregularly entered; and at (3), empowers "the court" to set aside such a certificate that was regularly obtained, if "good reason" is shown.

[4] Adopting rules 64 and 65 to this court and applying them (with such "necessary modifications" as are required or convenient), we are led to rule 2.10(1) of the CAR, which deals with procedural applications. This is how that rule reads:

> "Any application (other than an application for permission to

appeal to the court) must be made in writing in the first instance and be considered by a single judge."

[5] The provisions of that rule are reinforced by rule 2.11(1) (in particular (e)), of the CAR (as amended in September, 2015), which delineates the powers of a single judge, stating:

"A single judge may make orders-

(a) for the giving of security for any costs occasioned by an appeal;

(b) for a stay of execution of any judgment or order against which an appeal has been made pending the determination of the appeal;

(c) for an injunction restraining any party from dealing, disposing or parting with possession of the subject matter of an appeal pending the determination of the appeal;

(d) as to the documents to be included in the record in the event that rule 1.7(9) applies; and

(e) on any other procedural application including an application for extension of time to file skeleton submissions and records of appeal."

Rule 2.11(2) states:

"Paragraph (1)(e) does not include an application for extension of time to file an appeal".

[6] It will be seen that the matters listed at paragraphs (a) to (d) of rule 2.11(1), include dealing with applications for security for costs; applications for injunctions; applications for a stay of execution and as to documents to be included in a record of appeal. The only type of application expressly excluded by this rule (2.11(2)) from

being heard by a single judge is an application for extension of time to file an appeal. So that, an application to set aside a default costs certificate would appear not to fall outside the genus of the matters listed at (a) to (e) that a single judge can hear.

[7] There is, to my mind, no logical reason why such an application ought not to be dealt with by a single judge (rather than by a panel of three judges in open court) in the Court of Appeal. If this is not apparent from a reading of rules 1.18, 2.10(1) and 2.11 together, then that meaning should become clear from an application of the phrase "subject to any necessary modifications" to rules 64 and 65 of the CPR that might be required, appropriate or convenient.

[8] In my view, this position on the jurisdiction of a single judge in the Court of Appeal in a matter such as this is fortified by a consideration of both the wording of and the powers set out in rule 1.7 of the CAR. That rule deals with the general powers of management of "the court". Among these are: the consolidation of appeals; extending and abridging the time for compliance with rules and other case-management powers, that are routinely exercised by a single judge, notwithstanding the reference in that rule to the powers of "the court".

[9] An additional consideration is that the application to set aside a default costs certificate for "good reason" is in practice in the Supreme Court, made to a single judge in chambers. For completeness, this in keeping with rule 2.5(1) of the CPR which states:

> "Except where any enactment, rule or practice direction provides otherwise the functions of the court may be exercised in accordance with these Rules and any direction made by the Chief Justice by-
>
> (a) a single judge of the court;
>
> (b) a master; or
>
> (c) a registrar."

[10] It therefore appears to me (and I so find) that I as a single judge have jurisdiction to deal with this matter. Indeed, no jurisdictional issue was raised by the parties in this application.

Background

[11] On 31 July 2014, this court allowed an appeal brought by attorney-at-law, Ms Lilieth Turnquest (the respondent in this application), against the applicants, which arose out of an undertaking given in a sale of real property. The court awarded the costs of the appeal and costs in the court below to the respondent, with such costs to be taxed, if not agreed.

[12] Accordingly, the respondent, on 9 June 2015, filed her bill of costs, which was served on the applicants' then attorneys-at-law, Messrs Ballantyne Beswick & Company on 10 June 2015. (Ballantyne Beswick & Company remained the attorneys-at-law for the applicants until 8 July 2015, when a notice of change of attorney was filed by Ernest A Smith & Company.) A copy of the bill of costs was also served on the 1st applicant on 12 June 2015.

[13] Pursuant to rule 65.21(b) of the CPR, the respondent filed, on 14 July 2015, a default costs certificate, which was signed by the registrar on 13 August 2015, on the ground that the applicants had failed to file and serve points of dispute within the time allowed by the rules. Costs were awarded in the sum of $1,204,120.00 plus General Consumption Tax (GCT) of $198,679.80, the total being $1,402,799.80. A copy of the default costs certificate was served on the applicants on Friday, 21 August 2015 at 4:15 pm. (As it was served after 4:00 pm on 21 August, by virtue of rule 6.6(2) of the CPR, service would be deemed to have been effected on Monday, 24 August 2015 – the date of the filing and serving of this application.)

The application

[14] It was the issuing of the default costs certificate by the registrar that has given rise to the applicants' application before me.

[15] The application was supported by an affidavit sworn to by Mrs M Georgia Gibson-Henlin on 24 August 2015. Mrs Gibson-Henlin, in her affidavit, at paragraph 2, stated that on 21 August 2015, she became aware of the default costs certificate, which she recognized was filed on 14 July 2015. She also stated, at paragraphs 3 and 4 of her affidavit, that on 8 July 2015 the applicants had filed points of dispute (a copy of which was exhibited to her affidavit), which were served on Archer Cummings & Company, attorneys-at-law on the record (she then believed), for the respondent. Mrs Gibson Henlin also complained, at paragraph 5, that the applicants would suffer irremediable and reputational harm, if a stay of the order or the setting aside of the default costs certificate was not granted. She further asserted, at paragraph 6, that the applicants

have a genuine dispute (concerning the bill of costs), reflected in the points of dispute which was filed in time; and that there was a good prospect of success in establishing that the default costs certificate was irregularly signed or otherwise improperly obtained or issued.

[16] The applicants' points of dispute exhibited to the affidavit of Mrs Gibson-Henlin consist of 21 points, challenging the bill of costs on the bases, *inter alia*, that (i) no certificate for two counsel was awarded; (ii) there was no justification for the respondent's claim for attendance fee for both senior and junior counsel at the hearing of a particular application; (iii) the amount of $200,000.00 plus GCT for counsel to receive instructions and advise on the likelihood of success of the appeal is excessive; (iv) it is unreasonable for costs to be awarded for both senior and junior counsel for preparing and copying bundles; and (v) the respondent failed to indicate whose GCT reference number is noted on the bill of costs.

[17] The respondent, in response to the affidavit of Mrs Gibson-Henlin, filed on 10 September 2015, an affidavit sworn to by her on 9 September 2015. In her affidavit, she deposed, at paragraph 5, that she could not dispute whether the applicants had filed points of dispute, but asserted that her attorneys-at-law, Turnquest-Wilson & Franklin, were never served with the points of dispute. She exhibited a copy of the judgment of this court making the costs order (with reference: [2015] JMCA App 13), and the bill of costs, to show that her attorneys-at-law on the record are Turnquest-Wilson & Franklin. The respondent also denied that the applicants would suffer any irremediable and reputational harm given the fact that the default costs certificate arose

out of an order of the court of appeal for costs to the respondent. She further denied that the default costs certificate was irregularly signed or otherwise improperly obtained or issued, and asserted that it was properly issued and ought to be allowed to stand.

[18] Mrs Gibson-Henlin, on 25 September 2015, filed an affidavit in response to that of the respondent. At paragraph 4 of that affidavit, she recognized that there was an error in effecting service of the points of dispute and notice of change of the applicants' attorneys-at-law on Archer Cummings & Company. She deposed that it was only after communication with the Registry of the Court of Appeal, that she subsequently discovered that at all material times the attorneys-at-law on the record for the respondent were Turnquest-Wilson & Franklin. She, however, asserted that there was "substantial compliance with the rules and that there was no intention to flout the rules of the court". At paragraph 13, she stated that she had filed and "served" the points of dispute within the time prescribed by the CPR, but again accepted that due to an error, the wrong law firm was served with the points of dispute and notice of change of attorneys-at-law for the applicants. She further stated that the points of dispute indicate that there is a *bona fide* dispute as to the costs claimed.

[19] On 27 November 2015, the applicants also filed the affidavit of Coleasia Edmondson, sworn to on 26 November 2015. The respondent also filed affidavits on 24 November and 14 December 2015. It suffices to say that all of these affidavits attempted to reinforce the parties' respective positions.

Issues

[20] The following are the issues that might be discerned from the affidavits:

(a) Whether the applicants, the paying party, having filed points of dispute, but having failed to effect proper service of same on the respondent, within 28 days after receiving service of the bill of costs, acted in breach of rule 65.20(3) of the CPR.

(b) Whether the default costs certificate signed by the registrar on 13 August 2015 was irregularly signed or otherwise improperly obtained or issued.

(c) Whether sufficient good reason exists for setting aside the default costs certificate.

Applicants' submissions

[21] Counsel for the applicants submitted that pursuant to rule 1.18(1) of the CAR, rules 64 and 65 of the CPR are applicable to the award or quantification of the costs of an appeal. Counsel at first argued that rule 65.22 was a mandatory provision which contemplated the setting aside of a default costs certificate where it was wrongly issued and no right to it had arisen. The applicants subsequently adjusted their position, however, due to the admission in their second affidavit that the points of dispute had been served on the incorrect firm of attorneys-at-law.

[22] The applicants filed amended skeleton arguments on 9 December 2015 – amended primarily to give emphasis to the fact that rule 65.22 now has new sub-rules inserted in 2011, which expressly empower the court to set aside a default costs certificate on "good reason" for doing so being shown.

[23] With regard to the court's discretion to set aside a default cost certificate for good reason, it was submitted that before the 2011 CPR amendment no specific rule existed for setting aside a default costs certificate on such grounds. However, even so, the court had nonetheless found that it had the discretion to do so under the pre-amendment rule. That discretion was exercised in favour of an applicant where there was proof of a *bona fide* dispute between the paying and recieving parties. Counsel relied, in support of this submission, on the decision of **Rodney Ramazan and Ocean Faith NV v Owners of Motor Vessel CFS PAMPLONA** [2012] JMCA App 37 and the pre-amendment decision of **Charela Inn Limited v United Church Corporation and ors** Claim No HCV 02594 of 2004, judgment delivered 8 July 2011. These cases in essence held that the court has power to set aside a default costs certificate where it would be unjust to allow the bill of costs to remain uncontested; and that, since the registrar was permitted to set aside a default cost certificate, the court or judge would also be empowered to take that step (rule 2.5(1) of the CPR).

[24] Counsel further relied on **Charela Inn Limited v United Church Corporation and ors** to submit that the learned judge in that case (Brooks J - as he then was) had found that rule 65.22, as it then stood, did not stipulate any qualification for allowing the paying party to request the setting aside of the default costs certificate and that

rule 65.22(1) was broad in its import, while rule 65.22(2) did 'not otherwise' prevent the registrar from setting aside a certificate. Counsel also quoted the dictum of the learned judge that "...the registrar has the discretion to set aside a default costs certificate even if the receiving party was not found to be not entitled to it... a default costs certificate may be set aside for 'good reason'." (See page 7 of the judgment.)

[25] Counsel for the applicants contended that, in the circumstances of this application, there was good reason for setting aside the default costs certificate, as there had been compliance with the rules in that the points of dispute had been served within the required time, albeit erroneously on the wrong firm. Additionally, counsel submitted that the applicants were not alerted to the wrong service and there exists a *bona fide* dispute in relation to the bill of costs. It was also submitted that since, pursuant to rule 65.21(3) of the CPR, a default costs certificate is an order, the court has the power to set it aside where good reason is shown.

[26] It was also submitted on behalf of the applicants that the court has general powers of management to, *inter alia*, vary or revoke its orders (rule 26.1(7) of the CPR).

[27] With regard to the stay of execution, the applicants submitted that the court, under its general case-management powers, has the power to stay any part of any proceedings pursuant to part 26.12(e) of the CPR. Counsel further submitted that the decision of **Cable & Wireless Jamaica Limited v Digicel (Jamaica) Limited** SCCA No 148/2009, judgment delivered on 16 December 2009, provided the relevant

principles with regard to the exercise of that discretion. Counsel also submitted that irremediable harm would be suffered and the 2nd applicant was likely to suffer reputational harm if the stay was not granted whereas no hardship or irremediable harm would be caused to the receiving party if the execution was stayed.

Respondent's submissions

[28] Counsel for the respondent submitted that the CPR requires that the points of dispute must not only be filed in time but that it must also be served on the receiving party in order to restrain the registrar from issuing a default costs certificate (citing **Charela Inn Limited v United Church Corporation and ors**). Counsel further contended that all the conditions for obtaining a default costs certificate under the CPR had been satisfied and thus the receiving party was entitled to the default costs certificate being allowed to stand. Therefore, on a proper application of the rules, there was nothing to suggest that the registrar ought not to have issued the default costs certificate.

[29] With regard to the issue of whether the default costs certificate should be set aside for good reason, counsel submitted that the CPR does not stipulate the factors to be considered on that ground. However, it was submitted that, in the light of the circumstances in which the applicants had failed to comply with the rules of the CPR, no good reason existed for setting aside the default costs certificate. Furthermore, the failure to serve the attorneys-at-law on the record was inexcusable and not a simple administrative error, as the applicants had the opportunity to ascertain the correct firm to be served.

[30] It was further submitted that the court should not consider whether *bona fide* points of dispute had arisen in relation to the bill of costs as that would require the court to conduct an assessment of whether the registrar would be likely to reduce the costs, and that was not the purpose and fell outside the scope of the application before the court.

[31] With regard to the application for the stay, counsel submitted that rules 2.11 and 42.13 of the CPR were inapplicable to these circumstances as there was no pending appeal nor had anything occurred up to the date of the issue of the default costs certificate which would have prevented the certificate from being issued or that would warrant a stay of execution of the "order" and therefore the applicants would not be entitled to a stay. On the basis of the foregoing, it was submitted (in summary), that the default costs certificate should be allowed to stand as it was properly issued by the registrar of the court and no good reason existed for the failure to serve the respondent's attorneys-at-law on the record.

The law

The amendment to the CPR

[32] By way of notification published in the Jamaica Gazette Extraordinary of Tuesday 15 November 2011, rule 65.22 was amended by the addition of the following two sub-rules (3) and (4):

> "(3) The court may set aside a default costs certificate for good reason.

(4) An application to the court to set aside a default costs certificate must be supported by affidavit and must exhibit the proposed Points of Dispute."

[33] It will be recalled that, even before the amendment, in the **Charela** case, Brooks J (as he then was) had found that a default costs certificate could have been set aside on good reason being shown. He had also called for the then-existing rule which he characterized as "cumbersome", to have been reviewed by the rules committee. With the amendment, it is now clear beyond peradventure that the court might set aside a default costs certificate on good reason being shown.

Good reason

[34] The words "good reason", (which are used in rule 65.22(3) of the CPR), have been judicially considered in several cases. One such case is **Kleinwort Benson Ltd v Barbrak Ltd and other appeals; The Myrto (No 3)** [1987] 2 All ER 289. This is how the words were discussed at page 300 c, of the report:

> "The question then arises as to what kind of matters can properly be regarded as amounting to 'good reason'. The answer is, I think, that it is not possible to define or circumscribe the scope of that expression. Whether there is or is not good reason in any particular case must depend on all the circumstances of that case, and must therefore be left to the judgment of the judge..."

[35] Many of the other cases that discuss the phrase "good reason" cite the **Kleinwort Benson** case. What all these cases confirm is that whether good reason

exists or not is a matter that is left to the individual judge's discretion and is dependent on the particular facts and circumstances of each case.

Discussion

[36] In this analysis, I will consider the reason for the non-serving of the points of dispute, in addition to considering whether any other good reason has been shown for setting aside the default costs certificate.

[37] I give especial consideration to the fact that the points of dispute in this matter were filed on 8 July 2015 – that is, within the 28 days permitted by the CPR. I am quite aware as well that the firm on which the points of dispute was served was not the firm on the record. Whilst not condoning administrative inefficiency or even, possibly, carelessness, I have considered the explanation given and all the circumstances and am minded to accept the explanation given that a genuine error was made in serving the wrong firm (as indicated in the affidavit of Georgia Gibson-Henlin sworn to 25 September 2015). Counsel from the firm Archer, Cummings & Co had appeared for the respondent at some stage; and an assumption was made that that counsel's firm was the firm on the record. This error was made against the background of all the necessary steps having been taken to challenge the bill of costs including the filing and "serving" of the points of dispute, albeit on the wrong firm (which, of course, amounts to non-service and would not have prevented the issuing of the default costs certificate). Having regard to the overriding objective, I do not believe that the applicants should be deprived of their opportunity to challenge the bill of costs (for other reasons that I will

shortly address) because of what is really an instance of technical non-compliance with the rules.

The points of dispute

[38] There are two other important considerations that I wish to address in relation to the points of dispute. One of these is the requirement that the affidavit in support of the application should (in accordance with rule 65.22(2)) exhibit the "proposed" points of dispute. This requirement, to my mind, envisages the perhaps expected usual occurrence in which the points of dispute might not have been filed at all, possibly through inadvertence. Although, strictly speaking, with the grant of the default costs certificate, the points of dispute in this case, not having been properly served on the correct firm, might, in that technical sense, be regarded as being "proposed"; the fact is that it has been filed and so might be regarded (as submitted by the applicant), as being something more than just proposed.

[39] The second point is based on the fact that rule 65.22(4) requires that the points of dispute be exhibited to the affidavit in support of the application to set aside the default costs certificate. This suggests that it must have been intended by the rules committee that the contents of the points of dispute might be taken into account in the decision as to whether good reason exists for setting the certificate aside. What other objective could the inclusion of this requirement have been intended to achieve? Viewing the matter in this way makes it impossible to accept the respondent's submission that briefly reviewing the points of dispute would be improper, and as

amounting to something in the nature of a taxation, which the issuing of the default costs certificate was meant to circumvent.

[40] When one looks at the points of dispute in question, they appear to raise a number of questions that, on the face of them, are arguable points with some prospect of success. For example, one of the points raised is that a fee is being charged for an attorney-at-law for attendance to take the judgment by this court on 26 February 2015, when that attorney-at-law did not in fact attend court. A perusal of the judgment and of the file in this matter does not, on the face of them, reveal the attendance of that attorney-at-law; and so this is a point that is arguable before the registrar on taxation (although it is not impossible that counsel might have been present but no proper note taken of that attendance).

[41] This point among others, in my view, is sufficient to show that a clearly-articulated and *bona fide* dispute as to costs exists; and that it would be just and fair to set the default certificate aside and have these issues aired at a taxation of costs. There are other points raised as well, which, in the main, challenge the reasonableness of the sum claimed in the bill of costs, on the basis, *inter alia*, that the matter was not one of such novelty, weight and complexity as to warrant the quantum of costs being claimed. This contention must be viewed in the light of the requirements of rule 65.17(1) which rule reads:

> "Where the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount-
> (a) that the court deems to be reasonable; and

(b) which appears to the court to be fair both to the person paying and the person receiving such costs."

[42] What seems to me to be also of considerable significance is the very fact that the rule permitting the setting aside of a default costs certificate was amended in 2011. Before the amendment, the rules (which came into effect in 2002) simply read:

"65.22 (1) The paying party may apply to set aside the default costs certificate.

(2) The registrar must set aside a default costs certificate if the receiving party was not entitled to it."

[43] It seems to me that the fact of the amendment itself is an important consideration. Would it have been made by the rules committee if the old rule had met the justice of all cases that came before the court? The answer must be "no". The very fact of the amendment itself, therefore, must be seen as an act by the rules committee intended to ease the rigours of the restrictive nature of the old rule.

The position of the receiving party

[44] A complete review of the matter reveals that, although this court's judgment by which the order for costs was made, was delivered on 31 July 2014, the bill of costs was not filed until 9 June 2015. This appears to be in breach of rule 65.18(2), which requires that:

"(2) The bill of costs must be filed and served not more than three months after the date of the order or event entitling the receiving party to costs."

[45] There is no sanction that automatically applies to a breach of this rule. The possible consequence is specified in rule 65.19, which empowers the paying party to

make an application seeking to compel the receiving party to commence taxation, which application, if granted, could result in the receiving party (if it continued in breach) being deprived of interest or part or all of the costs of taxation. (The effect of rule 65.19 was discussed in the case of **Auburn Court Limited and Delbert Perrier v National Commercial Bank Jamaica Ltd and RBTT Jamaica Limited** SCCA No 27/ 2004, judgment delivered on 18 March 2009, in particular at paragraphs [13] to [15] .)

[46] It seems to me that it would be somewhat unfair for the respondent, while herself being in breach of the rules (although the applicant did not seize on the respondent's default), to be allowed to successfully take a technical point against the applicant based on a technical breach of the rules (albeit one that it is properly entitled to take).

[47] The foregoing discussion suffices, in my view, to dispose of this application in favour of the applicants. However, in the **Ramazan** case, Brooks JA took the view that an application such as this also sounds as one seeking relief from sanctions. These were his observations at paragraph [14] of the judgment:

> "I find also that rule 2.20(4) of the CAR which requires a consideration of the principles of relief from sanctions applies in these circumstances. The rule states:
>
> '(4) CPR rule 26.8 (relief from sanctions) applies to any application for relief.'
>
> It would seem that an application to set aside a default costs certificate easily qualifies as an application for relief".

[48] Brooks JA also took a similar view in **Harold Brady v The General Legal Council (Ex parte, Alva Langley and Rarane Langley)** [2012] JMCA App 40.

Rule 26.8 of the CPR

These are the provisions of rule 26.8 of the CPR:

> **"Relief from sanctions**
>
> 26.8 (1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be –
>
> (a) made promptly; and
>
> (b) supported by evidence on affidavit.
>
> (2) The court may grant relief only if it is satisfied that –
>
> (a) the failure to comply was not intentional;
>
> (b) there is a good explanation for the failure; and
>
> (c) the party in default has generally complied with all other relevant rules, practice directions orders and directions.
>
> (3) In considering whether to grant relief, the court must have regard to –
>
> (a) the interests of the administration of justice;
>
> (b) whether the failure to comply was due to the party or that party's attorney-at-law;
>
> (c) whether the failure to comply has been or can be remedied within a reasonable time;
>
> (d) whether the trial date or any likely trial date can still be met if relief is granted; and

(e) the effect which the granting of relief or not would have on each party.

(4) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown."

[49] The answers to these stipulated considerations will be seen in the foregoing discussion as well as in the disposition of the matter immediately following below. All the important considerations clearly fall to be resolved in favour of the applicants.

Disposition

[50] In all the circumstances of this case, it appears to me to be meet and just for the default costs certificate to be set aside. The applicants have satisfied me that good reason exists for the court to exercise its discretion to set aside the default costs certificate and have clearly articulated that a *bona fide* dispute exists in relation to the quantum of costs that will ultimately be decided to be fair and reasonable to both the paying and the receiving parties in this case. Additionally, I am unable to discern any prejudice to the respondent that setting aside the default costs certificate could possibly cause. Yes, there might be some delay; but in the final analysis after a contested taxation, it is expected that a figure that is fair to both sides will be arrived at. In the result, the following orders are being made:

(1) The default costs certificate, issued herein on 13 August 2015, is hereby set aside.

(2) The applicants' points of dispute, filed herein on 8 July 2015, is permitted to stand as filed and is to be served on the respondent's attorneys-at-law within 7 days of the date hereof.

(3) The respondent is directed to file a notice of taxation within 14 days of this order.

(4) The respondent's bill of costs shall be taxed by the registrar of this court, and the applicants shall be permitted to participate in the taxation proceedings and, in particular, to rely on their points of dispute filed herein.

(5) Costs of the application to the respondent, to be taxed if not sooner agreed.