Neutral Citation Number: [2020] EWHC 3195 (Fam)

Case No: 2019/0154

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/11/2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

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Between :

Mohammed Sarfraz Ali	**Appellant**
- and -	
Anisha Taj	
Nazma Taj	
Sabrina Taj	
Zarah Taj	**Respondents**

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Ms Clare Stanley QC (instructed by **Gentle Mathias LLP**) for the **Appellant**
Mr Thomas Dumont QC (instructed by **Ashfords LLP**) for the **Respondents**

Hearing dates: 4 December 2019

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 27 November 2020

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Mr Justice MacDonald:

INTRODUCTION

1. On 7 February 2020 I handed down judgment on the appellant's appeal summons against an order made by District Registrar Murphy on 7 August 2019 requiring the appellant to exhibit on oath a true and perfect inventory of the estate of Mohammed Taj (hereafter 'the Deceased') and render a true and just account of the administration of the estate of the deceased. The appellant, who is the younger brother of the Deceased, acts as an Executor of the estate of the Deceased, along with Mohamed Arshad Khan, who is the brother in law of the Deceased's second wife. The Respondents to the appeal are the persons entitled to a share in the residuary of the Deceased's estate under the terms of his will, namely the Deceased's widow and three children from his first marriage

2. Having considered carefully the comprehensive submissions of Ms Clare Stanley of Queen's Counsel on behalf of the appellant and Mr Thomas Dumont of Queen's Counsel on behalf of the respondents, and having approached the matter as a re-hearing, I dismissed the appellant's appeal summons. That decision was reported as *Ali v Taj (Probate: Inventory and Account)* [2020] EWHC 213 (Fam).

3. I am now concerned with the question of costs. I offer my apologies to the parties for the length of time it has taken to give this judgment on the issue of costs. I am only able to pray in aid as an explanation for the delay the unprecedented level of work created by the COVID-19 pandemic, the impact of which started to be felt and thereafter grew exponentially shortly after I handed down my substantive judgment in this matter. In particular, I should make clear that both Mr Dumont and Ms Stanley provided their written submissions as to costs on time as directed. The delay in providing this decision lies entirely with the court.

4. The issue in respect of costs is a narrow one in circumstances where the appellant does not dispute that he must pay the costs of the respondents. Within this context, the only issues between the parties are (a) whether those costs should be assessed on the standard basis, or on the indemnity basis and (b) the quantum of our costs.

SUBMISSIONS

5. Conceding that costs must follow the event, Ms Stanley QC submits that the award of costs should be made on the standard basis and advances the following submissions with respect to the quantum of costs within the context of, as submitted by Ms Stanley, the respondents' solicitors incurring the bulk of their costs in relation to the summons before the District Registrar:

    i) The amount for attendance on clients is excessive in circumstances where the respondents to the appeal were not required to put in further evidence. In the circumstances, 13.6 hours liaising with their clients is reasonable for the purposes of preparing the appeal and merits a reduction £3,888 to £2,500, i.e. a reduction of £1,388.

    ii) The amount of time claimed for attendance on opponents of 10 hours is excessive in circumstances where the appellant's solicitors spent 2.5 hours in

relation to such correspondence. This merits a reduction from £1,697 to £750, i.e. a reduction of £940.

iii) The amount of time claimed on attendances on others of 7.5 hours is excessive given that preparing the brief was been charged for separately, where the majority relates to time spent by a partner and where the Appellant's solicitors spent 3.5 hours on this element. This merits a reduction by half from £2,032 to £1,016, i.e. a reduction of £1,016.

iv) The amount of time claimed for attendance on documents is excessive in circumstances where the perusal of the appeal summons, grounds of appeal, and appellant's first Skeleton Argument should have taken no more than 30 minutes, not 3 hours by reference to the appellant's solicitors spending 30 minutes reviewing Mr Dumont's Skeleton Argument. This merits a reduction from £840 to £300, i.e. a reduction of £540.

v) The amount of time claimed for the preparation of leading counsel's brief of 13 hours by three fee earners is grossly excessive and unreasonable as demonstrated by the fact it is said to have cost £2,392 to prepare a brief for which leading counsel's fees were £6,000 or 40% of the brief fee. This merits a reduction to £1,200 (equivalent to four partner hours, i.e. a reduction of £1,192.

vi) The time claimed of 4.5 hours for a partner to prepare a bundle index is likewise grossly excessive and in any event unnecessary where it was not the respondents' appeal. The appellant's solicitors simply needed to review the index and make suggested changes, which an associate could have completed. This merits a reduction on the fees from £1,757 to £530, i.e. a reduction of £1,227.

vii) The time claimed of 4.5 hours to prepare and update their Statement of Costs is excessive in circumstances where it took the appellant's solicitor 1 hour. This merits a reduction from £889, to £300, i.e. a reduction of £589.

6. Within this context, Ms Stanley submits that, standing back and asking what did the respondents actually need to do ahead of the hearing before this court, one sees matters which the respondents might be happy paying for, but not matters which it is reasonable for the appellant to be ordered to pay for.

7. Ms Stanley further submits that lest it be said that the appellant's statement of costs was far higher than the respondents', the appellant was not enabled to participate below so the appellant's costs of the appeal included the need for him to 'catch up' ahead of the appeal hearing.

8. Mr Dumont submits that the court should order costs on an indemnity basis. In seeking their costs on an indemnity basis and in the sum of £33,328.50 (inclusive of VAT), through Mr Dumont the respondents make the following submissions:

i) The costs of the appeal below were "effectively" awarded on an indemnity basis given that the entire costs claimed were awarded.

ii) The executor's obligation to account is referred to in the substantive judgment of the court as being of "cardinal importance".

iii) The Administration of Estates Act 1925 s. 25(b) expressly requires an executor to render and inventory and account when required to do so by the court.

iv) The appellant swore, when he applied for a grant of probate, that he would produce an account of the Estate when required to do so by the court.

v) The appellant first refused to produce an account, and then promised an account, but failed to produce it within the time promised.

vi) When the appellant did produce an account, it was hopelessly inadequate. Had the account that he rendered been adequate, no order and no appeal would have been necessary.

vii) The court, with all this information before it, required him to produce an account by order dated 7 August 2019.

viii) The appellant should then have accepted his statutory obligation, which he had sworn to perform.

ix) Instead the appellant chose to put his beneficiaries, on whose behalf he was administering the Estate, to the trouble, delay and expense of an appeal.

x) The appellant's appeal was in essence an appeal on a technicality, not on the merits, based on the procedure which resulted in the order made against him. Within this context, in circumstances where the appeal was by way of re-hearing, there was no prospect of any technical deficiency in the court proceedings below, resulting in the appellant not rendering an account.

9. Within the foregoing context, Mr Dumont relies on the observations of this court as set out at paragraph 74 of my substantive judgment as further justifying the awarding of costs on an indemnity basis:

> "The Respondent beneficiaries, the Deceased's widow and three children from his first marriage, have now been without a proper understanding of the extent of and the administration of their inheritance for over a decade. It would be unconscionable for this situation to pertain any longer. It is high time that the Appellant discharged his cardinal duty to provide when called upon an inventory of the estate and an account of his administration of that estate."

10. With respect to the points made by Ms Stanley regarding the quantum of the costs, Mr Dumont replies as follows:

i) The attendance on clients is not excessive where there are four clients who make up two parts of the family, the Deceased's widow, and her step-children from an earlier marriage. Each side needed to be kept informed, and have matters explained to them within the context of an appeal that was a convoluted process, with a large amount of evidence submitted by the appellant, including at four witness statements and in which the appellant

chose to put in issue the validity of the Will he had proved. The evidence needed to be reviewed with the clients, and instructions needed to be taken on the wide-ranging allegations raised by the appellant in case any further evidence should be necessary. The time that was needed to review and explain matters of this kind to two groups of lay clients should not be underestimated and no reduction should be made.

ii) The time for attendance on opponents is not excessive. The time spent was in fact 7 hours, has been logged and reflects the letters and emails which the respondents' solicitors had to write to the appellant's solicitors. There is no suggestion that the correspondence has been other than appropriate in the circumstances. By using Grade C and D fee-earners the fees were kept down. No reduction should be made.

iii) The time spent on attendance of others is not excessive. Correspondence with counsel was necessarily full. The solicitors took on a greater proportion of the groundwork than counsel, as is shown by the ratio of counsel's fees in the bill. Because the appellant's solicitors had not agreed the hearing bundle with the respondents' solicitors, substantial correspondence was necessary with the court. No reduction should be made.

iv) The amount of time spent on attendance on documents is not excessive. The respondents' solicitors actually worked on the papers received, rather than simply reading them. The grounds of appeal and first skeleton required careful consideration, rather than simply being forwarded to counsel for his more expensive time to be spent unnecessarily. Two Skeleton Arguments were filed, notwithstanding no direction for a second Skeleton Argument, totalling 29 pages.

v) The time spent on drafting leading counsel's brief was not excessive. A fully-prepared brief resulted in a saving of counsel's time in preparation, so that the respondents' counsel only charged £6000 whereas the (three) counsel instructed for the Appellant at various stages charged £33,000. No reduction should be made.

vi) The respondents were required to supply their own index for the appeal hearing and that was done on the advice of leading counsel. The appellant's evidence was submitted in a haphazard and ill-prepared fashion. It contained very little of the matter before the Registrar, nor the crucial correspondence leading up to the application for an inventory and account. No reductions should be made.

vii) The time for preparing the statement of costs was not excessive. The statement of costs was a difficult document to prepare. Care had to be taken to ensure that costs for the underlying dispute with the Appellant as executor and the litigation over the statutory demand for his costs liability should not be included. Within this context however, Mr Dumont recognises that time spent on preparing costs schedules is a particularly sensitive issue and that the respondents' will accept a 15% reduction to £750, i.e. a reduction of £139.

11. Within this context, Mr Dumont submits that respondents' costs are £27,818.92 plus VAT (£33,328.50 inclusive of VAT), which is significantly less than the appellant spent on counsel alone. Further, Mr Dumont points to the fact that the respondents were threatened with a claim for the appellant's costs of £57,965 plus VAT, more than twice the amount of the respondents' costs. Within this context, Mr Dumont notes that the appellant is only offering £16,284 plus VAT, which equates to a mere 28% of the costs spent by the appellant. Within this context, Mr Dumont argues that the appellant's submission that the respondents' solicitors' costs should be reduced by 60% is unsustainable.

DISCUSSION

12. I am satisfied that the appellant should pay the costs of the respondents on an indemnity basis in the sum of £27,818.92 plus VAT (£33,328.50 inclusive of VAT). My reasons for so deciding are as follows.

13. An order for costs to be assessed on the indemnity basis is made to reflect the court's disapproval of the conduct of the paying party, either before or during proceedings (see CPR 44.2(5)). Within this context, I accept the submissions made by Mr Dumont on behalf of the respondents' to justify the payment of costs on an indemnity basis.

14. As I noted in my substantive judgment, at the point of the appeal, there was no dispute that the Administration of Estates Act 1925 s. 25(b) expressly requires an executor to render and inventory and account when required to do so by the court, that the appellant had sworn, when he applied for a grant of probate, that he would produce an account of the Estate when required to do so by the court and that the appellant had, ultimately, accepted this duty and had promised to produce an account. Within this context, instead of accepting the order of the District Registrar that required appellant do what he accepted he had a duty to do, that he had promised to do and which he had delayed for over a decade in doing, he decided to put the respondents to further expense, delay and inconvenience by requiring them to meet an appeal of dubious merit. All this notwithstanding that, as I again observed in the judgment, the appellant's obligation to account was of cardinal importance, that the Respondent beneficiaries, the Deceased's widow and three children from his first marriage, had been without a proper understanding of the extent of and the administration of their inheritance for over a decade and that it was unconscionable for this situation to pertain any longer.

15. Within this context, I am entirely satisfied that it is not appropriate that the respondents' should be at risk of having to bear any of the costs that they were required to expend in meeting the appellant's appeal. This is a clear case for the awarding of costs on an indemnity basis.

16. Finally, with respect to the quantum of costs, I am not in any event persuaded by the submissions carefully made by Ms Stanley regarding the heads of costs set out above.

CONCLUSION

17. In conclusion, I order the appellant to pay the costs of the respondent on an indemnity basis in the sum of £27,818.92 plus VAT (£33,328.50 inclusive of VAT) payable within 28 days of the date of the order.

18. That is my judgment.