[2026] JMSC Civ 64

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

PROBATE AND FAMILY DIVISION

CLAIM NO. SU2024ES00967

IN THE ESTATE OF GORDON CYRIL STEWART also known as GORDON ARTHUR "BUTCH" STEWART late of 76 Barbican Road, Kingston 6, Businessman, Testate

AND

IN THE MATTER of Section 9 of the Trustees, Attorneys and Executors (Accounts and General) Act

BETWEEN	**ADAM STEWART**	**1ST APPLICANT**
	JAIME STEWART-MCCONNELL	**2ND APPLICANT**
	BRIAN JARDIM	**3RD APPLICANT**
AND	**HUGH MARTIN VEIRA**	**1ST REPONDENT/ CLAIMANT**
	ELIZABETH DESNOES	**2ND RESPONDENT/CLAIMANT**
	TREVOR PATTERSON	**3RD RESPONDENT/ 1stDEFENDANT**
	CHERYL HAMERSMITH-STEWART	**4THRESPONDENT/ 2ND DEFENDANT**

Mrs. Daniella Gentles-Silvera K.C., Ms. Kerri-Ann Morgan and Mr. Stephen Nelson, Attorneys-at-Law instructed by Livingston, Alexander & Levy, Attorneys-at-Law on behalf of the Claimants/1st and 2nd Respondents, Mr. Hugh Martin Veira and Ms. Elizabeth Desnoes.

Ms. Carlene Larmond, K.C. and Ms. Giselle Campbell instructed by Patterson Mair and Hamilton, Attorneys-at-Law on behalf of 3rd Respondent/ 1st Defendant, Mr. Trevor Patterson.

Mr. Michael Hylton K.C., Mr. Kevin Powell and Ms. Timera Mason, Attorneys-at-Law instructed by Hylton Powell Attorneys-at-Law on behalf of 4th Respondent/2nd Defendant, Ms. Cheryl Hamersmith-Stewart.

Mr. Ian Wilkinson, K.C., Mr. Conrad George, Mr. Lenroy Stewart, Ms. Anna Gracie, Mr. Andre Sheckleford, Ms. Gabrielle Chin, Attorneys-at-Law instructed by Hart Muirhead & Fatta, Attorneys-at-Law on behalf of the Applicants.

HEARD ON: January 22, 2026

PROBATE - CIVIL PROCEDURE RULES 64.6(2) (3) and (4) - CLAIM BY EXECUTORS TO BE RELEASED –APPLICATION FOR JOINDER REFUSED BY COURT- COSTS – WHETHER THE APPROPRIATE COSTS ORDER SHOULD BE NO ORDER AS TO COSTS OR COSTS TO BE PAID OUT OF THE ESTATE - SPECIAL COSTSCERTIFICATE

REID, ICOLIN J.

THE APPLICATION

[1] The Applicants, Adam Stewart, Brian Jardim and Jaime Stewart- McConnell, filed an application in the Supreme Court seeking to be added as parties to a claim brought by Elizabeth Desnoes and Mr. Hugh Martin Veira to be released as Executors in the estate of the late **GORDON CYRIL STEWART** also known as **GORDON ARTHUR "BUTCH" STEWART** who died on January 4, 2021, testate.

[2] The application was heard in this Honourable Court on September 19, 2025, and a ruling delivered (**[2025] JMSC Civ 151**) by the Honourable Mrs. Justice Icolin Reid on December 12, 2025, in favour of the Respondents. In essence, the court was not satisfied that the proposed parties were necessary or appropriate to be joined to the proceedings as no evidence had been presented to demonstrate that their legal rights, obligations, or financial interests would be negatively affected by the orders sought by the Claimants, nor that their joinder or intervention was necessary for the resolution of the issues presented in the Claim.

[3] The issue of costs was reserved and the parties were directed to file written submissions and list of authorities on that issue by December 31, 2025. All parties filed their respective submissions, a brief summary of which is outlined below.

CLAIMANTS' SUBMISSIONS

[4] Counsel for the Claimants, in her submissions, made reference to section 28E of the **Judicature (Supreme Court) Act** and **CPR Rule 64.6** which deal with costs in civil proceedings. The general principle being that the unsuccessful party in a matter should pay the costs of the successful party.

[5] Counsel for the Claimants submitted that the costs of interim applications are discretionary but usually awarded to the successful party. Relying on **Stuart Sime, A Practical Approach to Civil Procedure**, 15th ed., p. 504, Counsel contended that from this principle, because the Claimants successfully opposed the Applicants' application for joinder, costs should follow the event and thus be paid by the Applicants as the unsuccessful parties. Support for this position was drawn from **Lowell Cameron and Another v Robert Pike and Another** [2015] JMSC Civ 66, where costs were awarded to parties who successfully resisted an application to add a party.

[6] Counsel further submitted that the Applicants' conduct was unreasonable. It was argued that the Applicants not only sought to be added to the claim but also sought orders outside the scope of the claim including disclosure and also indicated an

intention to appoint 3 new Executors. Counsel indicated that the Applicants presented no evidence relevant to the sole issue before the Court, namely whether the Claimants should be released as Executors.

[7] Counsel argued that the conduct of the Applicants was manifestly unreasonable, and which unnecessarily delayed and sought to complicate the claim. In response to the Applicants' contention that costs should be paid out of the estate, Counsel relied on **In re Buckton; Buckton v Buckton** [1907] 2 Ch 406, as summarized and applied by the Court of Appeal in **Mills and Another v Knott and Others** [2015] JMCA Civ 67. Counsel submitted that the classes outlined in **Buckton** [supra] permit estate-funded costs only in non-adversarial proceedings concerning construction of trust documents or administration, whereas adversarial litigation attracts the usual rule that costs follow the event.

[8] Counsel for the Claimants in applying the principles in **Mills and Another v Knott and Others** *[supra]* and **In re Buckton; Buckton v Buckton** *[supra]*, submitted that the Applicants' joinder application did not seek the Court's assistance in construing Gordon "Butch" Stewart's Will, nor did it request the determination of any question arising in the administration of the estate. Rather, Counsel contended that the Applicants attempted to insert themselves into a narrow claim despite having adduced no evidence capable of assisting the Court in determining whether the Claimants ought to be released as Executors.

[9] Counsel further submitted that the application was necessarily and properly opposed, as the Court was required to determine rights between adverse litigants. On the one hand, the Claimants sought only to be released from the office of Executors, while on the other, the Applicants pursued a multiplicity of orders unconnected to the claim. Accordingly, Counsel argued that the application did not fall within either of the first two **Buckton** categories and therefore could not justify an order that costs be paid out of the estate. Counsel submitted that the Applicants, as the unsuccessful parties, should bear the Claimants' costs of responding to the application.

[10] Counsel also relied on **Folds Farm Trustees Ltd and Another v Oliver Cutts and Others** [2024] EWHC 2143 (Ch), to submit that where unreasonable conduct by a beneficiary generates unnecessary costs, those costs should be borne by that beneficiary and not by the estate. Counsel argued that it would be unjust for estate funds to be used to satisfy costs arising from a misconceived and adversarial application filed by three beneficiaries.

[11] Finally, counsel submitted that this was an appropriate case for the grant of a special costs certificate for two counsel under CPR 64.12, relying on **Winston Finzi v Mahoe Bay Company Limited and JMMB Merchant Bank Limited** [2015] JMCA App 39. Counsel contended that the application was reasonably expected to be contested, required citation of authorities and skeleton arguments, and was unnecessarily complicated by numerous lengthy affidavit evidence which for the most part contained references that were not germane to the issue which the court had to determine.

[12] Accordingly, Counsel for the Claimants submitted that costs should be awarded in their favour against the Applicants, together with a special costs certificate for two attorneys, to be taxed if not agreed.

APPLICANT'S SUBMISSIONS

[13] The Applicants submit that the appropriate costs order is that costs should be paid out of the estate and alternatively, if the court is not minded to make that order then there should be no order as to costs.

[14] Counsel for the Applicants submitted that, although the Applicants were unsuccessful in their application for joinder by virtue of the decision of 12 December 2025, the application provided the Court with valuable information regarding the status of the matter, the three assets in the hands of the Executors, and the medical reports relating to Mr. Martin Veira. On that basis, counsel submitted that the application was reasonable and significantly assisted the Court.

[15] Counsel relied on the established principle that costs are compensatory and not punitive, as articulated in **Harold v Smith** (1860) 5 H & N 381 by Bramwell B, and submitted that costs in probate proceedings remain within the Court's discretion, to be exercised judicially having regard to the circumstances of the case and the facts as perceived by the Applicants. Counsel contended that the relevant statutory provision governing the Claimants' application for release as Executors prescribes no specific circumstances for such release, and that the Claimants' claim was filed only six months after the grant of probate, before the passing of any account, and amid known acrimony. Counsel further submitted that sufficient time had not passed to materially affect the respective age or health of the Executors.

[16] Counsel further submitted that, given the timing of the claim, the absence of any account, and discussions indicating the Claimants' dissatisfaction with the administration of the estate, the Applicants reasonably felt compelled to intervene to protect their interests, particularly in light of other contentious litigation involving the parties. Counsel emphasized that the Applicants' application was merely interlocutory, not a full blown probate claim, and that the substantive claim itself did not involve a prolonged trial or cross-examination.

[17] With respect to the Defendants, (that is the 3rd and 4th Respondents), Counsel submitted that they should not be awarded costs, as their affidavits predominantly addressed the substantive claim rather than the joinder application, they filed no submissions despite invitations by the Court, and their oral submissions merely supported the Claimants without citation of authority. Counsel contended that awarding costs to the Defendants would therefore be unreasonable and punitive.

[18] In relation to the Claimants, Counsel submitted that the Fixed Date Claim Form did not seek costs and that, although the Court retains a discretion, any costs awarded would require careful separation between costs attributable to the joinder application and those arising from the substantive claim. Counsel contended that most, if not all, costs arose from the Fixed Date Claim Form. Counsel reminded the Court of its previous pronouncements and orders emphasizing the need for

sufficient evidence and highlighted that the Claimants sought release on grounds existing prior to the grant of probate, despite having sworn to administer the estate and render accounts.

[19] Counsel further submitted that the medical report and asset details placed before the Court in May 2025 were relevant to the issue of release rather than joinder, and that the Court's eventual position that any release would be conditional upon the preparation of an account was informed in part by evidence brought to light through the Applicants' actions, notwithstanding their lack of success.

[20] Counsel submitted that the Court should decline to award costs to the successful parties and instead order that costs be paid out of the estate, or alternatively make no order as to costs. Counsel contended that there was good cause for departing from the general rule, as the circumstances reasonably led to the Applicants' application, the litigation was not caused by the testator or a beneficiary, and the Applicants' conduct was neither unreasonable nor frivolous.

[21] In conclusion, counsel for the Applicants submitted that, in the totality of the circumstances, the application was necessary for the proper administration of the estate and the protection of the Applicants' interests. Accordingly, Counsel contended that the Court should order that costs be paid out of the estate or, in the alternative, make no order as to costs.

3rd RESPONDENT/ 1ST DEFENDANT'S SUBMISSIONS

[22] Counsel for the 1st Defendant, in her submissions, relied on CPR Rule 64.6(1) indicating that "costs follow the event". Counsel argued that the court has a discretion to depart from the general rule as and in deciding who should be liable to pay costs, the Court must have regard to all the circumstances (CPR Parts 64.6 (2) (3) and (4).

[23] Counsel submitted that in this application, there are no bases for the court to depart from the general rule and that the circumstances outlined in CPR 64.6 (4) (a) (d) and (e) were particularly relevant. Counsel asserted that the appropriate order on

the application is that costs be awarded to the 1st Defendant. Counsel contended that the 1st Defendant was successful in resisting the Applicants' application and that there is no basis for the Court to depart from the general rule that costs follow the event, requiring the unsuccessful Applicants to pay the 1st Defendant's costs.

[24] Counsel submitted that there were distinctive features of the matter which clearly justified the exercise of the Court's discretion in favour of awarding costs to the 1st Defendant. It was contended that from the outset there was no dispute in relation to the substantive claim. Throughout the proceedings, the Defendants consistently maintained their positions before the Court through Counsel.

[25] Counsel further submitted that the Applicants' joinder application, filed on 24 May 2024, delayed the disposal of the claim for approximately nineteen months and was ultimately found to be without merit in a carefully reasoned judgment. It was contended that the Applicants persisted with the application even after filing a separate claim in November 2024, described as the Beneficiaries Directions Proceedings, which effectively mirrored the relief they claimed they would have sought had they been joined. Counsel referred to the Court's observations at paragraphs 45 to 47 and 78 of the Judgment, noting that the joinder application had been overtaken by another claim brought by the same Applicants seeking almost identical relief.

[26] Counsel submitted that the Applicants' conduct merely prolonged the proceedings, resulted in the filing of numerous documents including highly irrelevant affidavits, and constituted an abuse of the Court's process. It was emphasized that none of the Applicants' affidavits addressed or sought to counter the substance of the Claimants' claim or the evidence supporting the Claimants' release as Executors.

[27] Counsel further submitted that the Applicants failed to properly engage **Rule 19.2 of the Civil Procedure Rules**, and that the Court expressly observed that insufficient evidence was placed before it in this regard, particularly at paragraphs 65 and 69 of the Judgment. The absence of evidence directly relevant to the application for release was described as glaring.

[28] In conclusion, counsel for the 1st Defendant submitted that there were plain and incontrovertible bases for the Court to exercise its discretion in accordance with the general rule on costs. All relevant considerations supported the 1st Defendant's entitlement to costs, and the Court was urged to apply the costs follow the event principle reflected in the CPR and award costs to the 1st Defendant.

4th RESPONDENT/ 2nd DEFENDANT'S SUBMISSIONS

[29] Counsel for the 2nd Defendant submitted that the general rule under CPR 64.6(1) is that the unsuccessful party must pay the costs of the successful party, and that where an application is dismissed, costs almost invariably follow that result. It was contended that this principle applies with even greater force to an unsuccessful application for joinder, as the Applicants failed to meet the threshold under CPR 19.2 of showing that it was desirable or necessary for them to be added to resolve the issues.

[30] Counsel submitted that, following the Court's refusal on 12 December 2025 to add the Applicants as parties, the 2nd Defendant, who opposed the application and had been added by order dated 22 July 2025, was a successful party and there was no reason to depart from the general rule. In exercising its discretion, the Court was urged to consider that the Applicants' conduct was unreasonable, as they were merely three beneficiaries whose issues with the remaining executors did not justify joinder. The Court accepted that the sole issue was whether two executors should be permitted to retire and that the Applicants neither opposed nor adduced evidence challenging that substantive claim.

[31] Counsel emphasized that the Applicants' evidence showed that, if joined, they intended to pursue relief identical to that sought in another claim, (*Claim No. SU2024ES030115)*, thereby abusing the Court's process. Reliance was placed on the Court's findings that granting the application would have prolonged the claim, increased costs to the litigants and the estate, and undermined the overriding objective. Counsel further submitted that the Applicants' actions delayed the proceedings for over a year, necessitated multiple hearings, and caused the 2nd

Defendant to incur unnecessary expense despite her lack of objection to the executors' release.

[32] On immediate taxation, counsel relied on CPR 65.15 and the explanation of its rationale by Mangatal J in **Ofer v Thomas & Ors** [2012] JMSC Civ. 184, submitting that the Applicants' stated intention to appeal demonstrated a likelihood of the 2nd Defendant being put at an additional expense to defend the application. It was therefore submitted that immediate taxation was appropriate to avoid further prejudice to the 2nd Defendant.

[33] Counsel relied on CPR 64.12(3)(a) and the factors set out in CPR 65.17(3) to seek costs for two attorneys-at-law. It was submitted that the court should consider the importance of the matter to the parties, time spent on the matter, whether the matter is appropriate for a senior attorney-at-law and the care, speed and economy in which the matter was prepared. In those circumstances, representation by King's Counsel and one junior counsel was reasonable.

[34] Accordingly, counsel for the 2nd Defendant submitted that the Court should order costs in her favour for two attorneys-at-law, to be immediately taxed if not agreed.

ISSUE

[35] The issue which the court has to determine is what is the appropriate costs order that should be made in respect to the application.

LAW

[36] Costs are the expenses which one party incurs in pursuing litigation and which may be recovered from the other party. Part 64.6(1) - (4) states the following:

> ***(1) If the court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.***
> *(2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.*
> *(3) In deciding who should be liable to pay costs the court must have regard to all the circumstances.*
> *(4) In particular, it must have regard to –*

a) the conduct of the parties both before and during the proceedings;
b) whether a party has succeeded on particular issues, even if that party has not been successful in the whole of the proceedings;
c) any payment into court or offer to settle made by a party which is drawn to the court's attention (whether or not made in accordance with Parts 35 and 36);
d) whether it was reasonable for a party –
i. to pursue a particular allegation; and/or
ii. to raise a particular issue;
(e) the manner in which a party has pursued –
(i) that party's case;
(ii) a particular allegation; or
(iii) a particular issue …

[37] The case of **Harold v Smith** *(supra)* referenced by Sykes J (as he then was) in the case of **Gordon Stewart v Goblin Hill Hotels Limited et al** (2016) JMCC Comm 39 and relied on by the Claimant provides a reminder to the court as to the nature of costs awards. Bramwell B, in the **Harold** case stated thus:

> *Costs as between party and party are given by the law as an indemnity to the person entitled to them: they are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them. Therefore, if the extent of the indemnification can be found out, the extent to which costs ought to be allowed is also ascertained.*

[38] At paragraph 4 of the **Gordon Stewart** [*supra*] judgment, Sykes J (as he then was) stated the following in relation to CPR 64.6:

> *… attention is now directed to rule 64.6 (1) of the Civil Procedure Rules ('CPR') which states that if the court decides to make a costs order then the general rule is that it must order that the unsuccessful party is to pay the costs of the successful party. Rule 64.6 (2) allows the court to order the successful party to pay all or part of the unsuccessful party's costs. Rule 64.6 (3) states that in deciding who should pay costs the court must have regard to all the circumstances. Rule 84.6 (4) lists some of the matters the court must bear in mind.*

[39] The court continued at paragraph [5]:

> *[5] Rule 64.6 (1) captured the starting point of the common law. This is supported by Morrison JA (now President) in Capital & Credit Merchant Bank Ltd v Real Estate Board [2013] JMCA Civ 48 who said at paragraph 10:*
>
> > *[10]* ***The question of whether to make any order as to costs - and, if so, what order is therefore a matter entrusted to the discretion of the court****. The starting point under the rules, reflecting the longstanding position at common law, is that costs should follow the event.* (emphasis mine)

[40] In **Halsbury's Laws of England, 5th Edition**, the learned author in discussing costs in relation to unsuccessful parties in estate matters, stated the following:

Subject to the overriding consideration that costs are a matter of discretion, two general principles have been laid down as to unsuccessful parties:

(1) where the cause of litigation takes its origin in the fault of the testator or of those interested in the residuary estate, the costs of the unsuccessful party are allowed out of the estate; and
(2) the unsuccessful party will not be ordered to pay costs if there is a sufficient and reasonable ground, looking to his knowledge and means of knowledge, to question the execution of the will or the testator's capacity, or his knowledge and approval of the will.

[41] It is worth noting the case of **Mills and Thompson v Knott et al** (supra) relied on by the Claimants, which is very instructive on how costs should be treated particularly in circumstances concerning administration of trusts. Panton P (as he then was) at paragraph 7 of his judgment in discussing circumstances in which the court will depart from the normal rules concerning costs, stated the following:

[7] It is customary to depart from that rule when the litigation involves the construction of trust documents and the administration of trusts such as pension funds. The bases on which there will be a departure, are, however, well set out in the judgment of Kekewich J in ***In Re Buckton; Buckton v Buckton*** *[1907] 2 Ch 406. His Lordship explained that if the litigation is aimed at obtaining an interpretation of the instrument at the heart of the dispute, the costs will normally be borne by the trust fund. If, however, the litigation is wholly adversarial, the normal principle of costs following the event, would apply. He said, in part, at pages 414-415:*

"In a large proportion of the summonses adjourned into Court for argument the applicants are trustees of a will or settlement who ask the Court to construe the instrument of trust for their guidance, and in order to ascertain the interests of the beneficiaries, or else ask to have some question determined which has arisen in the administration of the trusts. In cases of this character I regard the costs of all parties as necessarily incurred for the benefit of the estate, and direct them to be taxed as between solicitor and client and paid out of the estate....

There is a second class of cases differing in form, but not in substance, from the first. In these cases it is admitted on all hands, or it is apparent from the proceedings, that although the application is made, not by trustees (who are respondents), but by some of the beneficiaries, yet it is made by reason of some difficulty of construction, or administration, which would have justified an application by the trustees, and it is not made by them only because, for some reason or other, a different course has been deemed more convenient. To cases of this class I extend the operation of the same rule as is observed in cases of the first class. ***The application is necessary for the administration of the trust, and the costs of all parties are necessarily incurred for the benefit of the estate regarded as a whole.***

There is yet a third class of cases differing in form and substance from the first, and in substance, though not in form, from the second. In this class the application is made by a beneficiary who makes a claim adverse to other beneficiaries, and really takes advantage of the convenient

> *procedure by originating summons to get a question determined which, but for this procedure, would be the subject of an action commenced by writ, and would strictly fall within the description of litigation**. It is often difficult to discriminate between cases of the second and third classes, but when once convinced that I am determining rights between adverse litigants I apply the rule which ought, I think, to be rigidly enforced in adverse litigation, and order the unsuccessful party to pay the costs. Whether he ought to be ordered to pay the costs of the trustees, who are, of course, respondents, or not, is sometimes open to question, but with this possible exception the unsuccessful party bears the costs of all whom he has brought before the Court.**" (emphasis mine)*

[42] **CPR 64.12** outlines the following in relation to special costs certificate:

> *64.12 (1)* ***When making an order as to the costs of an application in chambers the court may grant a "special costs certificate".***
> *(2) In considering whether to grant a special costs certificate the court must take into account –*
> *(a) whether the application was or was reasonably expected to be contested;*
> *(b) the complexity of the legal issues involved in the application; and*
> *(c) whether the application reasonably required the citation of authorities and skeleton arguments.*
> *(3) The court, having regard to the matters set out in rule 65.17(3), may direct that the costs of the attendance of more than –*
> *(a) one attorney-at-law on the hearing of an application; or*
> *(b) two attorneys-at-law at the trial, be allowed.*

ANALYSIS

[43] In order to determine the party against whom costs should be ordered, the starting point is CPR 64.6 which provides that costs ordinarily follow the event. In following the normal rules concerning costs, the Applicants having failed in their application for joinder, the general rule would therefore require them to bear the Respondents' costs unless there exists some proper basis for the Court to depart from that rule.

[44] In determining whether such a departure is justified, the Court must consider all the circumstances of the case, including the conduct of the parties, the reasonableness of the issues pursued, and the manner in which the application was advanced. The guidance of Waller LJ in **Straker v Tudor Rose (a firm)** [2007] EWCA Civ 368, cited by Sykes J (as he then was) in **Gordon Stewart v Goblin**

Hill Hotels Limited et al (supra), is instructive. The learned judge opined as it relates to the approach to costs orders, at paragraph [6] of his judgment:

> *[6] What does giving effect to the rule look like in practice? Waller LJ in **Straker v Tudor Rose (a firm)** [2007] EWCA Civ 368 gave good practical advice on this matter. He set out a methodology which should be followed. His Lordship said at paragraphs 11 – 13:*
>
> *…The court must first decide whether it is case where it should make an order as to costs, and have at the forefront of its mind that the general rule is that the unsuccessful party will pay the costs of the successful party. In deciding what order to make it must take into account all the circumstances including (a) the parties' conduct, (b) whether a party has succeeded on part even if not the whole, and (c) any payment into court.*
>
> *12. Having regard to the general rule, the first task must be to decide who is the successful party. The court should then apply the general rule unless there are circumstances which lead to a different result. The circumstances which may lead to a different result include (a) a failure to follow a pre-action protocol; (b) whether a party has unreasonably pursued or contested an allegation or an issue; (c) the manner in which someone has pursued an allegation or an issue; and (d) whether a successful party has exaggerated his claim in whole or in part.*
> *…*

[45] The application which was before the court was one in which the Applicants sought to be joined as parties to the claim brought by the 1st and 2nd Respondents, to be released as executors in the estate of Gordon Arthur Cyril Stewart. The Respondents were successful in resisting the application. So it is therefore clear, that the Respondents ought to be awarded costs. The question therefore becomes whether the circumstances of this case justify either an order that costs be paid out of the Estate or, alternatively, no order as to costs.

[46] In assessing the reasonableness of this application and the conduct of the parties, the court takes the view that that the application was unreasonably pursued. As was observed in the substantive judgment delivered on 12 December 2025, the Applicants failed to place before the Court sufficient evidence demonstrating that their legal rights or financial interests would be adversely affected by the relief sought in the claim. At paragraph [69] of the judgment, the Court stated:

> *Where a party seeks to be joined to proceedings by virtue of Part 19 of the CPR, it is incumbent upon that party to place before the court sufficient evidence to justify such joinder. This position advanced by all the executors in their responses to the Application is endorsed by the Court. The court cannot permit the Applicants to be joined and then await their revelation as to how their financial interests will be affected. This in essence is putting*

> *the proverbial cart before the horse, and in effect asking the court to determine the Application based on a mirage of circumstances that may never happen.*

[47] The court further stated at paragraph **[85]**:

> *The Court further notes that permitting the joinder would only serve to prolong the resolution of the Claim and increase the costs to the existing litigants and the Estate. Such an outcome would be inconsistent with the overriding objective, which requires the court to ensure that matters are dealt with justly, expeditiously and fairly*.

[48] Based on the evidence, the application did not deal with the sole issue arising in the substantive claim, namely whether the Claimants ought properly to be released as executors. Instead, the Applicants sought to raise broader concerns relating to the future administration of the estate, including disclosure and the proposed appointment of new executors, matters which fell outside the scope of the proceedings before the Court.

[49] The Court also adopts the Respondents' submissions that the application substantially overlapped with relief already being pursued in separate proceedings concerning the administration of the estate and the removal of executors. As noted at paragraph **[78]** of the substantive judgment, the issues advanced by the Applicants were already the subject of the Beneficiaries Directions Proceedings. The court noted:

> *Having regard to the substance of the Applicant's application, which in essence concerns the future constitution of the Executor body, the appropriate course of action is for an application to be made under the Contentious Probate Rules for the removal of personal representatives.* ***That issue however is already the subject of the Beneficiaries Directions Proceedings which seek directions pertaining to the administration of the Estate and the removal of certain Executors.***

[50] It is also to be noted that this application does not fall into the classes of cases described in **Re Buckton** *(supra)* where costs are ordinarily payable from the Estate. The application did not seek the Court's guidance concerning the construction of the Will or any genuine difficulty arising in the administration of the Estate. Rather, it constituted adversarial litigation between parties advancing competing positions concerning the future administration of the Estate and the composition of the Executor body. In those circumstances, the ordinary rule that costs follow the event applies.

[51] I have considered learned King's Counsel, Mr. Wilkinson's submission that, as a result of the application, the Court was provided with valuable information concerning the status of the administration, the assets in the hands of the Executors, and the medical condition of Mr. Martin Veira, and that this assisted the Court significantly and demonstrated the reasonableness of the application. The court respectfully disagrees. Much of this information would, in any event, have been provided to the Court upon the passing of accounts, as the Court would have made orders for the filing of certain relevant information based on the executors' statutory obligations (s. 9 of the Trustees, Attorneys and Executors (Accounts and General Act). In these circumstances, the provision of this information, does not advance the administration of the estate and therefore does not justify the court ordering that costs be paid out of the estate.

[52] The emphasis placed on the timing of the Claimants' application, six months after the grant of probate, has no bearing on the claim. Section 9 of the **Trustees, Attorneys and Executors (Accounts and General) Act** under which the Claimants proceeded expressly empowers the Court to release an executor "*on such terms as the Court deems just*" and does not prescribe any minimum period that must elapse following the Grant of Probate. The Applicants' attempt to elevate the passage of time into a threshold requirement is unsupported by the statute and does not justify costs being paid out of the Estate.

[53] The Applicants' submission that in the alternative, there should be no order as to cost, is rejected by this court. The Respondents were required to incur substantial costs in resisting the application, including the preparation of affidavits, submissions, authorities, and attendance before the Court. The application also materially delayed the resolution of the substantive claim.

[54] In those circumstances, it would be unjust to deprive the Respondents of their costs. There is further, no proper basis to depart from the general rule that costs follow the event, and the Applicants, having been unsuccessful, must bear the costs occasioned by this application.

[55] While the Applicants' submission regarding the fact that the Defendants did not file an affidavit in opposition or written submissions prior to the hearing on 22 July 2025 is noted, that fact is not determinative of the issue before the Court. The Defendants were entitled to, and did, advance oral submissions, which necessarily required their attendance. (I note too that the Defendants and their Counsel have attended all the Court hearings.) The absence of affidavits or written submissions before July 2025 does not, without more, render the application uncontested in respect to the Defendants, or justify the relief sought.

[56] Further, any complaint as to the extent, nature, or necessity of work undertaken by the Defendants' attorneys is a matter properly reserved for taxation, where the reasonableness of such costs can be fully examined.

[57] As it relates to the special costs certificate, I am of the view that this application meets the threshold as prescribed in CPR 64.12. The matter was reasonably expected to be contested as the application sought to add new parties to an existing claim, the applicants proffered no evidence which would relate to the sole issue in the claim which would create a reasonable expectation that the said application would be opposed. The Applicant's case included matters such as disclosure as well as an intention to appoint new executors which were outside the scope of the claim. Given the numerous extensive affidavits that were also filed by the Applicants, the court finds it reasonable that both King's Counsel and Junior Counsel would have been engaged in responding to the application. The Court also notes that fact that the Applicants too had their legal team being led by King's Counsel.

[58] Having regard to the factors identified in CPR 65.17(3), the Court is satisfied that the engagement of King's Counsel together with junior counsel was reasonable in the circumstances. A special costs certificate for two attorneys-at-law should therefore be granted.

[59] In all the circumstances, the Court is satisfied that there exists no sufficient basis to depart from the ordinary rule that costs follow the event. The Applicants, having

unsuccessfully pursued the joinder application, must therefore bear the Respondents' costs.

ORDERS

[60] In the circumstances, I therefore make the following orders:

1. Costs of the Application to the Respondents to be taxed immediately, if not agreed.
2. The Respondents are granted a special costs certificate allowing for the costs of two counsel in respect of the Application.
3. Leave to appeal is refused.
4. The Applicants' attorneys at law are to prepare, file and serve the order.