IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV00914

BETWEEN	**KEVIN SIMMONDS**	**CLAIMANT**
AND	**MINISTER OF LABOUR AND SOCIAL SECURITY**	**1st DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**2nd DEFENDANT**

IN CHAMBERS

Ms. De-Andra Butler instructed by Samuda and Johnson for the Applicant

Mr. Kevin Powell and Mr. Mikhail Williams instructed by Hylton Powell for Guardian Life Limited, the 1st Respondent

Mrs. Carlene Larmond K.C. instructed by Hylton Powell for Hylton Powell, the 2nd Respondent

Heard: May 4, June 27 and September 16, 2022

Setting Aside Default Costs Certificate – Civil Procedure Rules, 2002 Rule 65.22 - Interpretation of Court Order - Wasted Costs - Civil Procedure Rules, 2002 Rule 64.13

CORAM: Master K Henry Anderson

BACKGROUND

[1] The Applicant ("Mr. Simmonds") filed the instant claim ("the Simmonds Claim") against The Minister of Labour and Social Security ("the Minister") and the Attorney General of Jamaica ("the Attorney General") seeking declarations that

the Minister breached his right to a fair hearing by failing to refer his dispute with his employer to the Industrial Disputes Tribunal.

[2] Ms. Allen, a former employee of Guardian Life Limited, also filed a claim ("the Allen Claim") that is, claim SU2020 CV 0031 against the Minister, the Attorney General and Guardian Life Limited ("Guardian Life") for declarations that both the Minister and Guardian Life had breached her right to a fair hearing within a reasonable time.

[3] Mr. Simmonds applied to have his claim heard at the same time as the Allen Claim. That application was heard by the Honourable Justice D. Palmer where he delivered a written judgement refusing the application and scheduling separate hearings for each claim and awarded "Costs to the Respondents to be taxed if not agreed". Throughout the proceedings, Mr. Simmonds was represented by Samuda and Johnson and Guardian Life was represented by Hylton Powell, Attorneys-at-Law.

[4] At the heart of the present application is the interpretation of the costs order made by Palmer J, as it was Guardian Life's interpretation of the order which set the train in motion, leading up to Mr. Simmond's present application to set aside the defaults cost certificate issued to Guardian Life, and an order for wasted costs against Hylton Powell.

[5] The history of how the matter unfolded is central to the hearing and determination of the present application and therefore, this Court has created a timeline of the main events leading up to the hearing of this application.

Timeline of events

a) On March 18, 2020, Samuda and Johnson wrote to Hylton Powell seeking consent for the Allen Claim to be heard with the Simmonds

Claim. Hylton Powell did not consent, and so Samuda and Johnson filed their application to have the two claims tried together.

b) On June 24, 2020, during the first date for hearing of the application, Hylton Powell appeared for Guardian Life and the court ordered Guardian Life to file and serve submissions with all the other parties and ordered the other parties to serve Guardian Life with any affidavits filed.

c) On July 16, 2020, the application was heard and all parties made submissions. Submissions were made on behalf of Guardian Life by Hylton Powell, opposing Mr. Simmonds' application and Henlin Gibson Henlin made submissions on behalf of Ms. Allen in support of the application.

d) On July 27, 2020, the application was refused by Palmer J. and he scheduled separate first hearings in each claim and awarded **"Costs to the Respondents to be taxed if not agreed"**.

e) On August 4, 2020, Hylton Powell wrote to Samuda and Johnson to try to agree on costs, but Samuda and Johnson failed to respond.

f) On October 13, 2020, Hylton Powell having not received a response from Samuda and Johnson to their August 4 letter, filed and served a bill of costs on Samuda and Johnson. The bill included a note to file and serve points of dispute within 28 days pursuant to the Rules, failing which they would be proceeding to file a default costs certificate.

g) On October 22, 2020, Samuda and Johnson wrote to Hylton Powell in response to the August 4, 2020 letter, contending that no costs were awarded to Guardian Life arising from the application.

h) On November 11, 2020, the time for filing points of dispute expired and Mr. Simmonds had not filed and served a points of dispute.

i) On November 12, 2020, Hylton Powell wrote to Samuda and Johnson indicating that they did not agree with their position and in the circumstances, would be proceeding accordingly.

j) On November 24, 2020, Guardian Life filed a default costs certificate.

k) On June 16, 2021, the default costs certificate was issued by the court.

l) On June 29, 2021, the default costs certificate which had been issued by the court was served on Samuda and Johnson.

m) On July 6, 2021, an application was filed by Mr. Simmonds seeking to set aside the default costs certificate and an order for wasted costs against Hylton Powell or in the alternative costs to be made against Guardian Life.

n) On December 24, 2021, in order to enforce the default costs certificate, Guardian Life applied for and was issued an order for seizure and sale of goods.

o) On January 20, 2022, the order for seizure and sale of goods was served on Samuda and Johnson.

p) On January 24, 2022, the application to set aside the default cost certificate was amended. Orders were added seeking (i) a stay of the order for seizure and sale of goods until the determination of the application, and (ii) in the alternative to the default cost certificate being set aside along with all subsequent proceedings, that the default cost certificate be set aside, and the Claimant be permitted to file points of dispute within (14) days.

q) On February 1, 2022, Mr. Simmonds served Hylton Powell with the amended application to set aside the default cost certificate and an order for wasted costs against Hylton Powell and it is this amended application for which these written reasons are now being provided.

SUBMISSIONS

Applicant/ ("Mr. Simmonds") Submissions

Application to Set Aside the Default Costs Certificate

[6] Mr. Simmonds submitted that the Court should set aside the default costs certificate received by Guardian Life, as of right, as Guardian Life was not entitled to costs. Rule 65.22(2) was invoked in support, which states that:-

> "the Registrar must set aside a default costs certificate if the receiving party is not entitled to it."

[7] Counsel contended that the awarding of costs in any matter is at the discretion of the courts and that the litigants' entitlement to costs in any proceedings is determined by either, an order of the court, a provision of the rules or by agreement of the parties. Reference was made to Sections 28 E (1) and (3) of the Judicature (Supreme Court) Act, and Civil Procedure Rules 2002, Rule 64.5 in support. It was also argued that based on the facts of this case, the relevant categories for a possible costs award were either, an order of the court or provision of the rules.

[8] With regards to whether an award was made to Guardian Life via court order, Counsel primarily based her arguments on a careful examination of the judgment and costs order of Palmer J. It was submitted that Guardian Life was not a respondent to the application for the claims to be tried together, and therefore, on a clear and obvious construction of the words used by the Learned Judge in his order and judgment, it showed that no costs were awarded to Guardian Life.

[9] Counsel further submitted, that on an examination of the judgment, beginning at the very first page, the Learned Judge took great care when identifying the parties to the application, that is, to identify Mr. Simmonds as "**the Applicant"** and the defendants in the Simmonds Claim, Minister of Labour and Social Security and the Attorney General of Jamaica as "**the 1st and 2nd Respondents"**. Counsel further stated that the Learned Judge never intended for any of the defendants in the Allen Claim to be seen as respondents to the application. Clear evidence of that it was submitted, could be found in the fact that though the same defendants, that is, the Ministry of Labour and Social Security and the Attorney General of Jamaica were also present in the Allen Claim, they were referred to as the **1st and 2nd Defendants** in Claim No. SU2020CV00031 and not as respondents. Likewise, Guardian Life also was not

referred to as respondents to the application by the Learned Judge but as "**the 3rd Defendant**" in Claim No. SU2020 CV00031.

[10] With regards to whether Guardian Life was entitled to costs via a rule of court, Counsel relied on Rule 64.9 which addressed the issue of costs being awarded against a non-party. It was argued that under this rule for a non-party to recover costs, the issue has to either have been considered by the Court, or it must have been the subject of an application and that neither of the two occurred here. The Authority of ***Winston Finzi Smith and Mahoe Bay Company Ltd v JMMB***[1] was cited in support.

[11] Counsel contended that, since no application was made by Guardian Life for costs at the hearing of the application, it is immaterial now for them to raise the issue of an award for costs as being reasonable in the circumstances. Further, that a litigant's subjective view about the reasonableness of costs after the fact, is without more irrelevant.

[12] The other aspect of the amended application which this Court must now briefly treat with, was the alternative order being sought, that is for the default costs certificate to be set aside and, for the Applicant to be permitted to file a points of dispute within 14 days. This was being made pursuant to Rule 65.22 (3) and (4) which provides that:

> *The Court may set aside a default costs certificate for good reason but that such an application must be supported by affidavit and exhibit the proposed Points of Dispute.*

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[1] [2015] JMCA App 39A

In light of the fact that Mr. Simmonds had not exhibited a proposed points of dispute in compliance with the Rules, counsel indicated that this alternative position would not be pursued.

Wasted Costs

[13] This portion of the application is being made pursuant to Rule 64.13(2)[2]. Here, it was submitted that the conduct of Guardian Life's Attorneys, Hylton Powell, in securing a default costs certificate, despite Samuda and Johnson advising them that no costs were awarded in their client's favour via letter was improper and unreasonable.

[14] It was further submitted, that it is the unreasonable conduct of Hylton Powell, that has resulted in Mr. Simmonds and the Court being put to, much time and expense in the hearing of this application and as such their conduct warrants, a strong reprimand from the Court, in the form of an order for wasted costs.

Respondents/ Guardian Life's Submissions
Application to Set Aside Default Costs Certificate

[15] Guardian Life puts forward two main issues as being those that should be under consideration by the court when deciding this application in their written submissions. The first is, whether Guardian Life is entitled to the costs of the application heard by Palmer J and the second, is whether good reason has been shown to set aside the default costs certificate. In light of Mr. Simmonds' concession that the alternative position was not being pursued, Guardian Life did not proceed with their submissions with regards to the second issue, and as

[2] **(2)**."Wasted costs" means any costs incurred by a party - (a) as a result of any improper, unreasonable or negligent act or omission on the part of any attorney-at-law or any employee of such attorney-at-law; or (b) which, in the light of any act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay.

such, the Court will only be addressing their submissions in reference to the first issue.

[16] Guardian Life submitted that the challenge to their costs entitlement on the basis that the Learned Judge in his judgment referred to the Minister and the Attorney General as the 1st and 2nd Respondents and to Guardian Life as the 3rd Defendant in the Allen Claim as a basis for asserting that he only awarded costs to the Minister and the Attorney General, is incorrect. Further, to arrive at such a conclusion by just looking at the description given to the parties at the beginning of the Learned Judge's judgment is superficial.

[17] The analysis is submitted as being superficial, as it was stated by Counsel, that for the Court to properly interpret the costs order, it has to look at all the circumstances of the case including the factual background surrounding the making of the order. That is, one has to look at the fact that Guardian Life was always an interested and active party to the application. This point, it was submitted, was recognized by Mr. Simmonds himself before he had even filed his application, as he sought Guardians Life's consent to the matters being heard together, and that once the application was filed, it was quite properly served on them.

[18] Guardian Life's status as a respondent to the application, it was submitted was solidified at the first hearing before Justice A. Thomas when the Learned Judge ordered Guardian Life to file and serve submissions and that they were also to be served with the submissions and affidavits of the other parties.

[19] It was contended that Guardian Life's active participation continued throughout the hearing as its Attorneys made oral submissions on its behalf, and in fact, the Learned Judge noted at paragraphs [44] of his judgment that **"Guardian Life had its first hearing date subsumed by this instant application, in which it also participated fulsomely."**

[20] Guardian Life further stated that it is against this background of events that the Learned Judge's costs order should be interpreted to have meant costs were awarded to them.

[21] They also sought to rely on the definition of respondents under Rule 11.2(a)[3], which defines a respondent, as the person against whom the order is sought, and any other person on whom the applicant considers it just to serve the application, submitting that this definition plainly included Guardian Life.

[22] With regards to the application of Rule 64.9, Guardian Life submitted that this was inapplicable, as this rule applies where the court is asked to order a person who is not a party to the proceedings to pay the costs to some other person; and that though they were not party to the claim, they were a party to the application. Reliance was also placed on Rule 64.5[4] which entitles a person (not only a party) to recover costs, ….."from any other party or person".

[23] This Court was also asked to consider Rule 64.6 (1) which provides that the general rule is that an unsuccessful party must be ordered to pay costs to the successful party. In this instance, it was submitted that Guardian Life was a successful party and Mr. Simmonds was the unsuccessful party to the application.

Wasted Costs
Respondent/ Hylton Powell's Submissions

[24] Hylton Powell reiterated the position of Guardian Life advanced above as to the incorrectness of Mr. Simmonds' submissions that Guardian Life was not entitled to costs on the interpretation of Palmer J costs order and the reasons advanced

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[3] **(a)** the person against whom the order is sought and any other person on whom the applicant considers it just to serve the application;

[4] **(1)** A person may not recover the costs of proceedings from any other party or person except by virtue of - (a) an order of the court; (b) a provision of these Rules; or (c) an agreement between the parties.

by them in support. In the circumstances, it was submitted that Hylton Powell did not act unreasonably in recovering costs for their client, Guardian Life.

[25] They referred to Rule 64.13 (2) which sets out the type of conduct of an Attorney-at-law that would give rise to a wasted costs order being made, that is either, improper, unreasonable or negligent acts or omissions on behalf of the Attorney-at-Law. Counsel went on to quote Lord Bingham in ***Ridehalgh*** *v* ***Horsefield and another***[5] where he stated *that the mischief against which these provisions with regards to wasted costs were aimed was the causing of loss and expense to litigants by the unjustifiable conduct of litigation by their or their sides lawyers.*

[26] Counsel then cited Sykes J, as he then was, in ***Gregory v Gregory***[6] where he adopted Lord Bingham's approach in ***Ridehalgh v Horsefield*** of the three questions tier test to determine whether a wasted costs order should be made, with the questions being slightly rephrased as follows that is:

> *"(1) has the attorney acted improperly, unreasonably or negligently?*
>
> *(2) If yes, did the conduct cause the applicant or any party to the proceedings to incur unnecessary costs?*
>
> *(3) If yes, is it in all the circumstances just to order the Attorney to compensate the party for the whole or any part of the costs?"*

[27] It was noted by Counsel that the sole ground on which the wasted costs application was being advanced against Hylton Powell was on the basis of unreasonableness and as such, the meaning of unreasonableness that should be used by this Court is that of Sir Thomas Bingham in ***Ridehalgh*** which was stated as being:

> ***"conduct that is vexatious, designed to harass the other side rather than advance the resolution***

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[5] [1994]1Ch205

[6] Claim No. (2004) HCV 1930 OF 2003

> ***of the case and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of reasonable explanation. If so, the course may be regarded as optimistic and reflecting on a practitioner's judgment, but it is not unreasonable."***

[28] Applying the 3 tier test, Counsel submitted that Mr. Simmonds is bound to fail at tier one, as Hylton Powell's actions have not been unreasonable. Further, it was argued that if anyone could be said to have acted unreasonably, it was Mr. Simmonds and his Attorneys-at-Law, given their failure to act speedily throughout the history of this matter. Hylton Powell also argued that they, on the contrary acted with due expedition throughout, evidenced by the fact that within a week of the costs order being made, they made a demand for costs, and it was Mr. Simmonds who waited some 2 ½ months after they were served with the bill of costs and notice of points of dispute to respond. Further, that in light of Mr. Simmonds' position expressed via letter in opposition to Hylton Powell in 2020, he should have sought to register his objection before the Registrar via a notice in writing or otherwise. Instead, it was highlighted by Counsel that he waited until after the court's resources were utilized in issuing a default costs certificate in 2021, before he took any steps to mount a challenge.

[29] In conclusion, it was argued that in all the circumstances, it could not be said that Hylton Powell acted unreasonably in pursuing costs for Guardian Life's successful opposition to Mr. Simmonds' application for a joint trial, but rather, that the circumstances as advanced before this Court showed that they had a reasonable explanation for their actions.

DISCUSSION AND ANALYSIS

[30] ISSUES

(i) Issue 1: Whether the default costs certificate issued to Guardian Life and served on Samuda and Johnson should be set aside?

(ii) Issue 2: If the default costs certificate is set aside, whether wasted costs are to be awarded against Hylton Powell, the Attorneys-at -Law for Guardian Life?

[31] In order to address issue (i), the Court has to look at firstly, the approach to be adopted by the courts in interpreting a court order. Here, the analysis begins by determining, when it is open for a court to question the meaning of the language of an order.

[32] The Court of Appeal in ***Jade Hollis v Gregory Duncan and Global Designs Limited***[7] had to treat with this very issue. Here, P Williams JA cited the opinion of the Privy Council in ***San Souci Limited v VRL Services Limited***[8] where Lord Sumpton speaking on behalf of the Board opined that:

> '" *14. It is generally unhelpful to look for an 'ambiguity', if by that is meant an expression capable of more than one meaning simply as a matter of language. True linguistic ambiguities are comparatively rare.* ***The real issue is whether the meaning of the language is open to question. There are many reasons why it may be open to question, which are not limited to cases of ambiguity."***

[33] The real issue for the Court's consideration as stated in ***Advantage General Insurance Co Ltd v Hamilton (Marilyn)***[9], where clarity was sought regarding the meaning of stay orders issued and the circumstances in which the court may

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[7] [2018] JMCA Civ 32

[8] [2012] UKPC 6

[9] [2021] JMCA App 25

clarify its own order by McDonald Bishop JA *is, whether the meaning of the language of the order is open to question*.

[34] To go further, the court in **Advantage General** quoted from the pronouncements of Matajone J in ***Blue Cell (Pty) Ltd (In Liquidation) v Blue Financial Services Limited***[10], an unreported case from the republic of South Africa with special emphasis being made on the following excerpt:

> (2) ***The Court may clarify its judgment or order, if, on a proper interpretation the meaning therefore remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided that it does not thereby alter the sense and substance of the judgment or order.***

[35] Though the **Advantage General** case was concerned with a judge clarifying his own order, I believe that the principles advanced can be applied to one judicial officer interpreting the order of another.

[36] On the facts as presented, there is no linguistic ambiguity in the words used in the costs order; but rather, the central question being raised by this application, is whether the term, respondents as stated by the Learned Judge in his order as to costs include Guardian Life and as such like the other named respondents in the case, costs were awarded to them. If that is the case, the default costs certificate was properly issued by the Court and ought not to be set aside. Or, is the position as Mr Simmonds has submitted, that the term respondents, is restricted only to the named respondents in the judgment, being the Minister and the Attorney General, and therefore, no costs were awarded to Guardian

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[10] Case No. (3489/07, 8456/07) [2014] ZAGPPHC 267 (16 May 2014)

Life. If the latter position is accepted, then the default costs certificate ought properly to be set aside.

[37] This Court agrees with Counsel for Mr. Simmonds that is, that in order to answer the central question, it has to determine, not whether Guardian Life could or should have been able to recover costs on the hearing of the application, but whether in fact an award for costs was made in their favour. As this Court finds that, had an application been made by Guardian Life for costs at the hearing, they may in all likelihood have been successful. This court is of this view in light of the fact that as stated by them in their submissions:

(i) they were always an interested and active party to the application;

(ii) that they fell within the definition of respondents as defined by the Rules; and

(iii) that their submissions assisted the judge in arriving at a decision denying the application, and so could be considered a successful party to the application.

However, such an application for costs had not been made, therefore in order for this Court to determine whether Guardian Life did in fact receive an order for costs in their favour, it has to interpret the Learned Judge's costs order.

[38] The Court in interpreting the order must seek to give effect to the Learned Judge's true intention as was stated by Matajone J in **B*lue Cell (Pty) Ltd (In Liquidation) v Blue Financial Services Limited.*** *I*n arriving at the Judge's true intention, this Court is guided by the words of P Morrison (Ag), as he then was, in ***Weir v Tree***[11] where he stated at paragraph [17] that:

> "*In order to determine what was the intention of the Court which made the original order,* ***the Court must have regard to the language of the Order, taken in its context and against the background of all the***

[11] [2016] JMCA App 6

> ***relevant circumstances, including but not limited to (i) the issues which the Court was called upon to resolve; and (ii) the Courts reasons for making the original Order.*** *While ambiguity will often be the ground upon which the court is asked to amend or clarify its previous order (as in this case),* ***the real issue for the Court's consideration is whether there is anything to suggest that the actual language of the original order is open to Question."***

[39] When one looks at the Learned Judge's judgment in its entirety, this Court is of the view that he regarded all participants in the Allen Claim as interested parties to the application, but not as respondents to it.

[40] This conclusion was arrived at, firstly, by looking at the Learned Judge's description when identifying the parties to the application. That is, the parties in the Simmonds' Claim were identified as "**the Applicant"** and "**the 1st and 2nd Respondents"** but that, in reference to all of the participants in the Allen Claim, they were identified in reference to their role in the claim as distinct from their role in the application**.** That is, he referred to Ms. Allen as the claimant in Claim No. SU2020 CV00031*,* the same defendants in Simmonds Claim as the **1st and 2nd Defendants in** Claim No. SU2020 CV0003 and Guardian Life as **the 3rd Defendant** in Claim No. SU2020 CV00031*.* The Judge here seemingly was utilizing the meaning of respondents as contained within the first portion of the definition of respondents in the rules, that is, the person against whom the order is sought, being the defendants in the Simmonds Claim. The Learned Judge did not extend his definition to the latter portion, that is, any other person on whom the applicant considers it just to serve the application.

[41] This Court became even further convinced by looking at the implications of adopting the alternative approach. That is, to hold otherwise and adopt the interpretation of respondent as stated in Rule 11. 2 (a) in its entirety, as submitted by Guardian Life, would lead to what can only be described as the unintended result of awarding costs to Ms. Allen, the claimant in claim No. SU2020CV00031. As when one utilizes the latter portion of the definition, then

all the other parties served with the application would be considered respondents to the claim, including Ms. Allen.

[42] I regard this as an unintended result, as I do not believe that this was the Learned Judge's true intention on a careful reading of his judgment. The Learned Judge made the costs order intending that an award of costs was to be made to the successful party, and on the facts as presented, Ms. Allen's arguments advanced at the hearing were in support of Mr. Simmonds' application for the matters to be heard together, in effect arguments, in support of the unsuccessful party.

[43] I am therefore of the view that the term respondents as used in the costs order did not include Guardian Life and as such they were not entitled to costs. In the circumstances, applying Rule 65.22 (2), the default costs certificate and all subsequent proceedings flowing from it ought to be set aside.

Issue 2: Whether wasted costs are to be awarded against Hylton Powell the Attorneys-at-Law for Guardian Life?

[44] This Court having determined that the default costs certificate ought properly to be set aside, must now concern itself with the conduct of Hylton Powell in seeking the issuance of the default costs certificate. That is, whether they acted unreasonably in proceeding with the enforcement of the costs order in their client's favour, despite Mr Simmonds' attorney advising them that no costs were awarded to them.

[45] Applying the 3 tier test in ***Ridehalgh* v *Horsefield*** cited by Sykes J, as he then was, in ***Gregory and Gregory***, I must agree with Counsel for Hylton Powell that the Applicant must fail at tier one, as the actions of Hylton Powell could not be said to be unreasonable; as when the standard as to what is unreasonable conduct, as was stated above by Lord Bingham in ***Ridehalgh v Horsefi*eld,** is applied to the conduct of Hylton Powell in the instant case, their conduct could not be said to have been ***vexatious or designed to harass the other side rather than advance the resolution of the case…***

[46] On the facts of this case what clearly occurred was that the parties had differing interpretations of the court's order based on their own legal perspective. The fact that Guardian Life or Hylton Powell's interpretation has resulted in them being unsuccessful in this application does not render their conduct unreasonable. To go further, Lord Bingham stated that even if it is felt that other more cautious legal representatives would have acted differently, this does not elevate the conduct of Counsel to the level of unreasonableness. The acid test is whether the conduct permits of a reasonable explanation.

[47] I should also add that given the nature of the arguments put forward by Guardian Life and the careful consideration that this Court has had to take in analyzing them, the approach taken by Hylton Powell could not be said to be unreasonable. That is, their conduct permitted of a reasonable explanation. The reasonable explanation being that they sought to enforce the costs order on the basis that they believed that they were respondents to the application and therefore were included in the Learned Judge's costs order. They formed this view, as was stated in paragraph 37 above, on the basis that they were an interested and active party to the application who fell within the category of respondents as defined by the Rules, and whose submissions assisted the Judge in arriving at a decision, denying the application. Though their interpretation of the costs order and subsequent actions were erroneous, they could not be described in the circumstances as unreasonable.

[48] This Court must however state that in the future, the better course to be taken when issues of interpretation arise, especially at an early stage in the proceedings, is for the parties to seek where possible, clarification of the order from the Judge who made the order, as he is best able to speak to his true intention.

[49] In the circumstances, the Court finds favour with Hylton Powell on this aspect of the application and so the application for an order for wasted costs against Hylton Powell is denied.

[50] On the issue of costs in regards to this application, Counsel for Hylton Powell argued that even if this Court were minded to set aside the default costs certificate, costs should not be awarded to Mr. Simmonds although they would be the successful party. The reason advanced was that their overall conduct in the matter, that is, their delay in responding to Hylton Powell's correspondence and not indicating to the Registrar, their objection but instead waiting until after the default costs certificate had been granted before filing this application to set aside did not merit such an award. Due consideration was given to Counsel's argument and though I find merit in it, I am of the view that either party, on recognizing that the interpretation of the costs order was in issue, could have sought to have the order clarified thus preventing the need for the hearing of this application. In the circumstances, this Court is not minded to award the costs of the section of the application dealing with the setting aside of the default costs certificate to either party, but instead has determined that each party is to bear their own costs.

Orders

[51] In light of the above, this Court makes the following Orders:

i. That Guardian Life Limited's default costs certificate filed on the 24th November, 2020 and dated June 16, 2021 and all subsequent proceedings is set aside. Each party, that is, the Applicant and 1st Respondent are to bear their own costs.

ii. That the application seeking wasted costs against the Attorneys-at-Law for Guardian Life Limited is denied. Costs as regards the application for wasted costs is awarded to Hylton Powell, the Attorneys-at-Law for Guardian Life, the 2nd Respondent, to be taxed, if not agreed.

iii. Leave to Appeal is granted to the Applicant and the 1st Respondent.

iv. That the Applicant's Attorneys-at-Law is to prepare, file and serve the Formal Order.