

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT OF THE BAHAMAS**  
**COMMON LAW AND EQUITY DIVISION**  
**2013/CLE/gen/FP/00399**

**BETWEEN**  
**PAUL WALLACE WHITFIELD**  
**Claimant**



**AND**  
**THE ATTORNEY GENERAL**  
**1st Defendant**

**AND**  
**THE COMMISSIONER OF POLICE**  
**2nd Defendant**

**AND**  
**CORPORAL 265 COREY DAMIANOS**  
**3rd Defendant**

**BEFORE:** The Honourable Justice Petra M. Hanna-Adderley  
**APPEARANCES:** Mr. Harvey Tynes, KC, with Miss Ntshonda Tynes for the Claimant  
Mrs. Sophia Thompson-Williams for the Defendants  
**HEARING DATE:** March 30, 2023

**RULING**

**Hanna-Adderley, J**

**Introduction**

1. By Notice of Motion filed herein on September 9, 2022 the Claimant sought the following four items of relief:-
  - i. An Order that the Minister for Finance, the Honourable Philip Davis, Q.C. be found to be in contempt for his failure to pay the sum of \$67,701.68 shown to be due to the Claimant as of July 22, 2022 by the Certificate issued herein by the Deputy

Registrar on August 5, 2022 together with interest accruing at the rate of \$8.56 per day until paid and for his failure to pay the sum of \$127,083.11 shown to be due to the Claimant as of August 26, 2022 by the Certificate issued herein by the Deputy Registrar on September 7, 2022 together with interest accruing at the rate of \$19.58 per day until paid;

- ii. An Order that the Minister of Finance, the Honourable Philip Davis, Q.C. pay to the Claimant within 7 days or such other period as ordered by the Court all sums due and owing to the Claimant at the time of payment failing which he be held personally liable to imprisonment or to pay a fine or to any other punitive measure the Court deems appropriate;
  - iii. An Order that service of this Notice of Motion on the Office of the Attorney General at Nassau, Bahamas and on the Minister for Finance by email be deemed sufficient service on the Minister of Finance;
  - iv. An Order that the costs of and occasioned by this Motion be paid to the Claimant on a full indemnity basis.
2. The application is supported by the Affidavit of Mrs. G. Ingrid Tynes also filed on September 9, 2022 and the Affidavit Mrs. Tanisha Tynes-Cambridge filed on May 27, 2023. The Claimant also relies on Written Submissions dated March 29, 2023.
  3. The Defendants oppose the application. The Attorney General has not filed any evidence and relies on the Submissions of Mrs. Sophia P. Thompson-Williams, Counsel for the Attorney General.

### **Statement of Facts**

4. The factual background asserted by Mrs. Tynes in her Affidavit has not been disputed by the Defendants and is as follows:
  - a) By a Judgment of this Honourable Court dated April 13, 2022 it was adjudged that the Defendants pay to the Claimant damages in the sum of \$50,000.00 with interest thereon at the rate of 4% per annum from November 11, 2013 to April 11, 2022 and thereafter at the statutory rate together with the costs of the action;
  - b) By a Certificate of Taxation issued on August 16, 2022 the Deputy Registrar certified the Claimant's costs herein were taxed and allowed in the sum of \$114,360.50;

- c) On August 5, 2022, the Deputy Registrar of the Supreme Court issued a Certificate under her hand certifying that the amount payable to the Claimant by the Defendants by way of damages in pursuance of the said Judgment was \$67,701.68 inclusive of interest as of July 22, 2022 with interest continuing to accrue at the rate of \$8.56 per day;
  - d) On September 7, 2022, the Deputy Registrar of the Supreme Court issued a Certificate under her hand certifying that the amount payable to the Claimant by the Defendants by way of costs in pursuance of the said Judgment was \$127,083.11 inclusive of interest as of the September 26, 2022 with interest continuing to accrue at the rate of \$19.58 per day;
  - e) As Counsel for the Claimant, Miss. Ntshonda Tynes wrote to Mrs. Sophia Thompson-Williams, Chief Counsel in the Office of the Attorney General on July 19, 2022 requesting payment of the damages and interest due to the Claimant. Mrs. Williams responded by email on July 19, 2021 advising that the Judgment debt would not be processed as Counsel for the Claimant was not “tax compliant”.
  - f) On July 21, 2022 Miss. Tynes wrote to Mrs. Williams highlighting that Claimant Counsel’s “tax compliance” had no bearing on the Judgment Debtor’s obligation to pay the Judgment Creditor. Ms. Williams responded by email on July 22, 2022 advising that Ms. Tynes should direct further inquiries to an individual who is not a Counsel and Attorney and who does not act as Counsel for the Defendants.
  - g) Again on August 24, 2022, Miss. Tynes wrote to the Office of the Attorney General requesting payment of the damages and costs and interest thereon payable to the Claimant.
  - h) Up to the date of the filing of Mrs. Tynes’ Affidavit, neither Counsel Williams nor anyone else on behalf of the Defendants responded to Miss. Tynes’ letter.
  - i) Up to the date of the filing of Mrs. Tynes’ Affidavit, the Minister of Finance had failed to pay any part of the sums due and owing to the Claimant.
5. By her Affidavit filed on March 27, 2023, Mrs. Tanisha Tynes Cambridge states as follows:-
- a) On Friday, September 9, 2022, Miss. Ntshonda Tynes notified the Minister for Finance of the filing of the Notice of Motion by sending scanned copies of the

Notice of Motion and supporting Affidavit filed on September 9, 2022 to the Minister for Finance at his email address. The said email message was copied to the Attorney General and five Attorneys at the Office of the Attorney General. Neither the Minister for Finance nor anyone else responded to the said email.

- b) On February 13, 2023, Miss. Tynes sent a letter dated February 13, 2023 by email to five Attorneys at the Office of the Attorney General at their respective email addresses requesting urgent payment of the Judgment debt due to the Claimant or alternatively, convenient dates for the hearing of the application by Notice of Motion. No one responded to the said letter.
  - c) On March 22, 2023 Ms. Williams notified Claimant Counsel by email that a payment had been deposited to the Firm's bank account on February 17, 2023.
  - d) After checking the Firm's banking records Mrs. Tynes-Cambridge confirmed that the payment was deposited to the Firm's account not on February 17, 2023 but on March 16, 2023, two weeks prior to the date fixed for the hearing of the Claimant's application.
6. The contents of the said Affidavits have not been disputed by the Defendants.
7. On March 22, 2023, eight days before the hearing of the Claimant's application, Defence Counsel informed the Claimant that a payment representing the outstanding Judgment debt (the subject of the application) had been made to the Firm's bank account. The payment was made on March 16, 2023, exactly two weeks prior to the fixture for the hearing of the Notice of Motion application despite, I might add, the valiant efforts made by Counsel within the Attorney General's Office to expedite the payment.

### **Submissions**

8. Miss Tynes submitted, in part, that it is trite law that until a judgment or Order of the Court is successfully appealed or stayed the judgment or Order must be obeyed. That the Judgment herein was not stayed or appealed. That upon delivery of the Judgment on April 13, 2022 the Claimant was entitled to his award of damages with interest thereon and costs. Upon the delivery of the April 13, 2022 Judgment, the Claimant became entitled to receive and the Defendants were obligated to pay to the Claimant his award of damages with interest thereon and costs. On July 19, 2022 Defence Counsel advised Miss Tynes that the request for payment had been forwarded to the Permanent Secretary and the Financial

Officer some time ago. Notwithstanding Defence Counsel's acknowledgment, the Defendants repeatedly refused to comply with the Judgment of the Court and failed to make any payment. As a result of the Defendants' defiance and disobedience, the Claimant was obliged to make application to compel the Defendants to obey. That in spite of their having received notice of the filing of the enforcement application on the September 9, 2022, the Defendants did not pay the Judgment Debt until the March 16, 2023, that is, more than eleven months after delivery of the Judgment and more than six months after receiving notice of the filing of the enforcement application. Miss Tynes submitted that it was noteworthy that the payment was only made the day after notice of the March 30, 2023 fixture was emailed to the Minister for Finance. The Claimant Counsel was not informed of the payment until the March 22, 2023, eight days before the hearing. In the circumstances, Miss Tynes submitted, the Claimant ought to receive fixed costs of the application in the sum of \$14,750.00 payable on a date certain and that the hearing of the substantive application by Notice of Motion be adjourned to the payment due date or to a date soon thereafter. Copies of the exchange of emails between the parties and a draft Bill of Costs was also laid over to the Court.

9. Mr. Harvey Tynes KC added that pursuant to Section 19 (3) of the Crown Proceedings Act states that, the Minister of Finance shall cause to be paid to the person entitled the sums due or to his attorneys, and not to his attorney if he is tax compliant. That the obligation to pay is between the Plaintiff and the Government, not the Government and Tynes & Tynes.
10. Mrs. Thompson-Williams submitted, in part, that the Defendants object to the award of costs. That the filing of the application was unnecessary in the circumstances. That the Defendants were prepared to pay the outstanding sums however the Plaintiff's Counsel was required by law pursuant to Section 3 of the Business License Act Ch. 329 of the Statute Laws of the Commonwealth of The Bahamas to obtain annually a Tax Compliant Certificate of Good Standing and that it refused to do so. Mrs. Thompson-Williams acknowledged that pursuant to Section 30 of the Supreme Court Act and Order 59 r 2(2) of the Rules of the Supreme Court that the Court had the discretion to order costs. The Defendants also accepted that in most cases the successful party is entitled to its costs, however, the application was premature and unnecessary and was unjustified in all the circumstances. That the Defendants acted in good faith and that the Financial Secretary

was following the law by requesting that Tynes & Tynes must be tax compliant. That Tynes & Tynes had failed or refused to comply by making annual application for a Business License and that had this application been made then the Finance Office would have processed the judgment debt much earlier than March 17, 2023. That the onus was on Tynes & Tynes to comply with these laws and that they refused and failed to do so. That the conduct of the Plaintiff lead to the delay in receiving damages for the Plaintiff as well as legal costs. That the enforcement proceedings were unnecessary and designed to avoid complying with the Business Licence Act. That the application is an abuse of the process of the Court and is intended and designed by the Plaintiff to obtain further legal costs and the judgment has been satisfied since March 17, 2023. Counsel asked the Court to direct each party to bear its own costs. The Court asked Counsel for the Defendants if she could say whether Tynes & Tynes became Tax compliant or whether she could speak to why the payment was made 2 weeks before the hearing and not in August of 2022. She did not know and could not speak to why the monies were recently paid.

11. Mr. Tynes KC responded by saying that the status of Tynes & Tynes had not changed over the past year or more in respect of the people at Inland Revenue. If Tynes & Tynes was not tax compliant then it is not compliant now. That eventually, as a result of this matter being put before the Court, the other side has acknowledged the importance of complying with a Judgment of the Court.
12. Mrs. Thompson-Williams referred the Court to **Glinton v The Prime Minister & Others** [2010] 3 BHS J No. 42; **Christie v Ingraham & Others; Chief Constable of Derbyshire v Goodman and Newton** EWHC Admin 390; **Fane v Fane** 1878 Ch D, p. 228, **Knight and Another v Clifton and Others** [1971] 2 All ER p. 376 and **Hobbs v Marlowe** [1977] 2 All E R p 241.

### **Analysis, Discussion and Conclusions**

13. The claim of contempt having now become moot the Claimant only pursues the prayer that the costs of and occasioned by the application be paid to the Claimant on a full indemnity basis.
14. In **Vance Tynes v The Attorney General 2014/CLE/qui/FP/016** , relying on the authority of **M v Home Office** [1994] 2 A.C. 377, which was also relied upon by Mr. Tynes KC, and Section 19 of the Crown Proceedings Act, I ruled that while a contempt order can be

made against the Crown, the Minister was not amenable to enforcement and punitive measures such as imprisonment or a fine or like enforcement measures sought in the Notice of Motion.

15. Nevertheless the question of how I should exercise my discretion in awarding costs remains a live issue.

## **The Law**

### **(Pursuant to the Rules of the Supreme Court)**

16. In **Vance Tynes v The Attorney General** I addressed the issue of costs at paragraphs 12-14 as follows:

#### **“Costs**

**12. The plaintiff claims costs on an indemnity basis in the Notice of Motion. The Plaintiff in his written submissions does not argue the point and at the hearing Miss Tynes somewhat resiled from this position but proffered to the Court a draft bill of costs which she submitted set out the Plaintiff’s reasonable costs reasonably incurred herein in the sum of \$14,800.00. The Defendant claims that the costs being claimed ought not to have been incurred because the application was misconceived and furthermore, they are unreasonable . She relied on the authority of Home Office and Lownds [2002] EWCA Civ 365 where Lord Woolf C.J. stated the principle applicable to costs as follows:**

*“CPR 44.4 provides for two bases of assessment. The first is the standard basis and the second is the indemnity basis. In both cases the court will not allow the recovery of costs which have been unreasonably incurred or costs which are unreasonable in amount. The important distinction between the standard basis and the indemnity basis is that on an assessment on the standard basis the court will only allow costs which are proportionate. CPR 44.4(2) provides:*

*‘Where the amount of costs is to be assessed on the standard basis the court will—*

*(a) only allow costs which are proportionate to the matters in issue; and*

*(b) resolve any doubt which it may have as to whether costs were unreasonably incurred or reasonable and proportionate in amount in favour of the paying party.”*

13. Mrs. Smith submitted that the application is unreasonable, and therefore, no costs should flow to the Plaintiff.

14. The Civil Rules 2000 draws a distinction in substance between a standard order for costs and an indemnity order for costs. The differences are set out in Order 62 r12 of the Civil Rules 2000. In a standard Order the onus is on the receiving party to establish that the costs were in a reasonable amount and were reasonably incurred. Any doubts are resolved in favour of the paying party. In the case of an indemnity order, all costs are allowed unless it can be shown that they were unreasonably incurred and of an unreasonable amount and doubts are resolved in favour of the receiving party. By implication the onus is on the paying party to show that the costs are unreasonable and unreasonably incurred in an indemnity order for costs. Mrs. Smith has satisfied me that the Plaintiff could not have in law been granted all of the reliefs sought in the Notice of Motion. But having been satisfied that were it not for the filing of the application the balance of the sums due would not have been paid practically on the eve of the hearing, the receiving party has established that the costs of commencing and prosecuting the application were reasonably incurred and ought to be awarded on a standard basis. I have reviewed the draft Bill of Costs and I am of the view that the sum of \$10,000.00 is a proportionate sum in the circumstances and order that the Defendant pay the Plaintiff's costs occasioned by the application in the said sum of \$10,000.00 within the next 45 days together with interest thereon at the statutory rate.”

17. The facts show that the sum was outstanding from the government to the Claimant from August 25, 2022, when the Certificate was served on the Attorney General. The plaintiff was not paid so he took legal action. Two weeks before the hearing the payment was made. It would appear, and I am satisfied, as in **Vance Tynes v The Attorney General**, that the money would not have been paid without court action.




18. The Defendant states that the delay in payment was due to the Claimant, having been asked to do so, not complying with Section 3 of the Business License Act, which was said by the Ministry of Finance to be a pre-condition for processing the claim.
19. No evidence was brought to my attention to show that fulfillment of Section 3 of the Business License Act was a precondition to collecting monies from the Government pursuant to an Order of the Supreme Court. In any event the Government eventually paid eight (8) days before the hearing, without Tynes & Tynes having complied with Section 3 of three (3) of the Business License Act. This is inconsistent with the claim that the Ministry of Finance could not process the payment unless there was compliance.
20. In the circumstances the Claimant acted reasonably in commencing and prosecuting claim process. I therefore exercise my discretion to order costs to the Claimant following the same parity of reasoning as in **Vance Tynes v The Attorney General** above.

**Disposition**

21. Having been satisfied that were it not for the filing of the application the balance of the sums due would not have been paid practically on the eve of the hearing, the receiving party has established that the costs of commencing and prosecuting the application were reasonably incurred and ought to be awarded on a standard basis. I have reviewed the draft Bill of Costs and I am of the view that the sum of \$10,000.00 is a proportionate sum in the circumstances and order that the Defendants pay the Claimant's costs occasioned by the application in the said sum of \$10,000.00 within the next 45 days together with interest thereon at the statutory rate.

This 5<sup>th</sup> day of April, A.D. 2023

  
Petra M. Hanna-Adderley  
Judge