



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**Cause No. FSD 104 of 2011 (RPJ)**

**IN THE MATTER OF THE ESTATE OF JOHN SAMUEL HINDS (DECEASED AND THE  
ESTATE OF ESTHER ROSALIND HINDS (DECEASED))**

**AND IN THE MATTER OF THE GRAND COURT RULES ORDER 85**

**BETWEEN:**

**PHILLIP BRADLEY HINDS**

**APPELLANT**

**AND**

- (1) CLIVE MONTRIVELLE HINDS, ADMINISTRATOR OF THE ESTATE OF  
ESTHER ROSALIND HINDS**  
**(2) CLIVE MONTRIVELLE HINDS**  
**(3) JOHN LEVERETTE HINDS III**  
**(4) THOMAS ANTHONY HINDS**  
**(5) SHARON HINDS**  
**(6) NORAHS KCOTSOB LIMITED**

**RESPONDENTS**

**ON THE PAPERS**

Before: The Hon. Justice Raj Parker

Draft Judgment  
Circulated: 9 April 2021

Judgment Delivered: 16 April 2021

**HEADNOTE**

*Costs -taxing officer's decision to extend time-review by the court-jurisdiction under GCR Order 62 r.30-Order 62r.21(1)-Overriding Objective-inherent jurisdiction-requirement of compelling reasons-discretion-overall justice of the case.*

**Introduction**

1. This case in relation to costs orders arises from a dispute between members of the Hinds family.
2. The litigation concerned claims by the Plaintiff (PH) against his three half-brothers, (Clive, John and Thomas) D1-D4, and against his sister in law D5 (Sharon), and her Company (NKL)



D6, in connexion with the estate of his mother (ERH), which she had inherited from his father. ERH died on 11 July 2010, well over a decade ago.

3. The court summarised the background in its recent judgment dated 25 February 2021(unreported ,Parker J):

*“8. The proceedings and the subsequent appeal related to the Cayman estate of PH’s father (JSH) who died intestate on 4 April 1978. He was survived by his second wife (ERH) and by their only son, PH. D2 (Clive) D3 (John) and D4 (Thomas) were the three children of ERH by her first marriage.*

*9. She passed away on 11 July 2010 and letters of administration of her estate were granted to D1 (Clive) in his capacity as administrator, also named as D2 (Clive) in his personal capacity. D5 (Sharon) is CH’s wife and D6 is a company owned and controlled by her.*

*10. PH’s claim was that various assets, said to be the assets of the estate of ERH, were at the time of ERH’s death undistributed and still assets of JSH’s estate, of which PH was the sole beneficiary.*

*11. Following a 7 day trial and a separate costs hearing, by judgments dated 9 July 2014 and 5 December 2014 Foster J dismissed all of PH’s claims and ordered him to pay the defendant’s costs on the indemnity basis.*

*12. PH’s appeal to the Cayman Islands Court of Appeal (CICA) was successful and the order for costs against him was overturned.*

*13. No order for the costs of the proceedings was made by CICA, save that **D5 and D6’s costs of trial were to be paid by PH. These latter costs awarded against PH are not the subject of this application, although they formed part of the communications between the relevant attorneys and the Taxing Officer.***

*14. However, **PH was awarded 50% of his costs of the appeal to be paid by D2 to D4. These costs in the sum of US\$271,122.30 are pursued in this application, as well as the costs awarded pursuant to the two interim orders.**” (my emphasis)*

4. Following a review the court decided that, notwithstanding the serious delay to PH’s taxation of his costs, it should proceed for the reasons principally set out at paragraph 62:

*“62. I have decided that notwithstanding the delays I have set out above, the just result in this case is to allow PH’s taxation of his costs to proceed for the following reasons.*

- a) This is not a case where there was a failure to commence taxation proceedings at all. Bills of costs were served by PH on 28 January 2016 to allow time for the paying parties objections to be prepared and lodged in accordance with Order 62.*
- b) Those proceedings were first extended for three weeks by the Taxing Officer at PH’s request and then stayed pending the outcome of the Privy Council case at the paying parties request .The paying parties*



*have been aware since then of the details of the costs claimed by PH and indeed objections were prepared by the paying parties.*

- c) *This was complicated and hard fought litigation which has had successes and reversals up to the Court of Appeal and which resulted in professional negligence proceedings against one set of attorneys, which is said to have been PH's primary preoccupation once the stay had been agreed 19. The costs awarded by the court have reflected the justice of the proceedings at the various stages at which they were awarded.*
- d) *Overall the litigation has taken more than 7 years to conclude and the administration of the estate is apparently still incomplete. The interlocutory costs orders were agreed by consent in 2012 and 2013 and the Court of Appeal order was made in late 2015 20. It is noted that Taxation is taking place many years after the events which gave rise to the costs orders in question in any case, even if it should have been commenced in 2017. This does not by itself excuse the further delays but is relevant context.*
- e) *Examining the important question of prejudice to the paying parties due to the lapse of time does not result in the court refusing to exercise its discretion in favour of PH. The argument before the court is in general terms. It indicates, by Tayler Jones letter of 2 March 2020 to the Taxing Officer that one of their clients became unemployed and although he then had alternative employment his salary was roughly 60% of his former salary. Another of their clients had bought a property and taken on a significant mortgage whilst at the same time has had to sell a property at a significant loss and had also opened business in 2017 and recorded significant losses from that business in that tax year. No financial details were provided and the two clients were not identified. The third was not mentioned. Inevitably delays of the kind that have occurred will result in parties having changed financial circumstances, but it seems to me that the issue of prejudice is not sufficiently made out in this case so as to disqualify PH from proceeding with taxation in the circumstances. The three defendants' liability for costs is joint and several. The paying parties have not yet had their liability for such costs determined. It was notified to them in 2016 by PH and all parties should expect that this liability for PH's costs is now dealt with by taxation of PH's costs.*
- f) *The amount being claimed in taxation, being just short of US\$300,000, is a considerable sum. Most of that sum (US\$ 271,122.30) relates to costs awarded in the appeal proceedings which resulted in the overturning of a first instance decision which established PH's rights as a beneficiary to his late father's estate<sup>21</sup>.*
- g) *It would not in my view be just to deprive PH of the ability to have those costs taxed even though there have been serious delays in this case, which to some extent were caused by the changes in attorneys and the misunderstandings that they had formed, notably in relation to the stay . “*



5. Reference was made (see § 13) in the judgment to D5 and D6's costs of trial which were awarded by CICA. In relation to those costs the court said this.

*“27. Compliance issues arose not only with PH’s costs, but also relating to D5 and D6’ costs of trial awarded by CICA, which similarly concerned disagreements about extensions of time and stays agreed by the parties.*

*“28. D5 and D6’s costs of trial seem to have been somewhat of a bargaining chip between the attorneys. They do not concern this application which is only in respect of PH’s costs, and I say nothing about them. “*

### **Present dispute**

6. The attorneys for D5 and D6 wrote to the taxing officer on 23 February 2021 requesting that they too should be allowed to proceed to taxation on the basis that the draft judgment that had been circulated had found that PH’s bill of costs could proceed to taxation and that in the interests of justice both taxations should now be allowed to proceed.

7. On the same day the taxing officer responded saying:

*“.....I agree for their [D5 and D6] applications to be taxed at this time as indicated by the judge for the Plaintiff request”.*

8. On 24 February 2021 the attorneys for PH wrote to the taxing officer saying:

*“With utmost respect, it would appear procedurally irregular a year later, to grant parties who have never applied for any extension of time for taxation, an extension of time of four and a half years without (i)the filing of an application; (ii) inviting submissions; (iii)requiring evidence or (iv)taking into consideration the delay of a further year and [D5 and D6’s] failure to take advantage of what you stated would be the final opportunity given to file such application .”*

9. They invited the taxing officer to reconsider her decision and wrote to Judicial Administration on the same day pointing out the issues which had arisen which may have been because the taxing officer had thought that the court had granted permission for both taxations to proceed.

10. On 25 February 2021 by email to the parties and the taxing officer the court made it clear that the judgment did *not* deal with a review by D5 and D6. It was only PH who had made the application.

11. The court said that it was entirely a matter for the taxing officer as to whether D5 and D6 should be allowed to proceed to a taxation of their costs having regard to the arguments made by the respective attorneys in the recent correspondence.

12. The taxing officer responded on 25 February 2021.

*“On the bases as set out by Hon Justice Parker in relation to the above captioned, please note that taxation for [D5 and D6] should proceed without prejudice. “*



13. The attorneys for PH asked the taxing officer to clarify what she meant by “*On the bases as set out by Hon Justice Parker ....*” since the court had made it clear that the judgment did not apply to D5 and D6’s costs.
14. The taxing officer responded to both sets of attorneys on the same day saying:

*“Please be advise (sic) that all bills are to be filed with the Courts for Taxation for your client and for [D5 and D6] to ensure that there is no prejudice, to the parties in this matter.”*
15. PE sought a review of that decision by way of summons dated 11 March 2021 and this court granted a stay of the taxation of D5 and D6’s costs pending the outcome of the review.
16. The matter proceeded ‘on the papers’ and by way of written submissions.

### **Written submissions of the parties**

#### **PH submissions**

17. PH argued that the decision of the taxing officer was procedurally flawed, perverse and inequitable.
18. There is no reason for D5 and D6 to benefit from PH’s successful review of the taxing officer’s decision in respect of his costs. D5 and D6 did not make an application for an extension and did not review the taxing officer’s decision to summarily dismiss the parties respective taxations, having given all parties ‘*one more opportunity*’ to file applications out of time on 24 February 2020.
19. PH did so on 2 March 2020 and successfully reviewed her decision which had been to refuse the application. By contrast D5 and D6 did not apply for an extension or review her decision.
20. In fact D5 and D6 opposed PH’s application. This, it is argued, was an election made tactically by D5 and D6 due to the greater sum of costs likely to be payable by D2 to D4 to PH.
21. D5 and D6 were prepared to stand by as long as PH’s costs were disallowed as being out of time.
22. Furthermore, since PH’s costs are payable by different defendants (D2 -D4, not D5 and D6,) this was not a ‘set off’ situation for D5 and D6.
23. There is a no inherent unfairness in D5 and D6 not being permitted to recover their costs from PH where D2 to D4 are to pay PH’s costs in these circumstances.
24. PH, D2-D4, and D5 and D6 are separate and distinct parties who were separately represented in the Grand Court proceedings and separate and distinct awards of costs were made. There was no possibility of a set off or any applicable principle of ‘*pari passu*’.



25. The position of the D5 and D6 was critically different because their bill of costs were served out of time, no extension was applied for and no review of the taxing officer's decision was made. D5 and D6's delay is a year longer than that of PH.
26. As to potential quantum, PH also submitted that D5 and D6's claim for the costs of trial is less than half of the costs of the appeal claimed by PH.
27. Furthermore PH has incurred significant irrecoverable costs in applying for permission to the taxing officer and then to the court to review that decision.
28. D5 and D6 chose not to do so and should not be allowed to benefit from PH's successful review.
29. Moreover D5 and D6 have never provided any compelling reasons to explain the delay and to justify permission for taxation to proceed.
30. It would not meet the overall justice of the case to allow D5 and D6's taxation to proceed.
31. The decision of the taxing officer to allow D5 and D6 to proceed is inequitable, clearly prejudicial to PH, and should be reviewed.

#### **D5 and D6 submissions**

32. D5 and D6 argued that the court did not have jurisdiction to review the taxing officer's decision. Order 62 rule 30 did not apply as there has been no amount awarded, which is the only basis for a review under that rule.
33. Administrative or procedural decisions taken by the taxing officer, where a wide discretion is enjoyed, are not generally susceptible to review by the court. Only substantive or final decisions are. This is good policy to prevent multiple challenges and satellite litigation.
34. Even if the court did have jurisdiction, it should as a matter of discretion uphold the taxing officer's decision in order to do justice between the parties.
35. There is a link to PH as he is the paying party in respect of D5 and D6's costs and the receiving party in respect of his bill of costs, which is payable by D2-D4. He should not be entitled to have D5 and D6's costs shut out against him in circumstances where he has been permitted to proceed to recover his costs in respect of the same delay.
36. Pending the Privy Council appeal and thereafter Sharon adopted a 'let sleeping dogs lie' approach. If D5 and D6 were guilty of delay it is no more blameworthy than that of PH.
37. The court has allowed PH's application to proceed on grounds that equally apply to D5 and D6, namely: this was not a case where there was a failure to commence taxation proceedings at all<sup>1</sup> ; proceedings were first extended by the taxing officer and then stayed pending the outcome of the Privy Council case; the paying parties have been aware of the details of the

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<sup>1</sup> PH commenced taxation on 28 January 2016 within time. D5 and D6 seem to have commenced by serving their bill on 1 March 2016 which was out of time.





costs claimed and objections to those costs were prepared; this was complicated and hard fought litigation and the costs reflected the justice of the proceedings; any taxation will be taking place many years after the events in question in any event; questions of prejudice were not determinative; the amount being claimed in taxation is considerable; it would not be just to disallow taxation even though there have been serious delays. The reasons for the delay were the same.

38. The decision of the taxing officer, who has had conduct of the proceedings for the past four years or so, should be upheld.

## Decision

### Jurisdiction

39. I have decided that the court does have jurisdiction to review the taxing officer's decision pursuant to GCR order 62.

40. GCR Order 62 rule 30 (1) provides :

*”Any party who is **dissatisfied with the amount of any cost certificate** may apply to a judge to review the taxing officer's decision”.* (my emphasis).

41. There is clearly no amount of costs yet awarded in this case, merely permission granted by the taxing officer to D5 and D6 bring proceedings out of time.
42. It seems to me that it would be unfair and undesirable to allow applications to be reviewed where there has been a refusal by the taxing officer to extend time where the court has assumed jurisdiction because no costs can be awarded, but not to allow a challenge a taxing officer's decision to grant an extension of time<sup>2</sup>.
43. There is no logical distinction between challenging a decision to not allow a taxation to proceed because it was out of time and challenging a decision to allow a taxation to proceed when it was also out of time. Each can be described as a substantive decision which affects the litigants in question.
44. Indeed if the court did not have jurisdiction PH could justifiably say that he would be dissatisfied with any costs subsequently awarded by way of costs certificate because the taxing officer was wrong to allow the taxation to proceed.
45. It would be disproportionate and a waste of resources to wait until the outcome of the taxation process and a certificate to be first issued before a taxing officer's decision to extend time can be reviewed, which might result in a reversal of the process.
46. Indeed as it would not be made within 14 days of the decision of the taxing officer an extension of time under GCR Order 62 r.30 (3) would have to be applied for. It is clearly desirable to have challenges heard in a reasonable period of time without seeking more time.

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<sup>2</sup> See § 42 of judgment of 25 February 2021

47. The court's jurisdiction over the grant or the refusal of extensions of time is confirmed by GCR Order 62 rule 21 (1) where it is provided that the court *or* the taxing officer may extend time to commence proceedings for taxation or to do anything in or in connection with such proceedings.



*21. (1) The Court or the taxing officer may extend the period within which a party is required by or under this Order to commence proceedings for taxation or within which a party is required to do anything in or in connection with such proceedings on such terms (if any) as it thinks just and the Court or the taxing officer may do so although the application for such extension is not made until after the expiration of that period. (2) Where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with proceedings for taxation a taxing officer may specify the period within which the thing is to be done. (my emphasis).*

48. It is also instructive to consider the Overriding Objective to ensure the substantive law is rendered effective, the proceedings are normally advanced and not delayed, and to save expense.
49. Interpreting these rules in accordance with the Overriding Objective 2.1, which provides that the court must seek to give effect to it when it applies or exercises any discretion given to it under the rules, or interprets the meaning of any rule, reinforces my conclusion that the court has jurisdiction in this case based upon the rules.
50. If that is wrong, in my view the court has an inherent jurisdiction to review a taxing officer's decision in a case where it is just and in keeping with the Overriding Objective to do so.
51. This is so whether a review is sought of a decision before a taxation takes place, or after it has taken place. Indeed there may be cases where a review is sought during the course of a taxation.
52. Provided that it is a proper case for review so that the matter is dealt with justly and the substantive law is rendered effective, to save time and expense in accordance with the Overriding Objective the court may exercise its inherent supervisory jurisdiction and consider the merits *de novo*.

### **Approach**

53. Here the question is whether it would meet the overall justice of the case to allow D5 and D6's taxation to proceed as decided by the taxing officer. The court is not fettered by the taxing officer's decision, but of course must give due regard to it. The taxing officer had no duty to give reasons and did not do so other than to indicate that neither party was to be prejudiced.

### **Analysis**

54. Submissions were made by both parties as to the amount which might be awarded upon taxation.





55. The amount claimed by D5 and D6 as their costs of trial is US\$139,133.85, which is a significant sum, albeit not as large as the sum claimed by PH for his costs of the appeal (just under US\$300,000).
56. The quantum claimed is not a factor which weighs heavily and there may be arguments deployed on a taxation which considerably change the amounts properly claimable.
57. As to the delay, in support of the written submissions of D5 and D6, Sharon has submitted an affidavit <sup>3</sup>which states that D5 adopted a ‘*let sleeping dogs lie*’ approach pending the Privy Council appeal, even though D5 and D6 were not parties to it.
58. She says at paragraph 18
- ‘Any of the legal fees of the Plaintiff that are recoverable will have to be paid by [D2, D3 and D4]. [D2] is my husband. On the other hand, any of the legal fees that [D5 and D6] recover will go to me .Nevertheless I took the decision that I would forego any costs that I could recover if that meant an end to these proceedings, which have caused everyone involved no end of inconvenience and distress for over a decade now .We just want it all to end and so I took no action whilst the Plaintiff took no action ’(my emphasis)*
59. The court has considerable sympathy with that sentiment.
60. I however accept, as PH submitted, that an important distinction is that unlike PH, where this court has overturned the decision of the taxing officer not to allow the taxation of his costs to proceed, D5 and D6 did not apply for an extension of time or permission to commence taxation out of time, or indeed to review the taxing officer’s decision.
61. On 24 February 2020 the taxing officer allowed the parties “*one more opportunity to put their application out of time ....we therefore invite you to file your applications within seven days from the date of this email, submissions no later than 3:00 PM on the 2nd of March 2020*’.
62. On 2nd March 2020 the attorneys to D5 and D6 wrote to the taxing officer accepting the taxing officer’s current assessment that the taxations were out of time and were liable to be summarily dismissed absent compelling reasons. They accepted that if PE’s application failed to clear that hurdle then any application for an extension by D5 and D6 “*may well be summarily dismissed.*’
63. Only if she found compelling reasons should the taxing officer consider the ‘critical issue’ of prejudice which they then elaborated upon concerning D2, D3 and D4 (for whom they were also instructed).
62. PH’s attorney had filed a lengthy affidavit in support of his application for taxation out of time<sup>4</sup>, which the taxing officer dismissed on 1 June 2020.
63. The explanation given by D5 and D6 as to why they did not submit an affidavit and make an application seeking time as well is that they wished to avoid duplication and to save costs.

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<sup>3</sup> Dated 29 March 2021

<sup>4</sup> *Affidavit of Tetrina Rivers 28 February 2020, see §§ 15-41 of Judgment of 25 February 2021.*



64. On 16 October 2020 the attorneys for D5 and D6 wrote to the taxing officer concerning the application for review by PH. The position they then took was that if PH's taxation was confirmed by the court to be out of time then D5 and D6 would also accept that their application for taxation would also be out of time stating *'The same facts apply'*.
65. The communication then said:
- "By the same token, if the Review Application overturns your decision and allows the Plaintiff's application to proceed, then the same reasons outlined by the Plaintiff in support of his application should apply to [D5 and D6]."*
66. It went on to say that since either both taxations should proceed or both are struck out, they did not believe much could be achieved by filing an additional review application on behalf of D5 and D6, but would do so if the court was of the view that it should be filed or heard at the same time. The court is not aware that such a view was conveyed and no application was in fact made.
67. Turning to the taxing officer's decision on 25 February 2021, no specific reasons are given for the decision to allow both taxations to now proceed, but she says in her communication to *'ensure there is no prejudice to the parties'*.
68. Interpreting that ,the taxing officer has decided that both parties should be treated equally, once the court had decided to allow PH's taxation to proceed, no doubt in an to attempt to meet the overall justice of the case.
69. However, as can be seen in the reasoning in the judgment of this court PH's application had certain special features pertinent to PH and which do not apply to D5 and D6.
70. One of the considerations taken into account was that the delay in PH's case was to some extent caused by the changes in his attorneys and the misunderstandings they had formed in relation to the stay.
71. Another extenuating factor was the professional negligence proceedings against PH's previous attorneys which was his primary preoccupation once the stay had been agreed.
72. In addition, and of significance no compelling reasons have been advanced by D5 and D6.
73. In fact the only reason advanced is that PH's taxation has been allowed to proceed and there should be equality of treatment.

### **Decision**

74. As this court has said<sup>5</sup> compelling reasons need to be shown as to why the court should allow a taxation to proceed which is outside the time limited by the rules, which are to be complied with in order to promote certainty and fairness.

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<sup>5</sup> §§61 Judgment dated 25 February 2021



75. This is especially so in circumstances where a serious amount of time, measured in years, has elapsed. The fact that PH has been successful cannot be a good reason, let alone a compelling reason for D5 and D6 to be allowed to proceed to taxation in the circumstances of this case. No other reason has been advanced by D5 and D6.
76. PH was entitled to reasonably believe given the lapse of time and opportunities for challenge not taken up by D5 and D6, that D5 and D6 were content to let the matter rest. He should not now be prejudiced by an unexpected and unjustified outcome.
77. It would appear that D5 and D6 would have been content to let things rest if PH had not been successful in overturning the taxing officer's decision (the 'let sleeping dogs lie' strategy). They only expressed the intention that if PH was successful to rely on the reasons which he advanced which they now say apply equally to them. This could fairly be described as an attempting to a 'have your cake and eat it" strategy.
78. The position of the parties is also different in material respects. There are a number of factual distinctions as set out in the submissions referred to above which were pointed out in PH 's submissions which I accept.
79. It seems to me that there is no principled reason as to why D5 and D6 should be treated in the same way as PH.
80. In addition there is the unfairness of the outcome to PH of D5 and D6 choosing to 'let sleeping dogs lie 'and then attempt to 'have their cake and eat it 'by receiving the result that has been argued for and obtained by PH at some no doubt considerable cost and effort on his part.
81. I have therefore decided in my discretion that the taxation of D5 and D6's costs should not proceed and so direct.

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**THE HON. RAJ PARKER**  
**JUDGE OF THE GRAND COURT**