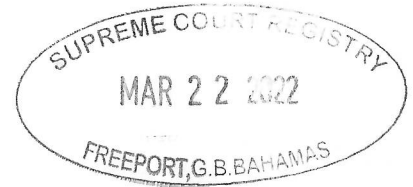


**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division
2020/FAM/div/FP/00165**



BETWEEN

**ALISON MARIE ANGLADE née BOWEN
Petitioner**

AND

**ROBERT ANGLADE JR.
formerly ROBERT DELHAYE ANGLADE JR.
Respondent**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley
APPEARANCES: Mr. Harvey O. Tynes, QC, along with N'tshonda Tynes for the
Petitioner/Appellant
Mrs. Justine Smith along with Ashley Sands for the Respondent
HEARING DATE: February 28, 2022

Appeal of Deputy Registrar's Decision on a Review of Taxation

RULING

Hanna-Adderley, J

Introduction

1. The parties are before the Court on an appeal from a decision made by Deputy Registrar Stephana Saunders ("**the Deputy Registrar**") on September 3, 2021 on a Review of Taxation application by the Petitioner/Appellant.
2. The single issue raised in the application for "**Review of Taxation**" by the Petitioner/Appellant relates to the decision by the Deputy Registrar to award the "global sum" of \$6,500.00 in respect of 53 items (6 and 8 through 60) in the Bill of Costs at the earlier Taxation Hearing on July 28, 2021.

3. The Petitioner/Appellant contends that the Deputy Registrar was required to examine each of the items individually in order to determine whether each item was necessary and/or proper for the attainment of justice. The Respondent contends that this is plainly wrong and that there is no requirement to award a specific amount for each item. Further as a matter of clarification Mrs. Smith contended that the learned Deputy Registrar's Order stated, inter alia, that Items 8 - 60 of the Petitioner's bill would be awarded in the amount of \$6,500.00.
4. In support of her appeal the Petitioner/Appellant relies on her Submissions dated August 20, 2021 and the Respondent relies on his Submissions dated August 25, 2021. Both Mr. Harvey O. Tynes QC, Counsel for the Petitioner/Appellant and Mrs. Justine Smith Counsel for the Respondent augmented the said Written Submissions with further oral Submissions at the hearing of this appeal.

Items 6 and 8-60

Item	Particulars	Disbursements	Disbursements Allowed	Professional Charges	Professional Charges Allowed
6	Attendance at Registrar General's Department to request and collect relevant Birth and Marriage Certificates (2 visits)			100.00	
7.	Cost of certified copies of one Marriage Certificate and three Birth Certificates	\$40.00			
8.	Drafting and preparing Petition for Divorce G. Ingrid Tynes			6,500.00	
9.	Copies	63.00			
10.	Drafting Notice of Petition G.Ingrid Tynes				162.50
11	Copies	9.00			
12.	Drafting Memorandum of Appearance G. Ingrid Tynes				162.50
13.	Copies	12.00			
14.	Drafting Acknowledge of Service G. Ingrid Tynes				162.50

15.	Copies	6.00			
16.	Attendance at Supreme Court Registry to file Petition and lodge Notice of Petition for perfection (2 visits)				100.00
17.	Filing Fees	100.00			
18.	Effecting Service on the Respondent				75.00
	CARRIED FORWARD	\$230.00			\$12,950.00

Item	Particulars	Disbursements	Disbursements Allowed	Professional Charges	Professional Charges Allowed
	BROUGHT FORWARD	\$230.00		\$12,950.00	
19.	Reading and considering Acknowledgement signed by Respondent G. Ingrid Tynes			162.50	
20.	Attendance at Supreme Court Registry to file Acknowledgement of Service			50.00	
21.	Drafting and preparing Affidavit of Service and attending to execution of same G. Ingrid Tynes			162.50	
22.	Copies	15.00			
23.	Attendance at Supreme Court Registry to file Affidavit of Service			50.00	
24.	Reading and considering Acknowledgement of Service by Respondent Counsel G. Ingrid Tynes			162.50	
25.	Reading and considering Memorandum of Appearance filed by Counsel for Respondent G. Ingrid Tynes			325.00	
26.	Advising Petitioner of contents of Memorandum of Appearance and taking further instructions G. Ingrid Tynes			325.00	
27.	Drafting and preparing Application for Registrar's Certificate			325.00	

	G.Ingrid Tynes				
28.	Copies	9.00			
29.	Drafting and preparing Registrar's Certificate G.Ingrid Tynes			162.50	
30.	Copies	6.00			
	CARRIED FORWARD	\$260.00		\$14,675.00	

Item	Particulars	Disbursements	Disbursements Allowed	Professional Charges	Professional Charges Allowed
	BROUGHT FORWARD	\$260.00		\$14,675.00	
31.	Attendance at Supreme Court Registry to file Application and lodge Registrar's Certificate for perfection (2 visits)			100.00	
32.	Drafting and preparing Notice of Hearing G.Ingrid Tynes			162.50	
33.	Copies	6.00			
34.	Attendance at Supreme Court Registry to file Notice of Hearing			50.00	
35.	Correspondence with Supreme Court staff to obtain fixture Nishonda L. Tynes			125.00	
36.	Effecting service of Registrar's Certificate and Notice of Hearing on Respondent Counsel			75.00	
37.	Drafting and preparing Affidavit of Service G. Ingrid Tynes			162.50	
38.	Copies	15.00			
39.	Attendance at Supreme Court Registry to file Affidavit of Service			50.00	
40.	Reading and considering Respondent's Answer G. Ingrid Tynes			975.00	
41.	Taking further instructions of Petitioner with respect to Respondent's Answer G. Ingrid Tynes			2,275.00	

42.	Requesting Mode of Disposition from Judge's Secretary by telephone on 3 rd December 2020 Ntshonda L. Tynes			125.00	
	CARRIED FORWARD	\$281.00		\$18,775.00	

Item	Particulars	Disbursements	Disbursements Allowed	Professional Charges	Professional Charges Allowed
	BROUGHT FORWARD	\$ 281.00		\$18,775.00	
43.	Communicating by telephone with Counsel for Respondent on 4 th December, 2020 Ntshonda L. Tynes			125.00	
44.	Preparing email to Counsel for Respondent dated 4 th December 2020 Ntshonda L. Tynes			125.00	
45.	Reading email correspondence from Counsel for Respondent dated 4 th December 2020 Ntshonda L. Tynes			125.00	
46.	Reviewing file in preparation for trial G. Ingrid Tynes			4,875.00	
47.	Preparing Petitioner to give testimony at trial G. Ingrid Tynes			2,925.00	
48.	Reading copy email correspondence dated 7 th December 2020 from Counsel for Respondent to Judge requesting zoom details G. Ingrid Tynes			162.50	
49.	Communicating with Judge's Secretary by telephone on 8 th December 2020 advising of Respondent's Counsel's wish to attend hearing and for zoom details Ntshonda L. Tynes			125.00	
50.	Sending email correspondence to Judge's Secretary dated 8 th December 2020 G. Ingrid Tynes			162.50	
51.	Reading email correspondence from Court containing zoom details			162.50	
52.	Reading email correspondence from Counsel for Respondent dated 8 th December 2020 G. Ingrid Tynes			162.50	

	CARRIED FORWARD	\$ 281.00		\$27,725.00	
Item	Particulars	Disbursements	Disbursements Allowed	Professional Charges	Professional Charges Allowed
	BROUGHT FORWARD	\$281.00		\$27,725.00	
53.	Responding by email to Counsel for Respondent on 8 th December, 2020 sending zoom details G. Ingrid Tynes			162.50	
54.	Appearance by G. Ingrid Tynes on 9 th December 2020 before Hanna-Adderley, J. at trial			1,625.00	
55.	Requesting transcript of proceedings for 9 th December 2020 G. Ingrid Tynes			162.50	
56.	Copies	32.00			
57.	Reading and considering transcript of 9 th December 2020 G. Ingrid Tynes			162.50	
58.	Drafting and preparing Decree Nisi G. Ingrid Tynes			325.00	
59.	Copies	9.00			
60.	Attendance at Supreme Court Registry to lodge Decree Nisi for perfection (2 visits)			100.00	

Deputy Registrar's Ruling

5. The Deputy Registrar's reasons for awarding the global sum of \$6,500.00 are set out in "Analysis" portion of her decision:

"Analysis"

This Court is of the view that the test is reasonableness and the entire Bill of Costs must receive an objective assessment on what is reasonable.

In taking the facts of this matter through the test of reasonableness as espoused by Churaman J. in Tynes vs Barr and Another (supra), as mentioned previously, the nature of the claim was a divorce matter which proceeded uncontested. This is the simplest divorce

proceeding as only one party to the action is being heard and giving evidence before the Court. There was an answer from the Respondent but no cross petition and therefore no need for a reply. I surmise that if the matter had been contested, this action could have rivaled the fictional movie of the "War of the Roses" however, it is in my view that this action is not in the least complicated. This leads me to the next element of whether the matter was of such complexity to merit the amount of costs billed and if the costs were reasonable, and I maintain there was nothing extraordinary about the claim in my view, in terms of its complexity as there were no complicated legal issues that arose. I do not view the thirty incidences of cruelty that were listed in the Petition complex legal issues, these were facts that supported the Petitioner's case for the ground of cruelty. These particulars were pleaded at length with eloquence and savvy as should a senior member of the Bar be able to pen, but they were still just the facts. The Court chose to hear from the Petitioner nine (9) of the particulars which leads me to surmise, that the Petitioner could have listed less and depending on the veracity of the incident, the Petitioner would have been successful on the ground of cruelty. I am of the view that there was no lengthy research required as there were absolutely no "knotty points of law" which required submissions laid over by either side to be considered by the Honourable Judge. Neither were there applications regarding the children such as, maintenance or child protection orders or protection orders for the Petitioner which required the Judges intervention. Further, all of the documents were standard and followed the forms contained within the Matrimonial Causes Act.

*The test of reasonableness would also include the test of hypothetical counsel as stated in **Parker (supra)** by Allen J. Counsel acting for the Petitioner is Mrs. G. Ingrid Tynes of the firm Tynes and Tynes who has been called to the Bar from 1976, a total of 45 years. The*

hourly rate given was Six Hundred and Fifty Dollars (\$650.00) per hour and all items in the Bill of Costs were charged at the stated rate. I accepted the hourly rate as Counsel is senior at the Bar, however, even though the hourly rate was accepted, were all of the charges at the hourly rate of Six Hundred and Fifty Dollars (\$650.00) necessary for the attainment of justice and should the Bill of Costs be a yardstick for myself as taxing master to follow? I say no. If I were to use this Bill of Costs as a yardstick, **“the application of such a principle would lead to obviously undesirable consequences”** as stated by Pennycuick J. in **Simpson Motor Sales (supra)**. It was therefore now my task to review the bill and ascertain what is reasonable.

Usually in my preparation for taxation hearings, a review of the items in the Bill of Costs along with the corresponding documents is performed to familiarize myself with the matter beforehand. Once the hearing is underway, the parties and I would go through each item line by line where the parties seeking Costs would explain the reasons for the charges and the parties paying costs would give their objections or agree the costs. I would then give my decision as to the amount of costs allowed. At times, at the beginning of the hearing, the parties paying costs would advise the Court which costs they have no objection to and the Court does not interfere and allows the charges. As the taxation proceeds, when the parties seeking costs refers to the corresponding documents for the item, I would have reviewed the document to determine whether the amount is reasonable. For example, in my experience, there are times when Counsel in seeking to collect more costs, would seek an amount for a sworn affidavit by a party for Four Hundred Dollars (\$400) and would ask the same amount for an affidavit sworn by another person with the exact same facts. As Taxing Master having reviewed and read the documents on the Courts file, I can determine that only the names were changed in the affidavit and therefore I would not award the sum of \$400 for the second affidavit but a

minimal sum for perhaps the copies as there was no real time spent on the drafting of the second affidavit.

*In this instance, at the time of the taxation, I had already reviewed the Bill of Costs in preparation for the hearing and read the lengthy and detailed objections of the Respondent. The taxation proceeded as explained above on an item by item basis until Item No. 6 through 8 through 60. At this juncture, I drew upon my former experience as a practitioner in the Family Division, past taxations in Family Matters and canvassing practitioners who have prolific family practices regarding the usual practice of charging for uncontested divorces. In my experience there is a set charge for uncontested divorces as confirmed by the regular family practitioners before the Supreme Court where the charges can range from One Thousand Two Hundred Dollars (\$1,200.00) to Two Thousand Five Hundred (\$2,500.00) and this charge encompasses **all** work done from the filing of the Petition to the filing of the Decree Nisi. I would further add that all of the practitioners stated that a **contested** divorce would be charged at time spent. At the taxation hearing, in granting the award, as this was an uncontested divorce, I multiplied the hourly rate of Six Hundred and Fifty dollars (\$650.00) by 10 hours and awarded the sum of Six Thousand Five Hundred Dollars (\$6,500.00) which is almost three times more than the maximum amount charged by the regular family practitioners on the Island of Grand Bahama. Counsel for the Petitioner suggested to the Court that in today's practice, a retainer fee is paid to the firm and charges are made to the clients account for time spent. I am of the view that this method may be their procedure as divorce matters are not their main practice as perhaps ten (10) divorce petitions may be filed from their firm in any given year in Grand Bahama: but for the hypothetical counsel test, I am of the view that the test of reasonableness must consider what is usually done within the industry of a regular*

family court practitioner and that the routine is there would usually be a set fee for an uncontested divorce. It would also be helpful to add that the charges are the same for every ground of divorce listed in the Matrimonial Causes Act from adultery to 5 year separation.

Conclusion

*In summary and applying the test of reasonableness uttered by Churaman JA in **Tynes vs Barr and Another (supra)**, I am of the view that the sum of Six Thousand Five Hundred Dollars (\$6,500.00) is reasonable and is more than generous for items 6 and 8 through 60 having considered the nature of the claim, the complexity of the claim, the time spent, the degree of research, the test of hypothetical counsel and the regular practices of those in the industry. It is certainly reasonable for the attainment of what the Petitioner ultimately wanted, and that is a divorce from the Respondent.*

I therefore dismiss the Petitioners objections on the review of taxation and order that costs of the application be awarded to the Respondent to be taxed if not agreed.”

Submissions

6. Mr. Tynes, QC submitted, in part, that the single issue being raised in this Application is whether it was proper for the Deputy Registrar to award a global sum of \$6,500.00 in respect of 54 Items listed in the Petitioner's Bill of Costs. That the 54 Items in respect of this global sum of \$6,500.00 was allowed, comprised both 18 Items of Disbursements and 36 Items of Professional Charges. But one sum and one sum alone was allowed in respect of all 54 Items. That the Deputy Registrar did not say what amount, if any, was being allowed or awarded in respect of any of the 54 Items. That the question is, was she right in doing what she did?
7. Mr. Tynes QC referred the Court to the provisions of Order 59 Rule 26(2) of the RSC. That there were a total of some 83 Items of Disbursements and Professional Charges in the Petitioner's Bill and it is the Petitioner/Appellant's basic contention that the only way one could determine which, if any, and of the Items were

necessary or proper for the attainment of justice, was to examine each Item one by one. That there could be no other way to comply with the Rules set out in Rule 26(2) of the RSC. That each of the Items, whether by way of Disbursement or by way of a Professional Charge, was different. That there may have been some that were not necessary at all or proper. But that the only way in which you could make that determination is to look at each Item one by one.

8. Mr. Tynes QC submitted that the Deputy Registrar had the Bill of Costs before her and that she had read the lengthy and detailed objections of the Respondent. That the Taxation had proceeded on an item by item basis until reaching the disputed items. That at that juncture the Deputy Registrar "drew upon" her former experience as a Practitioner in the Family Division and to past Taxations in Family Matters. She said also canvassed Practitioners, who have prolific Family Practices, regarding the usual practice of charging for Uncontested Divorces. That in her experience, there is a set charge where charges can range from \$1,200.00 to \$1,500.00 for Uncontested Divorces, as confirmed by the regular Family Practitioners before the Supreme Court and that this charge encompasses all work done from the filing of the Petition to the filing of the Decree Nisi. Mr. Tynes QC submitted that the Deputy Registrar went outside of the Taxation Hearing and confirmed and consulted with Private Practitioners, whom there is nothing to suggest, had anything to do with this particular case or had the documents and papers. That the Deputy Registrar stated that all of the Practitioners stated, that a Contested Divorce would be charged at "time spent".
9. That in granting the award, as this was an Uncontested Divorce, she multiplied the hourly rate of \$650.00 by 10 hours. That while he appreciated that she accepted that \$650.00 per hour was a reasonable hourly rate the services of Mrs. Ingrid Tynes he saw no basis for multiplying this rate by 10 hours and awarding \$6,500.00.
10. Mr. Tynes QC submitted that the Deputy Registrar had a Bill of Costs in front of her, where she should have examined each Item to determine whether it was necessary or proper for the attainment of justice, but instead of addressing her

mind to what is necessary and proper, she drew on her former experience as a Practitioner. She also drew on past Taxations, which she has done, that had nothing to do with the matter before her. She also went outside and canvassed the views of Practitioners, who had prolific Family Practices, which she seemed to have determined that Tynes & Tynes did not have, so, they probably did not know what they are doing. She considered a statistical count of the number of Divorce and Matrimonial Cases done by Tynes & Tynes each year as not exceeding 10. She gave consideration to some creature called "A Hypothetical Counsel." She also considered what is usually done within the "Industry". No where does she seem to have regard to the provisions of Order 59 Rule 26(2), which mandates on a Taxation, on a party and party basis, there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party, whose costs are being taxed.

11. Mr. Tynes QC submitted that the Deputy Registrar demonstrated a total lack of understanding of the concept that appears in some of the Case Law called the Hypothetical Counsel. The principle is that you do not engage the most Senior Practitioner to do a simple task and then try to collect from the party paying costs, the costs of the most Senior Practitioner. You think of a Hypothetical Counsel, who would be sufficiently competent, though not as pre-eminent and whose charges would be less. That that is the Hypothetical Counsel that Justice Allen and no doubt Justice Pennycuick had in mind. That the issue of Hypothetical Counsel simply did not arise in the matter before her. That she did not think that Ms. Tynes was a luxury, therefore there was no reason for her to introduce the concept of a Hypothetical Counsel.

12. Mr. Tynes QC submitted that Counsel acting for the Petitioner is Ms. G. Ingrid Tynes of the Firm, Tynes & Tynes, who has been called to the Bahamas Bar from 1976. A total of 45 years. The hourly rate given was \$650.00 and all Items in the Bill of Costs were charged at the stated rate. That if she accepted the hourly rate of Mrs. Tynes, as being reasonable there is only one way she can make a determination pursuant to Rule 26, by examining each of the Items listed in the

bill where Ms. Tynes rendered Professional Services. Because even if you find that there is an Item that could have been done in 15 minutes and Ms. Tynes applying the rate of \$650.00 took a half an hour, then you allow for 15 minutes and not for the half hour. But you must examine the Items and Deputy Registrar did not do that.

13. That the Deputy Registrar refers to the fact that 30 Particulars of Cruelty were pleaded but the trial judge may have requested to be addressed on 9. The Deputy Registrar seems to be saying, the Petitioner did not have to make 30 Allegations of Cruelty, as was done in her Petition. She could have gotten away with less than the 30 that she alleged. Because the judge requested that Counsel only deal with a lesser number than 30, the Petitioner did not have to comprise 30 allegations. The Learned Registrar seemed to have ignored the requirements of Rule 4 of the Matrimonial Causes Rules. 4(1)(I) which requires a Petitioner to set out the Particulars, that you put your case. And why put a weak case if you have a strong one? Certainly, there is nothing to suggest, that the judge hearing the Petition chastised the Petitioner for overkill by setting out 30. It appears that all the judge said was you do not have to go through the 30. Just let me hear you on 9 of them. I want to hear or I have a greater interest in these 9. The judge did not suggest that or say anything to suggest that, the Petitioner's Costs should be reduced on a Taxation, because this was a case of overkill. It was his Submission, that it should not be and it appears to be, a subject of adverse comment from the Registrar, who obviously had it in mind at the time of Taxation and the Application for Review before her. The judge never said it was unnecessary or that no costs should be allowed for the other 21 allegations.

14. Mrs. Smith submitted, in part, that all that is required of the Registrar is to consider everything that is outlined in the Bill of Costs and apply the relevant legal principles. That Mr. Tynes QC has not been able to proffer any particular Rule or Principle, that shows that she behaved incorrectly or exercised her Decision improperly. In fact, in her judgment, she said that she reviewed in detail the Bill of Costs that was before her. He also seems to have a difficulty with how she

exercised her discretion or what things she relied upon. We say, at the end of the day, she took into consideration what was necessary and proper, what was reasonable in all of the circumstances, and came to a determination that the costs outlined in the Bill proffered by the Petitioner were not reasonable, were not proper.

15. Mrs. Smith drew the Courts attention to the fact that at the end of the Taxation, the total amount taxed and what was to be paid by the Respondent is actually \$20,204.80. So, the disputed area here is the \$6,500.00 but the global sum that was awarded was already \$20,204.80. She submitted that was operating on the Deputy Registrar's mind. She submitted that the Deputy Registrar's approach was let us see what is proper and reasonable here. Let us look at the entire Bill of Costs. Let us look at what is done in practice. And she made a reasoned, fair decision, on the basis of all of the factors that she took into consideration. That this was a very simple, Uncontested Divorce matter, which it still is. It is being suggested that the Registrar took into consideration irrelevant factors. But, she submitted, the Petition was overkill. It was not in keeping with what was reasonable to prove your case. And just because a fee is paid or ought to be paid by the client does not mean the Respondent is obligated or must pay the same amount. It is always what is reasonable in the circumstances. Mr. Smith submitted that a Bill of Costs for a Petition, in an Uncontested Petition, in the amount of, \$48,000, is highly irregular. The Registrar reviewed all of those Items listed and came to a reasoned Decision.

Issues

16. The issues to be determined are:

- a. whether the test in assessing a Bill of Costs is determining whether an item claimed was necessary and/or proper for the attainment of justice and whether the sum claimed for such item was reasonable.
- b. whether the Deputy Registrar was required to examine each of the items claimed individually in order to determine whether each item was

necessary and/or proper for the attainment of justice and whether the sum claimed was reasonable.

- c. whether the Deputy Registrar in making her determination considered matters that she ought not to have considered.

Analysis & Discussion

The Law

17. Order 59 Rule 26 of the Rules of The Supreme Court ("**RSC**") provides:

"Assessment of Costs

26. (1) This rule applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed."

18. Order 59, Rule 31 of the RSC states:-

"31. (1) Any party to any taxation proceeding who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by him in respect of any item, may apply to him to review his decision in respect of that item.

(2) An application under this rule for review of the Registrar's decision may be made at any time within 14 days after that decision or such shorter period as may be fixed by the Registrar:

Provided that no application under this rule for review of a decision in respect of any item may be made after the signing of the Registrar's certificate dealing finally with that item.

(3) Every applicant for review under this rule must at the time of making his application deliver to the Registrar objections in writing specifying by a list the items or parts of item the allowance or disallowance of which or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objection to each other party (if any) who attended on the taxation, of those items or to whom the Registrar directs that a copy of the objection shall be delivered.

(4) Any party to whom a copy of the objection is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the Registrar, deliver to the Registrar answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to each other party (if any) to whom a copy of the objection has been delivered or to whom the Registrar directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the Registrar's decision in respect of any item shall not prejudice the power of the Registrar under rule 15 to issue an interim certificate in respect of items his decision as to which is not objected to. "

19. Order 59 Rule 32 of the RSC provides:

"32. (1) On reviewing any decision in respect of any item, the Registrar may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(2) On a hearing of a review under rule 31 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled

to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(3) The Registrar who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it. A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the Registrar."

20. Order 59 Rule 33 of the RSC states:

"33 (1) Any party who is dissatisfied with the decision of a Registrar to allow or to disallow any item in whole or in part on review under rule 31 or 32, or with the amount allowed in respect of any item by the Registrar on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item, if, but only if, one of the parties to the proceedings before the Registrar requested him in accordance with rule 32(3) to state the reasons for his decision in respect of that item or part on the review.

(2) An application under this rule for review of a Registrar's decision in respect of any item may be made at any time within 14 days after the Registrar's certificate in respect of that item is signed, or such longer time as the Registrar at the time when he signs the certificate, or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the judge thinks fit to adjourn into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no grounds of objection shall be raised which was not raised on the review by the Registrar but,

save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the Registrar in relation to the subject matter of the application.

(5) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the Registrar's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another Registrar for taxation."

21. Having reviewed Order 59 Rules 26, 31, 32, and 33, the Submissions of Counsel, in particular the submissions of Mr. Tynes QC, and the case law referred to by him, I am persuaded that the proper test when assessing or taxing a Bill of Costs is determining whether an item claimed was necessary and/or proper for the attainment of justice and whether the sum claimed for such item was reasonable. The provisions of Order 59 speak to the allowance or disallowance in whole or in part of any "item", list the items or parts of item, any item, that item, that a party to whom a copy of objections was delivered shall be entitled to be heard in respect of any item to which the objections relate. There is no disagreement between Counsel that sum to be awarded for each professional service and disbursement claimed must be reasonable. I am of the view that there is no basis in law for the "global award" approach taken by the Deputy Registrar in awarding a fixed sum for the item 6 and 8-60 of the Bill of Costs and that in determining what is necessary and proper for the attainment of Justice of justice the Deputy Registrar must examine each item sought to be taxed individually.

Matters which the Deputy Registrar ought not to have considered

22. In her analysis the Deputy Registrar states that she canvassed practitioners who have a prolific family practices regarding the usual practice of charging for uncontested divorces as confirmed by regular family practitioners before the Supreme Court, and what was charged for contested divorces, and what is usually

done within the industry of a regular family court practitioner, and that charging on a time spent basis by Tynes v Tynes was their method because divorce matters were not no their main practice. These matters in my view were not proper considerations. Further, she attached too much weight to the fact that the Court in the Decree Nisi hearing dissolved the marriage relying on 9 out of many more particulars of cruelty contained in the Petition. The divorce stated as a contested matter and subsequently became uncontested. The Court may have chosen at that point the "worst of the worst" instances of cruelty. This did not negate the importance of the other pleaded instances of cruelty in grounding the Petition.

23. In summary, each item 6 and 8-60 of the Bill of Costs ought to be examined in the light of the test hereinbefore mentioned "individually" and that the fixing of a global sum is inappropriate and the wrong approach to be applied. The Deputy Registrar's Decision in respect to items 6 and 8-60 is set aside including her cost order on the taxation. The Petitioner is awarded her costs associated with this application to be taxed if not agreed.

Dated this 16th day of March, A.D., 2022


Petra M. Hanna-Adderley
Judge

