

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port-of-Spain

Claim No. CV2019-03930

BETWEEN

TRICIA BROWN

Claimant

AND

THE NATIONAL COMMISSION FOR SELF HELP

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: May 6, 2020.

Appearances:

1. Mr Farai Hove Masaisai instructed by Ms Antonya Pierre, Attorneys-at-law for the Claimant.
2. Mr Frederick Gilkes instructed by Ms Danté Selman-Carrington, Attorneys-at-law for the Defendant.

DECISION:

1. Before the Court for its determination is the Defendant's application for budgeted costs.
2. The Claimant's claim against the Defendant, is founded in wrongful dismissal/unfair dismissal and breach of contract and the following relief has been claimed:
 - a. Special damages in the sum of \$176,808.00;
 - b. Damages for breach of employment contract;
 - c. Damages for wrongful dismissal;
 - d. Damages for unfair dismissal;
 - e. Damages for stress, anxiety, trauma, humiliation and embarrassment;
 - f. Damages for loss of reputation;
 - g. Exemplary and aggravated damages;
 - h. Interest pursuant to the Supreme Court of Judicature Act Ch. 4:01;
 - i. Costs;
 - j. All necessary and consequential orders, directions and inquiries that this Court may order.

Defendant's Application to set a costs budget:

3. On January 21, 2020 the Defendant filed its Re-Amended Notice of Application pursuant to Part 67.8 CPR, for a costs budget. The Defendant's application is premised, *inter alia*, upon the assertion that prescribed costs will be grossly inadequate having regard to the nature and circumstances of the case.
4. In its Amended Statement of Costs, the Defendant gave the following breakdown of costs:
 - a. Cost already incurred by Instructing and Advocate Attorney: \$28,900.00.
 - b. Estimate of costs to be incurred by Instructing and Advocate Attorney:
\$248,106.25

5. The grand total of the costs as stated by the Defendant is \$277,006.25.

Budgeted costs under the CPR:

Purpose:

6. The purpose of setting a costs budget is to provide for circumstances where prescribed costs may be inadequate having regard to the nature of the case. An order also provides some measure of certainty as to the maximum financial exposure that each party may be exposed to, if they have to pay costs: per Boodoosingh J in **CV2014-03459 Parvatee Anmolsingh Mahabir v The Presbyterian Church of Trinidad and Tobago** at paragraph 11.
7. **Part 67.8 of the CPR** provides for such an application and outlines the relevant considerations. The timing of the application is important and such an application for a costs budget must be made at or before the first case management conference: Part 67.8(2) CPR.
8. In an application for budgeted costs, the parties should be able to ascertain, from the outset, whether the matter has the required novelty, degree of importance, or complexity to warrant that a different costs budget be set: per Mohammed J in **CV2013-01903 Razia Elahie v Samaroo Boodoo and others** at paragraph 18.
9. In **CV2014-03454 Mukesh Sirju v The Attorney General of Trinidad and Tobago** the Claimant made an application for budgeted costs on the ground that it was fair and reasonable since prescribed costs were grossly inadequate having regard to the nature and circumstances of the case. The purpose of the application was essentially to secure higher costs via budgeted costs since it was felt that prescribed costs was insufficient. The Court in that case had to ascertain and interpret the underlying principles of the CPR and determine the purport and purpose of the regime of budgeted costs.

10. The Court in *Sirju* (supra) considered the learning in Review of Civil Procedure wherein Mr. Dick Greenslade, the initial draftsman of the CPR, outlined the rationale for budgeted costs as follows:

“...there will be cases in which the low amount of the claim masks considerable complications of law and/or facts. These are mainly those types of cases which I describe as complex cases... In such cases the fixed costs might well not be appropriate. Hence my suggestion that the parties could agree, or one party could apply at the case management conference, for a budget to be fixed for the case.”

11. In the UK equivalent i.e. cost-capping orders, Lord Jackson in his report Review of Civil Litigation and Costs in England and Wales (Final Report, 21st December, 2009) highlighted that these are distinct concepts, the purpose of which is similar in terms of ensuring proportionality and controlling costs. He recommended that the aim of setting costs budgets in England would be to control recoverable costs and encourage access to justice. Mohammed J in *Razia Elahie* (supra) advanced the view that applications for budgeted costs should not be filed solely to achieve increased costs for the successful party.

12. Budgeted costs applications may, in the view of this Court, be appropriate in proceedings which involve, *inter alia*, novel or complex points of law, lengthy and/or cumbersome procedures, unique issues, complicated factual matrices or where there are significant private or public interests at stake.

13. Ultimately the Court has to exercise a discretion and make a determination based on the particular factual matrix before it as to whether a budgeted costs order is fair, necessary and/or proportionate having regard to the overriding objectives of the CPR.

Resolution of the Defendant's Notice of Application:

14. In determining the Defendant's application, the Court had regard to the overriding objective under Part 1.1(2)(c) of the CPR which provides for dealing justly with cases in ways which are appropriate having due regard to the amount of money involved, the importance of the case, complexity of the issues and financial position of each party.
15. The Court considered the position of the Claimant herein. In the Claimant's submissions in reply to the Defendant's application at paragraph 16, it was stated that the Claimant has been in a dire financial position and she relies on food cards to support herself and her household. No doubt, this situation would be exacerbated given the covid-19 pandemic whereby persons who engage in non-essential services are unable to attain employment.
16. The financial position of the parties are diametrically opposed and the Court should always remain cognizant that the right to access the courts should not be thwarted by the fear of financial ruin and/or impecuniosity. Those who cannot afford litigation, can avail themselves of assistance from the State via legal aid and cost orders will not be issued against a legally aided litigant. The Defendant may have the luxury of advancing every legal application, as it may be able to finance costly litigation but the Claimant is not similarly circumstanced. Access to justice cannot be reserved for the wealthy or privileged and costs should not be used as a catalyst to drive the poor, vulnerable and/or financially compromised, out of court.
17. An examination of the pleaded case reveals that the instant matter is neither novel nor does it involve a complex factual matrix. In fact, several of the issues to be resolved are straightforward and simple.
18. In addition, the Court notes that the Claimant has sought special damages in the sum of \$176,808.00 whereas the Defendant has sought costs in the sum of \$277,006.25. This

difference is hardly proportionate and cements in the Court's mind, the view that the sum sought by the Defendant for costs is outrageous and unnecessary.

19. If this Court set the costs budget as per the Defendant's request, there is the real chance that such an order may serve to deny the Claimant a chance to access the court and this Court holds the view that the instant application is devoid of merit.

20. For the reasons outlined the Court holds that the Defendant's application is not appropriate and/or justified. The said application is hereby dismissed and the Defendant shall pay to the Claimant, costs assessed by this Court in the sum of \$5000.

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FRANK SEEPERSAD

JUDGE