COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2021/CLE/gen/0136

BETWEEN

HALSBURY CHAMBERS
(A FIRM)

Plaintiff

-AND-

WATER AND SEWERAGE CORPORATION

1st Defendant

-AND-

THE ATTORNEY GENERAL

2nd Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Branville McCartney of Halsbury Law for the Plaintiff
Ms. Camille Cleare of Harry B. Sands for the 1st Defendant
Mrs. Kayla Green-Smith of the Attorney General's Chambers for the 2nd Defendant

Hearing Dates: 14 October 2021, 22 November 2021

Appeal from Deputy Registrar – Rehearing - Procedural Irregularities – Bias - Case management powers – RSC O. 31A r. 1 (d) and (i) – Power to decide the Order in which issues are to be resolved – Dealing with as many aspects of the case as is practicable on the same occasion – Whether Deputy Registrar should have heard the 1st Defendant's Strike Out Application before the Application for specific disclosure of the Partnership Agreement (which was not fixed for hearing) - Whether the Deputy Registrar erred in making an order for specific disclosure of Partnership Agreement and staying the proceedings - Whether the Attorney General ought to have been struck out as a defendant where no claims were made against it – Whether 1st Defendant is a body corporate capable of being sued

The 1st Defendant, through its Chairman, retained the Plaintiff to act on its behalf for the collection of outstanding debts by customers. The Plaintiff sued the 1st and 2nd Defendants

(collectively “the Defendants”) for outstanding legal fees accumulated from that engagement.

Instead of filing a Defence within the time limited for doing so, the 1st Defendant filed a Summons to strike out the Plaintiff’s Writ of Summons on the ground that the Plaintiff was not a partnership at the material time and consequently it lacked the capacity to commence the action. The Summons also asserted that all further proceedings be stayed.

Before that application was heard, the Plaintiff filed an Amended Summons seeking final judgment on the ground that the 1st Defendant has no defence to the action and that it has admitted its indebtedness to the Plaintiff.

Thereafter, the 2nd Defendant applied to have the action struck out against it, as the claims were made only against the 1st Defendant, which is a body corporate capable of suing and being sued in its own name.

While these three applications were pending before the Court, the 1st Defendant filed another Summons seeking specific discovery of the Partnership Agreement referred to by the Plaintiff. The 1st Defendant had previously written to the Plaintiff requesting the Partnership Agreement.

The Deputy Registrar heard the application for specific discovery although it was not given a hearing date and granted the Order prayed by the 1st Defendant with costs to be paid by the Plaintiff. She also stayed the proceedings until compliance with her order. On the same day, the Deputy Registrar heard the Attorney General’s application to strike out and ordered that the action be struck out as against the 2nd Defendant, with costs to be borne by the Plaintiff. She adjourned the 1st Defendant’s Strike Out Application although it was the first application that was filed.

The Plaintiff now appeals both decisions on a myriad of grounds which may be subsumed under the following broad heads:

1. Allowing Counsel for the 1st Defendant to set up, send out and record the Zoom hearings;

2. Not permitting a partner of the Plaintiff’s firm to be present at the remote hearing;

3. Hearing the 1st Defendant’s application for specific discovery before hearing the 1st Defendant’s Strike Out application;

4. Failing to consider the uncontroverted evidence that the Plaintiff was a partnership at the material time;

5. Failing to consider that the filing of the 1st Defendant's Memorandum of Appearance and Notice of Appearance on 18 March 2021 debarred the 1st Defendant from raising any irregularity of the Writ of Summons;

6. Failing to consider relevant provisions of the Crown Proceedings Act in striking out the action against the 2nd Defendant and;

7. Erred in her exercise in the award of costs against the Plaintiff.

HELD: Setting aside the Order of the Deputy Registrar with costs in the sum of $10,000 to the Plaintiff to be paid by the 1st Defendant, the 1st Defendant is to file and serve its Defence by 30 March 2022 failing which Judgment will be entered for the Plaintiff in the sum of $40,221.07 with interest and costs. Upholding the order of the Deputy Registrar with respect to her decision to strike out the matter against the 2nd Defendant with costs to the 2nd Defendant in the sum of $2,500.

1. The setting up and circulation of a Zoom Hearing link does not appear to call into question the Court's impartiality. Further, Counsel for the 1st Defendant did not *conduct* the proceedings. The Deputy Registrar did. In any event, procedural irregularities are not fatal for the Court to set aside the Order of the Deputy Registrar: **Texan Management Limited v Pacific Electric Wire & Cable Company Limited** [2009] UKPC 46 applied. That said, the Deputy Registrar or the judicial staff should have done so and not place it in the hands of any attorney.

2. The Deputy Registrar was wrong to prohibit one of the partners of the Plaintiff's firm from being present at the hearing. However, there was no suggestion that her absence prejudiced the Plaintiff in the conduct of its application.

3. The court has a wide discretion under its case management powers to deal with cases efficiently and justly. Case management decisions are quintessentially decisions in the discretion of the court. They should not be interfered with unless the Court has misdirected itself on law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong: RSC Order 31A and **Old Fort Bay Property Owners Association Limited v Old Fort Bay Company Limited; Matthew Chance Hudson and Zsuzsanna Marta Foti v Old Fort Bay Company Limited and New Providence Development Company Limited; Old Fort Bay Company Limited v Old Fort Bay Property Owners Association Limited** 2014/CLE/gen/773 consolidated with 2014/CLE/gen/0889 and 2017/CLE/gen/00014 (Bahamas Judiciary website) applied. That said, the Deputy Registrar took irrelevant matters into consideration when she concentrated on Water & Sewerage's application for specific discovery instead of focusing on the failure of Water & Sewerage to file

and serve its Defence notwithstanding that the time for doing so had long expired. If Water & Sewerage was so convinced that Halsbury was not a law firm and incapable of commencing this action, they could have raised that in their Defence. The Deputy Registrar also failed to take into consideration the uncontroverted affidavit evidence of a partner, who asserted that she was such at the material time. If the 1st Defendant had any doubt, the 1st Defendant could have cross-examined the partner.

4. The 1st Defendant's objection that the Plaintiff is not a partnership is irrelevant to the cause of action as the 1st Defendant entered into a contract to create legal relations with the Plaintiff. The Court also notes that partnership agreements need not be in writing. It may be evident from the conduct of the parties or documents such as joint ownership of assets or professional indemnity insurance: see sections 2, 3 and 5 of the Partnership Act. This will no doubt call for an objective examination of the parties' words and conduct.

5. The claims made by the Plaintiff were against the 1st Defendant which is a body corporate capable of being sued. As such, it was plain and obvious that the Writ of Summons disclosed no reasonable cause of action against the 2nd Defendant: Crown Proceedings Act, Ch 68 considered; Water & Sewerage Corporation Act; RSC Order 18 Rule 19 and Order 31A and **Drummond Jackson v British Medical Association** [1970] 1 WLR 688 relied upon.

RULING

Charles J:
Introduction

[1] By Notice of Appeal filed on 11 June 2021, the Plaintiff's firm ("Halsbury") appealed two Decisions of Carol Misiewicz ("the Deputy Registrar") wherein she (i) struck out the action against the 2nd Defendant ("the Attorney General") on the ground that it discloses no reasonable cause of action or is otherwise an abuse of process with costs to be borne by Halsbury and (ii) ordered Halsbury to produce the Partnership Agreement on which it relied to establish that it was a partnership at the material time with costs to the 1st Defendant ("Water & Sewerage").

[2] Both Defendants objected to Halsbury's appeal, contending that the Deputy Registrar was correct to have made the decisions which she did.

Some facts

[3] By Specially Indorsed Writ of Summons filed on 16 February 2021, Halsbury alleged that, on or about January 2019, Water & Sewerage (through its then Chairman, Adrian Gibson ("Mr. Gibson")) engaged Halsbury, a law firm carrying on the business of legal services, to act on its behalf in the collection of monies from its delinquent customers. Halsbury commenced collection proceedings against delinquent customers on or about February 2019 and alleged that the Chairman publicly commented on the success of the exercise.

[4] On or about July 2019, Mr. Gibson allegedly requested Halsbury to institute defamatory proceedings against one Gregory Miller, President of Apex Underground and Utilities Co. Ltd. Pursuant to Mr. Gibson's request, a demand letter was issued and served on Mr. Miller requesting a public apology and retraction of statements made in the media about Mr. Gibson. Mr. Miller was given seven days to comply. Mr. Miller did not respond to the demand letter. Halsbury alleged that Mr. Gibson insisted that a defamation action be instituted against Mr. Miller and that the legal fees relative thereto be paid by Water & Sewerage and not by him personally.

[5] Halsbury averred that when Mr. Gibson was advised that he will have to pay for the defamation action, he stopped all communication and wilfully refused and/or neglected to pay legal fees regarding the collection of delinquent accounts to Halsbury.

[6] Halsbury further averred that Water & Sewerage's General Manager acknowledged that fees for professional legal services were outstanding and agreed to pay by way of two instalments.

[7] On 18 February 2020, Water & Sewerage made a payment towards its indebtedness and agreed to pay the balance by the end of February 2020. The balance was not paid by that date but, in or about September 2020, Water & Sewerage paid $20,000 towards its indebtedness and stipulated that the said

payment would have been in full and final settlement. Halsbury alleged that the payment was not in full and final settlement and it advised Water & Sewerage accordingly.

[8] On 9 October 2020, Halsbury wrote to Water & Sewerage and demanded settlement of the outstanding fees in the sum of $40,221.07. Water & Sewerage has neglected and/or refused to satisfy the outstanding debt.

[9] On 8 April 2021, the Attorney General filed a Defence reserving his right to make an application to strike out on the ground that the Statement of Claim makes no claim or discloses any cause of action against the Attorney General and is therefore an abuse of the process of the Court. The Attorney General contended that Water & Sewerage is a body corporate, which is capable of suing and being sued.

[10] To date, Water & Sewerage has not filed a Defence. Instead, Water & Sewerage filed two interlocutory applications; one to strike out the Writ of Summons and the other seeking specific discovery and staying the proceedings until Halsbury produces its Partnership Agreement.

Procedural history

[11] On 30 March 2021, Water & Sewerage filed a Summons supported by the Affidavit of Samovia Miller, seeking an Order to strike out the Writ of Summons on the ground that "*Halsbury Chambers*" was not a partnership at the material time and consequently lacked the capacity to commence the action. The Summons also sought an order that all further proceedings be stayed until the application is determined ("Water & Sewerage's Strike-Out Application").

[12] By Amended Summons filed on 17 May 2021 and supported by the Affidavit of Nerissa Greene dated 14 May 2021, Halsbury applied, pursuant to RSC Order 14 Rule 1 and Order 27 Rule 3 and/or under the inherent jurisdiction of the Court for final judgment on the ground that Water & Sewerage has no defence to the action and has admitted its indebtedness to the claim.

[13] By Summons filed on 21 May 2021, the Attorney General applied to have the action dismissed against it ("the Attorney General's Strike-Out Application") on the ground that the claim discloses no reasonable cause of action against the Attorney General.

[14] By Summons filed on 25 May 2021 supported by the Second Affidavit of Samovia Miller, Water & Sewerage applied for specific discovery of the Partnership Agreement between Ms. Greene and Mr. McCartney and, for all further proceedings to be stayed, pending compliance with the Order.

[15] On 9 June 2021, the Deputy Registrar made an Order for specific discovery of the Partnership Agreement dated 7 March 2008. She further ordered that the proceedings be stayed pending compliance by Halsbury of her Order and that Water & Sewerage's strike-out application issued on 30 March 2021 be fixed for hearing on 1 July 2021 via video link.

[16] On the same day, the Deputy Registrar dismissed the action against the Attorney General and ordered costs to be paid to the Attorney General by Halsbury.

Notice of Appeal

[17] By Notice of Appeal filed on 11 June 2021, Halsbury appealed the Deputy Registrar's Ruling on a myriad of grounds. The grounds alleged that the Deputy Registrar erred in law and in procedure by:

1. Allowing Counsel for Water & Sewerage to conduct the online proceedings via Zoom by scheduling the hearings and recordings of same;

2. Not coordinating the arrangements for the remote hearings;

3. Failing to send out the link/invitation to Counsel 24 hours in advance of the hearing on 9 June 2021;

4. Insisting that one of the Plaintiffs, Nerissa Greene of Halsbury Chambers (A Firm) who is also a Counsel and Attorney at Law and the Affiant of an

Affidavit sworn and filed on 14 May 2021 not be allowed to attend the hearing on 28 May 2021 and insisted on her removal from the proceedings;

5. Hearing Water & Sewerage's Summons dated 25 May 2021 when a subsisting Summons by Water & Sewerage was filed on 30 March 2021;

6. Hearing Water & Sewerage's Summons filed on 25 May 2021 when the aforesaid Summons was not scheduled to be heard at that time;

7. Failing to consider sections 2 and 5 of the Partnership Act, Ch 310;

8. Failing to consider the sworn affidavit evidence of Nerissa Greene filed on 14 May 2021, verifying the existence of a Partnership Agreement;

9. Determining that there may not have existed a Partnership Agreement notwithstanding the sworn affidavit evidence of Nerissa Greene dated 14 May 2021;

10. Determining that the Partnership Agreement dated 7 March 2008 was a public document and ought to be inspected;

11. Failing to consider the filing of Water & Sewerage's Memorandum of Appearance and Notice of Appearance filed on 18 March 2021 which debarred Water & Sewerage from raising any irregularity of the Writ of Summons filed herein on 16 February 2021;

12. Failing to consider section 2 of the Crown Proceedings Act and struck out the Attorney General and granted costs against Halsbury; and

13. Erred in the exercise of her discretion in granting costs against Halsbury.

[18] In my opinion, the 13 grounds raise the following issues:

1. Whether the Deputy Registrar erred in law and in procedure when she allowed Counsel for Water & Sewerage to set up, record and send out the Zoom Meeting links for the remote hearings?

2. Whether the Deputy Registrar erred in law and procedure when she insisted that Counsel who swore an affidavit not be allowed to attend the hearing on 28 May 2021?

3. Whether the hearing the specific discovery application before the Water & Sewerage's Strike Out Application was wrong in law and procedure?

4. Whether the Deputy Registrar erred when she failed to consider the uncontroverted evidence of a partner that Halsbury was a partnership at the material time;

5. Whether the Deputy Registrar erred when she failed to consider that the filing of the Memorandum and Notice of Appearance debarred Water & Sewerage from raising any irregularity;

6. Whether the Deputy Registrar erred when she struck out the action against the Attorney General and;

7. Whether the Deputy Registrar erred in her discretion to make cost orders against Halsbury?

Issue 1: Whether the Deputy Registrar erred in allowing Counsel for Water & Sewerage to set up, send out and record the zoom hearings

[19] Grounds 1 to 3 of the Notice of Appeal may be subsumed under this subhead. Halsbury alleged that the Deputy Registrar was wrong to have allowed Ms. Cleare, Counsel for Water & Sewerage, to set up the zoom hearing and failing to send the link sufficiently in advance.

[20] Mr. McCartney contended that the practice adopted by the Deputy Registrar was contrary to the standard procedure of the Court, as confirmed by the Chief Justice

in his letter, wherein the Chief Justice acknowledged that remote hearings are to be hosted, conducted and managed by the Court staff and/or judicial officers. Mr. McCartney next contended that, besides this procedural irregularity, the failure of the Deputy Registrar to set up the links showed apparent bias. The test for determining whether there has been apparent bias was succinctly set out by Lord Phillips in **Re Medicaments and Related Classes of Goods (No 2)** [2001] 1 WLR 700. At para 85, he stated:

> **"85. When the Strasbourg jurisprudence is taken into account, we believe that a modest adjustment of the test in *R v Gough* is called for, which makes it plain that it is, in effect, no different from the test applied in most of the Commonwealth and in Scotland. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased."**

[21] Mr. McCartney urged the Court to consider that bias extends beyond the limits of what may be strictly included within the description of being judge in one's own case. He cited **Roylance v General Medical Council** [1999] 3 WLR 541 at page 546:

> **"But bias may extend beyond the limits of what may be strictly included within the description of being judge in one's own case. The judge may have no actual bias and no interest in the case nor in its outcome, but nevertheless by such things as his behaviour, including his management of the hearing, there may arise a suspicion of partiality. Here the examples may merge into the wider complaint that there has been no fair hearing, but to the extent that they may suggest a partiality for the one side or the other they may properly be analysed as examples of bias."**

[22] Mr. McCartney also relied on the quote of Lord Nolan in **Re Pinochet Ugarte** [1999] All ER (D) 18 on bias:

> **"I would only add that in any case where the impartiality of a judge is in question the appearance of the matter is just as important as the reality."**

[23] In my judgment, Mr. McCartney's assertions of bias do not arise in the circumstances of this case. I am unable to discern how the setting up, recording and circulation of a Zoom Meeting link calls into question the Court's impartiality. Further, Ms. Cleare did not ***conduct*** the proceedings merely because she sent out the Zoom Meeting links. With respect to the failure to send the link 24 hours before the hearing, Mr. McCartney failed to demonstrate how this prejudiced Halsbury.

[24] It is, however, a fact that the Deputy Registrar/judicial staff is the proper officer to send out the Zoom Meeting links but nothing really turns on this; certainly not bias. At the end of the day, the Deputy Registrar, and not Ms. Cleare, conducted the proceedings.

[25] Even though there were procedural irregularities, it was not fatal for this Court to set aside the order of the Deputy Registrar.

[26] Further, I am reminded of the judicious words of Lord Collins in the introductory paragraph in the Privy Council case of **Texan Management Limited v Pacific Electric Wire & Cable Company Limited** [2009] UKPC 46 from the British Virgin Islands where he stated:

> **"It has often been said that, in the pursuit of justice, procedure is a servant and not a master."**

[27] This issue is therefore untenable and must fail.

Issue 2: Did the Deputy Registrar err in law and procedure when she insisted that Counsel who swore an affidavit not be allowed to attend the hearing on 28 May 2021?

[28] Mr. McCartney submitted that the Deputy Registrar erred when she insisted that Nerissa Greene ("Ms. Greene"), Counsel and Attorney at Law, should not be allowed to attend the hearing on 28 May 2021 because Ms. Greene swore an affidavit attesting to the existence of a Partnership.

[29] Mr. McCartney forcefully argued that, as a partner of the Plaintiff, Ms. Greene was one of the Plaintiffs, thereby entitling her to be present. This is because, as law firms are not incorporated bodies, they do not have separate legal personalities. They sue and are sued personally by the partners who comprise it. I agree.

[30] In my opinion, the Deputy Registrar fell into error by not allowing Ms. Greene to be present at the hearing. However, Mr. McCartney has failed to demonstrate and I cannot see how this prejudiced Halsbury or might have changed the outcome. In the absence of some cogent evidence to this effect, this ground fails.

Issue 3: Whether the order in which Summonses were heard was wrong?

[31] Grounds 5 to 10 are subsumed under this sub-head. Mr. McCartney asserted that the Deputy Registrar was wrong to have heard the Summons for specific discovery by Water & Sewerage ahead of its (Water & Sewerage) strike-out application (which was first in time of filing) and that the specific discovery Summons ought not to be heard because it was not scheduled to be heard on that day. He also attacked the fact that the Deputy Registrar gave no reasons (oral or otherwise) for the hearing of the specific discovery Summons ahead of the other Summonses particularly Water & Sewerage's Summons to strike out.

[32] With respect to how the Deputy Registrar dealt with the partnership issue, Mr. McCartney submitted that she failed to consider the uncontroverted evidence of Ms. Greene on the existence of a partnership as well as sections 2 (1) and 5 of the Partnership Act. According to Mr. McCartney, there was no evidence contradicting the affidavit evidence of Ms. Greene.

[33] With respect to the Deputy Registrar's decision to hear Water & Sewerage's application for Specific Discovery ahead of its Strike Out Application, this was a case management decision, which is in the court's wide discretion pursuant to RSC Order 31A. However, the overriding objective of Order 31A is to dispose of as many interlocutory applications as possible in one go. In **Old Fort Bay Property Owners Association Limited v Old Fort Bay Company Limited; Matthew**

Chance Hudson and Zsuzsanna Marta Foti v Old Fort Bay Company Limited and New Providence Development Company Limited; Old Fort Bay Company Limited v Old Fort Bay Property Owners Association Limited 2014/CLE/gen/773 consolidated with 2014/CLE/gen/0889 and 2017/CLE/gen/00014 (Bahamas Judiciary website), this Court explained the wide and discretionary nature of case management decisions and emphasised that such decisions should only be interfered with in very limited circumstances. At para 79 of that judgment, this Court stated:

> **"[79] It cannot be disputed that judges have wide and unfettered discretion when managing cases. These powers exist inherently and also under Order 31A Rule 18(2)(s) which provides that the Court has the power to "take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case."**
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> **[80] In Paulista Ltd v Alfredo Neves Penteado Moraes; Moraes v Paulista Ltd [2013] 1 BHS J. No. 21, Conteh JA had this to say at para 29:**
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> > **"Discretion is an integral part of the case management function and powers of the trial judge. This enables the judge to decide, whether in a given case, there should be a preliminary trial of issues. Order 31A, Part I, (see S.I 44 of 2004), supplements the Rules on the powers of the Supreme Court in case managing of actions."**
>
> **[81] At para 27, Conteh JA also stated:**
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> > **"Order 33, rr. 1, 3 and 4 of the Rules of the Supreme Court, undoubtedly confers such discretion on a trial judge in civil cases. It is discretion, which if properly exercised, an appellate court should uphold and not lightly interfere with".**
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> **[82] In Maria Iglesias Rouco, this Court comprehensively confirmed the unfettered nature of case management powers and the approach of appellate courts not to interfere with the discretion of a lower court unless the Court has misdirected itself on law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong. At paras 59-63 of the Ruling, this Court stated:**

"[59] The approach of appellate courts to the review of judicial discretions and case management decisions is well-established.

[60] An appellate court will not interfere with the discretion of a lower court unless it is satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a different way or unless clearly satisfied that there has been a miscarriage of justice. In Ratnam v Cumarasamy [1964] 3 All ER 933, Lord Guest giving the advice of the Privy Council stated at page 934:

> **"The principles on which a court will act in reviewing the discretion exercised by a lower court are well settled. There is a presumption that the judge has rightly exercised his discretion: Charles Osenton & Co v Johnston ([1941] 2 All ER 245 at p 257; [1942] AC 130 at p 148), per Lord Wright. The court will not interfere unless it is clearly satisfied that the discretion has been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage of justice: Evans v Bartlam."**

[61] As Mr. Deal correctly submitted, appellate courts will rarely allow appeals against case management decisions and will uphold robust and fair case management decisions. By its nature, case management is "quintessentially" a matter for the first instance judge seised of the proceedings. In Wembley National Stadium Limited v Wembley (London) Limited [2000] Lexis Citation 2361, Parker LJ said at paragraph 54:

> **"The issue whether to grant expedition, and if so how much and on what terms, was a matter essentially for the discretion of the judge. As is well-known, this court will not lightly interfere with the exercise of judicial discretion. That applies, in my judgment, with particular force to case management decisions. The whole purpose of case management would be frustrated if an appeal route against case management decisions were thought to be readily available to the dissatisfied party. The reality is quite the contrary, in my judgment. Case management rarely involve issues of principle, and the onus on a dissatisfied party to demonstrate**

that a case management decision is plainly wrong cannot be easily discharged. By its nature, case management is quintessentially a matter for the court in which the proceedings are being conducted, and the scope for intervention by an appellate court in relation to case management decisions taken by that court is necessarily limited, in my view. Only in the most compelling circumstances, as I see it, would intervention of that kind be warranted."

[62] However, an appellate court may interfere with a case management decision if satisfied that the judge has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong. In Broughton v Kop Football (Cayman) Ltd [2012] EWCA Civ 1743, Lewison LJ said at paragraph 51:

"Case management decisions are discretionary decisions. They often involve an attempt to find the least worst solution where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree. So the question is not whether we would have made the same decisions as the judge. The question is whether the judge's decision was wrong in the sense that I have explained."

[63] The breadth of the court's case management powers is self-evident in Order 31A itself but nowhere more than in O.31A, r. 18 (s). The wide terms of this open-ended section expressly states that the Court may "take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case." [Emphasis added]

[34] In **Old Fort Bay**, the Court was considering whether the case management decision was one that the Court of Appeal was entitled to interfere with. The same concept applies even though, in this instance, the question is whether the case management decision made by the Deputy Registrar could be considered by this Court.

[35] RSC Order 31 A Rule 1 speaks to the Court's duty to actively manage cases which may include (d) deciding the order in which issues are to be resolved; and (i) dealing with as many aspects of the case as is practicable *on the same occasion*.

[36] Accordingly, although the Deputy Registrar had the discretion to decide how and in what order the pending applications would be heard, it was more expedient for her to have dealt with as many applications at the same time. Although, under RSC Order 31A Rule 11, she lacked the jurisdiction to hear Halsbury's summary judgment application, she had the jurisdiction to hear Water & Sewerage's Strike Out Application which was actually the first application filed in this matter.

[37] In the present case, the Deputy Registrar concentrated on an application which was not even given a hearing date and which was the last to be filed on 25 May 2021 (about two weeks before the hearing on 11 June 2021). It seems odd to me that she did not see it fit to also hear Water & Sewerage's Strike Out Application but she heard the Attorney General's Strike Out Application which was filed later. Had she done so, she might have realized that both applications by Water & Sewerage appeared to be tactical ones with a view to delaying the matter.

[38] At best, if Water & Sewerage was so concerned with whether Halsbury was a partnership or not at the material time, it could have requested for the cross-examination of Ms. Greene with regards to the veracity of her affidavit. From documents unearthed thus far by Water & Sewerage, it appears that, pursuant to section 4 of the Business Licence Act, 2010, a business licence was granted in 2018 to W.A. Branville McCartney trading as "Halsbury Chambers" to

practice/carry on the profession/occupation/business of “office of lawyers/law firm and/or practice”.

[39] That said, even if the unchallenged evidence of Ms. Greene had turned out to be untrue during cross-examination, it would be difficult to see how Water & Sewerage could escape liability having engaged Halsbury in the collection of monies from its delinquent customers. Water & Sewerage was a party to the contract and intended to create legal relations with Halsbury. In passing, the Court also observes that partnership agreements need not be in writing. The Court may determine whether there was a partnership from the actions of the parties or any documents such as joint ownership of assets or professional indemnity insurance: see sections 2, 3 and 5 of the Partnership Act. This will no doubt call for an objective examination of the parties’ words and conduct.

[40] To my mind, the issue of whether or not Halsbury was a partnership at the material time is not relevant to the crux of the action since Water & Sewerage contracted with Halsbury. That said, the matter is still at an early stage. If the name of the Plaintiff has to be substituted to W.A. Branville McCartney trading as “Halsbury Chambers” that could be done. But I agree with Mr. McCartney that the Deputy Registrar ought to have accepted the unchallenged evidence of Ms. Greene with respect to the existence of a partnership agreement.

[41] As reiterated, the Deputy Registrar should have proceeded with as many applications as she could and she also had the power to direct Water & Sewerage to file its defence so that this matter may be proceeded with in a fair and efficient manner with a view to saving time and expense.

[42] In my opinion, the Deputy Registrar took irrelevant matters into consideration when she concentrated on the application by Water & Sewerage for specific discovery of the Partnership Agreement instead of focusing on the failure of Water & Sewerage to file and serve its Defence notwithstanding that the time for doing so had long expired. There would have been nothing precluding Water & Sewerage

from raising the partnership issue in its Defence. The Deputy Registrar also failed to take into consideration the uncontroverted evidence of Ms. Greene who swore an Affidavit asserting that she was a partner of Halsbury at the material time.

[43] For all of these reasons, I am of the opinion that the Deputy Registrar erred when she stayed the proceedings pending the production of the Partnership Agreement. Accordingly, that order is set aside. I will order that Water & Sewerage do file and serve its Defence by 30 March 2022 failing which Judgment will be entered for Halsbury in the sum of $40,221.07 with interest and costs.

Issue 5: Whether the Deputy Registrar erred when she failed to consider that the filing of the Memorandum and Notice of Appearance debarred Water & Sewerage from raising any irregularity

[44] Ground 11 of the Notice of Appeal states that the Deputy Registrar was wrong and erred in law and procedure when she failed to consider that the filing of the Memorandum and Notice of Appearance on 18 March 2021 by Water & Sewerage debarred it from raising any irregularity with respect to the Writ of Summons which was filed on 16 February 2021.

[45] RSC Order 12 Rule 1(3) provides that the entrance of an ordinary or unconditional appearance is a waiver of irregularity:

> **"Where a Defendant enters an ordinary appearance, without any condition reserving his right to object to the irregularity of the Writ of Summons on the jurisdiction of the Court, he is debarred from raising an objection afterwards. The effect, therefore, of any ordinary or unconditional appearance is a waiver of irregularity, if any, as well as a submission of the jurisdiction of the Court."**

[46] Mr. McCartney submitted that, as both Defendants entered unconditional appearances, they waived their rights to object to the irregularity of the Writ of Summons. I agree. Water & Sewerage ought to have filed a conditional appearance. That said, this appears not to have had any effect on the outcome of the Deputy Registrar's Ruling.

Issue 6

[47] Ground 12 concerns the decision of the Deputy Registrar to dismiss the action against the Attorney General.

[48] Mr. McCartney submitted that the Deputy Registrar was wrong to have struck out the action against the Attorney General having regard to section 2(4) of the Crown Proceedings Act which provides:

> **"Any reference in Part III or Part IV of this Act to civil proceedings by or against the Crown, or to civil proceedings to which the Crown is a party, shall be construed to include a reference to civil proceedings to which the Attorney General, or any Government department, or any officer of the Crown as such, is a party:**
>
> **Provided that the Crown shall not, for the purposes of Part III or Part IV of this Act, be deemed to be a party to any proceedings by reason only that they are brought by the Attorney General upon the relation of some other person."**

[49] RSC Order 18 Rule 19 gives the Court the power to strike out any pleading or part of a pleading. It states:

> **"19 (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –**
>
> **(a) It discloses no reasonable cause of action or defence, as the case may be; or**
>
> **(b) It is scandalous, frivolous or vexatious; or**
>
> **(c) It may prejudice, embarrass or delay the fair trial of the action; or**
>
> **(d) It is otherwise an abuse of process of the court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be."**

[50] Additionally, RSC Order 31A Rule 20(1) provides further grounds for striking out a pleading or part of a pleading. It states:

> **21. (1) In addition to any other powers under these Rules, the Court may strike out a pleading or part of a pleading if it appears to the Court –**
>
> > **(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the Court in the proceedings;**
> >
> > **(b) that the pleading or the part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings;**
> >
> > **(c) that the pleading or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or**
> >
> > **(d) that the pleading or the part to be struck out is prolix or does not comply with the requirements of any rule."**

[51] As striking out means that either the whole or part of a party's case is at an end, it is a draconian step. Therefore, pleadings should only be struck out in exceptional cases. Exceptional cases that warrant striking out should be "plain and obvious". Striking out on the ground that the Writ discloses no reasonable cause of action was explained by Lord Denning in **Drummond Jackson v British Medical Association** [1970] 1 WLR 688 at page 695:

> **"Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases."**

[52] Section 4 of the Water & Sewerage Corporation Act, Ch 196 establishes the Water & Sewerage Corporation as a body corporate. It expressly states:

> **"4. (1) There is established a Corporation to be known as the Water and Sewerage Corporation.**
>
> **(2) The Second Schedule shall have effect with respect to the incorporation, constitution, proceedings and staff of the Corporation and otherwise in relation thereto."**

[53] The Second Schedule of the Act outlines the scope and nature of the body corporate which includes the capacity to sue and be sued and provides inter alia as follows:

> ***"A Body Corporate***
>
> **1. The Corporation shall be –**
>
> **(a) a body corporate with perpetual succession and a common seal, having capacity to acquire, hold and dispose of property, movable and immovable, and to enter into contracts; and**
>
> **(b) capable of suing and of being sued and, subject to this Act, of doing and suffering all such acts as a body corporate may lawfully do and suffer."**

[54] Notwithstanding that Water & Sewerage is a government department, I agree with Mrs. Green-Smith who appeared as Counsel for the Attorney General that, as the pleadings asserted outstanding payment of legal fees from Water & Sewerage, which is a statutory body that can be sued, it is plain and obvious that there can be no claim against the Attorney General. Had Water & Sewerage not been a body corporate capable of being sued, the Attorney General would have been a proper defendant to the proceedings. However, as it is a body corporate and all of Halsbury's claims were made against it, the Attorney General has no place in the action. As such, the Deputy Registrar was correct to strike out the action against the Attorney General.

[55] The Attorney General was successful in this action. The general principle is that a successful party is entitled to its costs unless there are good reasons to depart from this practice. There was no reason given why the Deputy Registrar should have departed from this general principle. She awarded costs of $5,000 to the Attorney General. Costs are discretionary and a cost award must be fair and reasonable. There is nothing to demonstrate that the costs order which the Deputy Registrar made in favour of the Attorney General was not a reasonable one.

[56] This ground of appeal is untenable and must fail.

Issue 7: Did the Deputy Registrar err in making cost orders against Halsbury?

[57] Ground 13 states that the Deputy Registrar erred in the exercise of her discretion in making cost awards against Halsbury.

[58] In civil proceedings, costs are always discretionary. A good starting point is Order 59, rule 3(2) of the Rules of the Supreme Court ("RSC") which states:

> **"If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."**

[59] Section 30(1) of the Supreme Court Act provides:

> **"Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid."**

[60] Order 59, rule 2(2) of the RSC similarly reads:

> **"The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order."**

[61] As noted, the Deputy Registrar did not give any written reasons for her decisions. There was no transcript provided to this Court to verify whether she gave any *ex tempore* reasons at the hearing. In the absence of any reason for her decision and this, being a rehearing before me, I consider that the cost orders made by the Deputy Registrar were not unreasonable in the circumstances.

[62] Consequently, Halsbury's appeal against the costs order made by the Deputy Registrar fails.

Conclusion

[63] For all of the reasons stated above, the Deputy Registrar erred when, on 9 June 2021, she made the order directing Halsbury to permit Water & Sewerage to

inspect and take copies of the documents comprising the Partnership Agreement dated 7 March 2008 and staying the proceedings pending compliance by Halsbury.

[64] The Order made by the Deputy Registrar on 9 June 2021 is hereby set aside in its entirety with costs of $10,000 to Halsbury to be paid by Water & Sewerage.

[65] Further, the Court orders that Water & Sewerage is to file and serve its Defence by 30 March 2022 failing which Judgment will be entered for Halsbury in the sum of $40,221.07 with interest and costs.

[66] With respect to the Attorney General's Summons to strike out, the Deputy Registrar was correct to strike out Halsbury's case against the Attorney General as Water & Sewerage is a body corporate capable of suing and being sued. It was plain and obvious that the Writ of Summons disclosed no reasonable cause of action against the Attorney General. The Attorney General, being the successful party in these proceedings, is entitled to its costs. I will therefore make an order that Halsbury pays to the Attorney General's costs of $2,500.

Postscript

[67] After I delivered this Ruling, it was brought to my attention that, pursuant to the Order made by the Deputy Registrar on 9 June 2021, Halsbury dutifully complied and provided the Partnership Agreement to Counsel for Water & Sewerage that same day. The Agreement confirmed that Halsbury was/is indeed a law firm carrying on the business of legal services and is therefore a proper Plaintiff before the Court with capacity to commence this action.

Dated this 16th day of March 2022

Indra H. Charles
Justice