Neutral Citation No. [2012] NIQB 24

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Judgment: approved by the Court for handing down

*(subject to editorial corrections)**

Delivered: **19/ 04/ 12 & 14/05/12**

FINAL

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISON

BETWEEN:

ULSTER BANK IRELAND LIMITED
and
ULSTER BANK LIMITED (As Security Trustee for the Finance Parties)

Plaintiffs/Respondents:

-and-

MICHAEL ADRIAN TAGGART

-and-

JOHN DESMOND TAGGART

Defendants/Appellants:

McCLOSKEY J

Introduction

[1] These are separate, inter-elated actions in which the Plaintiffs sue the Defendants (hereinafter described as "*the Appellants*") on foot of guarantees allegedly executed by the Appellants on 8th August 2007 and 30th November 2007 respectively. The Plaintiffs successfully applied for summary judgment in both cases. The Master made orders in the Plaintiffs' favour in the amounts of £5 million and €4.3 million. The Appellants challenge these orders before this court.

[2] These appeals were originally listed for hearing in June 2011. The position adopted by the Appellants then, and subsequently, was that the hearing should be deferred for an assortment of reasons. The course of these appeal proceedings and the background to the most recent events are rehearsed in the ruling which I made on 29th September 2011: see [2011] NIQB 85. I refer particularly to paragraphs [3] – [8]. Paragraph [8] in particular speaks volumes and I reproduce it here:

> **"***[8] In the course of his submissions on behalf of the Defendants urging this court to exercise its statutory power of remittal to the Master, Mr. Ronan Lavery (of counsel) agreed with the court that, from his clients' perspective, the menu of unfinished interlocutory and evidence gathering steps potentially includes the following:*
>
> - *Continued execution of the "Khanna" subpoena.*
> - *Further inter-partes discovery.*
> - *Uncompleted litigation in Florida, USA.*
> - *The possible issue of a witness subpoena.*
> - *Possible further affidavits.*
> - *The spectre of cross-examination of deponents.*
> - *The possibility of third party proceedings.*
> - *The progress of the litigation in another action (Taggart –v- Ulster Bank), where no Defence has been served.*
>
> *This extensive list weighed heavily with the court against the background and progress of these proceedings generally. It appeared to this court incongruous that the framework of this litigation should be so apparently uncertain and incomplete in circumstances where the rundown period culminating in the first instance hearing had been, on any showing, a lengthy one – see paragraph [6] above - and taking into account that such hearing culminated in a final order, determinative of the litigation, subject only to appeal to this court."*

In paragraph [9], the ruling continued:

> *"[9] I also formed the view that the Defendants have been dilatory in their conduct of these proceedings generally, in*

> *circumstances where delayed progress was plainly in their interests and antithetical to the interests of the Plaintiffs. In addition, I considered that the intrinsic vagueness and uncertainty of the Defendants' current position was underlined emphatically by the Plaintiffs' submission relating to the person identified as Richard Ennis and the abject paucity of detail relating to him. I also took into account that any remittal of the matter to the Master would give rise to increased delay and cost. Furthermore, I was satisfied that the Defendants will suffer no prejudice by the continuation of the appeal before this court in preference to a remittal to the Master. Finally, it seemed to me plainly undesirable to remit to the Master the uncertain, demonstrably incomplete, evolving and unpredictable litigation scenario portrayed to this court on behalf of the Defendants. The Master has fully discharged his function and it now falls to this court to discharge its appellate function."*

In paragraph [10], the ruling referred to the *"protracted and unsatisfactory background"*. Paragraph [11] continued:

> *"Furthermore, I must have regard to the further delay and cost which an appeal to the Court of Appeal would generate and, in this respect, I take notice of the extant Court of Appeal calendar. Any fair and objective review of the conduct of these proceedings to date suggests that the Defendants have been dilatory throughout. This court is instinctively reluctant to take any course which would, without good reason, add to the delays to date, increase costs and postpone the final day of reckoning. No good reason, in my opinion, exists."*

[3] The next landmark in the appeal proceedings was the listing of these appeals for hearing on 23rd February 2012. This hearing was aborted, in simple terms, due to the extremely late production of further affidavit evidence by the Appellants. An order for costs was made against the Appellants. Furthermore, one of the terms of the adjournment ordered was that the Plaintiffs' legal representatives would be given preference with regard to the rescheduled appeal hearing date. On 28 February 2012, I informed *both parties'* counsel in court that the rescheduled hearing date would be 29th March 2012. On the rescheduled hearing date, the court convened accordingly. In the event, the court was driven to adjourn the hearing. All parties agreed that an adjournment was the only feasible course in the circumstances. This further ruling determines the two issues which were reserved, namely (a) costs and (b) the future programming and progress of the appeals

Costs

[4] In determining the issue of costs, I refer to, but do not repeat, the following:

(a) The court's aforementioned written ruling on 29th September 2011.

(b) The court's *ex tempore* ruling on 22nd February 2012.

(c) All of the observations which I made during the wasted hearing on 29th March 2012: these have been transcribed (at the expense of the Appellants' legal representatives).

The sole reason for the latest adjournment of these appeals, on 29th March 2012, was the chaotic state of the papers lodged in the Court Office which had accumulated during a period of some nine months and were, as is customary, delivered to the designated judge by office staff one day in advance of the scheduled hearing date. The reigning chaos which prevailed was articulated fully by me in the transcript of the hearing on 29th March 2012 and I do not repeat same. On that date, all of the issues and factors bearing on this state of affairs were fully ventilated. I received submissions on behalf of all parties. Subsequently, in accordance with the court's directions, the Appellants' solicitor filed an affidavit and the Respondents' solicitors replied by letter. I have considered these materials in full.

[5] By Section 59 of the Judicature (NI) Act 1978, the court exercises a discretion in all matters of costs. Against the background outlined above, I take into account the following factors in particular:

(a) The sole responsibility for the preparation, presentation and filing of the appeal bundles for hearing rested at all times on the Appellants' solicitors. This is not in dispute.

(b) In discharging this responsibility, the Appellants' solicitors were obliged to communicate timeously and efficaciously with the Respondents' solicitors, with a view to ensuring that there was no dispute or uncertainty about the compilation and presentation of the appeal hearing bundles. This obligation was of acute significance in the present case, having regard to the highly unsatisfactory history of the litigation outlined above.

(c) Based on all the evidence, I find that this did not occur. Rather than according the utmost priority to this discrete issue, the Appellants' solicitors opted to invest large quantities of time, energy and cost in confrontational correspondence with the Respondents' solicitors, in

circumstances crying out for direct telephonic and face to face communication, with a view to ensuring that the appeal hearing bundles were pristine, satisfactory to all parties and compliant with the court's directions.

(d) The Appellants' solicitors were under a comparable duty to communicate timeously and efficaciously with court staff. Specifically, there was a discrete obligation to give concrete, unequivocal and comprehensive instructions and guidance to members of court staff.

(e) While the evidence demonstrates that there was some communication between the Appellants' solicitors and court staff, it is clear that this consisted of a brief and belated verbal exchange with a random official. This occurred extremely late in the day, was bereft of the necessary substance and quality and was inadequate and unsatisfactory in consequence.

(f) Court staff were left to wrestle with longstanding bundles, updated bundles, entirely new bundles (without indexing or pagination), unbound documents and a bombardment of correspondence. Furthermore, court staff were not informed that the Appellants' solicitors had, unilaterally and without authorisation or direction from the court, prepared and filed a substantial number of additional bundles.

(g) With a view to ensuring certainty and clarity and simultaneously avoiding uncertainty and confusion, the Appellants' solicitors were under an obvious, specific duty to remove obsolete bundles and papers from the Court Office. If they considered a direction from the court necessary for this purpose, they should have sought same. There was no removal of obsolete papers from the materials destined for the designated judge and no direction of any kind was sought.

(h) The uncertainty and confusion thus generated were exacerbated by a relative deluge of correspondence copied by the Appellants' solicitors to the Court Office during a compressed period prior to the scheduled hearing date.

(i) Ultimately, the papers which, by instruction of the Appellants' solicitors to court staff, were delivered to me consisted of ten bundles and other sundry items. Four of these were unauthorised bundles, prepared on the initiative of the Appellants' solicitors without permission or direction of the court.

[6] In ***Re McDonagh's Application*** [2010] NIQB 139, in a somewhat different litigation context, the judgment of this court lamented the undesirable consequences which can be generated by solicitors' correspondence in certain circumstances. The first is that of polarisation. The second, related to the first, is that it discourages telephonic and face to face meetings between the firms concerned. The judgment further cautioned that this can give rise to –

> "*… clear disharmony with the contemporary approach to the resolution of* ***all*** *… litigious disputes and the over-riding objective enshrined in Order 1, Rule 1A of the Rules of the Court of Judicature.*"

See paragraph [16]. The sentiments in this passage apply fully to the present context.

[7] In every sphere of litigation, the responsibility for the preparation of bundles for hearing in compliance with the court's directions and the relevant Practice Direction rests on the Plaintiffs, Applicant or Appellant – in other words, the moving party. Specific aspects of this overarching responsibility include duties to ensure that the compilation and presentation of the bundles are of high quality; to refrain from filing additional, unauthorised bundles; to ensure that, presentationally, bundles are as reader friendly as possible – particularly by the attachment of clear and coherent facial and spinal identifications; to retrieve from the Court Office – or, as a minimum, to separate and clearly identify – obsolete bundles and all other materials which do not form part of the bundles for hearing; where necessary, to seek further directions from the designated judge timeously; and to take steps to ensure that the designated judge receives only the authorised bundles for hearing. These are all features of a non-delegable responsibility which is absolute in its terms. In contemporary litigation, its importance cannot be over-emphasized. In many instances, sensible and proactive communication and arrangements between the parties' respective solicitors contributes to the timeous and efficacious discharge of this responsibility, sometimes with consensually shared duties and, simultaneously, can help to save costs. Furthermore, appropriate and timeous communication with the court office serves to ensure that any doubts or queries relating to the trial bundles are swiftly clarified by the designated judge.

[8] In the present case, the responsibility which I have outlined above was all the more acute, given the protracted nature of the appeal proceedings and, with the passage of time, the generation of substantial new materials requiring revision, reconfiguration and updating of the hearing bundles. To describe this responsibility as a matter of the greatest priority is an understatement. Ultimately, the papers with which court officials and the designated judge were left to wrestle consisted of the following:

(a) Four lever arch files which, at the adjournment which ensued on 29th March 2012 (*supra*), were identified in court as the main appeal hearing bundles. [These were the only authorised bundles].

(b) A new lever arch file ("Book 4"), entitled "Specific Discovery".

(c) A new lever arch file ("Book 5"), entitled "Pleadings in Related Action 2011/2153".

(d) Two further lever arch files entitled, respectively, "Exhibits in Chronological Order, October 2004 – December 2007" and "Exhibits in Chronological Order, 2008 to Date".

(e) Another new lever arch file entitled "Inter-Partes Correspondence, December 2008 to 15th February 2012".

(f) A further new lever arch file entitled "Additional Inter-Partes Correspondence, 16th February to 29th March 2012".

(g) An assortment of scattered, unbound and unindexed papers, constituted mainly by letters and skeleton arguments.

(h) Three separate lever arch files entitled "Appeal Bundle", filed by the Plaintiffs' solicitors.

(i) The Plaintiffs' Bundle of Authorities.

(j) Sundry unbound papers consisting of skeleton arguments and items of correspondence.

(k) A small bound booklet of papers (containing mainly skeleton arguments) which I had previously compiled for myself in an attempt to make some sense of the vast quantities of materials which had been progressively accumulating.

This ungainly, voluminous mass of materials was delivered to my chambers in two unroadworthy boxes on the eve of hearing.

[9] To summarise, the Appellants' solicitors ultimately filed ten bundles of papers in the Court Office. These were squeezed into two large boxes. The solicitors instructed court staff to deliver all of these materials to the designated judge. Only four of the ten bundles accorded with the directions of the court. These four could not be quickly and conveniently identified by me because they had no markings on their respective spines. The two new "Exhibits in Chronological Order" bundles had no index or pagination. Of

the new correspondence bundles, one had pagination (consisting of 448 pages), but no index. The other had neither index nor pagination. At the wasted hearing on 29th March 2012, counsel for the Appellants confirmed that there was no intention to make reference to any of the last four-mentioned bundles in argument.

[10] Referring directly to some of the averments contained in the affidavit sworn by the Appellants' solicitor:

(a) At the first review hearing conducted on 9th June 2011 this court did **not** criticise any named solicitor of any named firm of solicitors. It will be necessary for the Appellants' solicitors to write to the firm concerned [copy to the court office], correcting and withdrawing the averments in paragraph [2] of the affidavit.

(b) The affidavit confirms the highly specific and meticulous nature of the directions given by the court on 9th June 2011 regarding compilation of the appeal bundles.

(c) The averment that this court directed on 8th September 2011 that **all** *inter-partes* correspondence be copied to the court office betrays a fundamental misunderstanding of the import of the direction given. Instant clarification of this would have been available, if requested.

(d) The focus in the affidavit of the Appellants' solicitor on the *content* of the *inter-partes* correspondence is misconceived.

(e) It is evident that the Plaintiffs' solicitors did not grasp the thrust and purpose of the comments in the court's reserved ruling of 27th September 2011.

(f) When delivered to me, the boxes did indeed haemorrhage parts of their contents. This is unsurprising, given that they were overloaded and not fit for purpose.

(g) As I stated at the wasted hearing on 29th March 2011, the papers were indisputably in an appalling mess fundamentally because four authorised appeal hearing bundles had, without permission of the court, swollen to ten, duly augmented by other materials.

(h) It is clear that a fundamental *inter-partes* issue regarding the composition of the appeal hearing bundles materialised on 23rd March 2012. It was incumbent on the Appellants' solicitors to bring this to the attention of the court immediately. They did not do so, immediately or at all.

(i) When the Appellants' solicitors made their visit to the Court Office, apparently designed to deal with the appeal hearing bundles, there was only one remaining working day before the scheduled hearing date.

(j) The letter dated 26th March 2012 from the Appellants' solicitors, delivered to the Court Office one working day in advance of the scheduled hearing date, makes no reference to the court's initial directions regarding the compilation of appeal hearing bundles, fails to disclose the unauthorised nature of the six new bundles and fails to disclose the *inter-partes* dispute regarding bundles which had materialised the previous week. It also makes no reference to unbound and unindexed materials.

[11] The combination of factors listed above brought about a most sorry state of affairs giving rise to a dreadful waste of court time and resources, wasted costs on behalf of the Respondents and still further delay in finalising this litigation - all against the highly unsatisfactory background, outlined above. The responsibility on the Appellants' solicitors, as formulated above, was exclusive and inalienable. The conclusion that they failed to discharge this responsibility is irresistible. In my view, the sole question for the court is whether the abysmal failure to discharge this responsibility is excusable. I have considered fully the explanations and justifications proffered in the affidavit sworn by the Appellants' solicitors. Having done so, I conclude that the serial failings identified above are inexplicable and unjustifiable, individually and collectively.

[12] I repeat my observation during the course of the wasted hearing on 29th March 2012 that, based on all available evidence, the Appellants themselves cannot be faulted for any of the defaults or failings identified above. I would add that the process of the court cannot and must not be misused in this way. The acts and defaults identified above were, in my view, positively antithetical to the over-riding objective enshrined in Order 1, Rule 1A of the Rules of the Court of Judicature, which gives primacy to the efficient and expeditious administration of justice. Furthermore, there was a disturbing failure to co-operate with, and to recognise the authority of, the court. The citadel of the overriding objective has been further shaken by the need to write this purely satellite judgment.

Outworkings of the Above Conclusions

[13] Order 62, Rule 11 of the Rules of the Court of Judicature provides:

> *"11. - (1) Subject to the following provisions of this rule, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or have*

been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may-

(a) order-

(i) the solicitor whom it considers to be responsible (whether personally or through a servant or agent) to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; or

(ii) the solicitor personally to indemnify such other parties against costs payable by them; and

(iii) the costs as between the solicitor and his client to be disallowed; or

(b) direct the Taxing Master to enquire into the matter and report to the Court, and upon receiving such a report the Court may make such order under sub-paragraph (a) as it thinks fit.

(2) When conducting an enquiry pursuant to a direction under paragraph (1)(b) the Taxing Master shall have all the powers and duties of the Court under paragraphs (4), (5), (6) and (8) of this rule.

(3) Instead of proceeding under paragraph (1) of this rule the Court may refer the matter to the Taxing Master, in which case the Taxing Master shall deal with the matter under paragraphs (2) and (3) of rule 28.

(4) Subject to paragraph (5), before an order may be made under paragraph (1)(a) of this rule the Court shall give the solicitor a reasonable opportunity to appear and show cause why an order should not be made.

(5) The Court shall not be obliged to give the solicitor a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the solicitor-

(a) fails to attend in person or by a proper representative;

(b) fails to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account; or

(c) otherwise fails to proceed.

(6) The Court may direct the Official Solicitor to attend and take part in any proceedings or inquiry under this rule and the Court shall make such order as to the payment of the Official Solicitor's costs as it thinks fit.

(7) If in any proceedings a party who is represented by a solicitor fails pay the fees or any part of the fees prescribed by the Orders as to Court fees then, on the application of the Official Solicitor by summons, the Court may order the solicitor personally to pay that amount in the manner so prescribed and to pay the Official Solicitor's costs of the application.

(8) The Court may direct that notice of any proceedings or order against a solicitor under this rule be given to his client in such a manner as may be specified in the direction."

The governing principles are contained in ***Gupta –v- Comer*** [1991] 1 QB 629. The purpose of making a wasted costs order against a solicitor in pursuance of this rule is compensatory and not punitive. Furthermore, the making of such an order is not dependent upon the demonstration of serious dereliction of duty, gross misconduct or gross negligence or neglect. The kind of default engaging the application of this rule is illustrated in ***O'Neill –v- Nicholson*** [1995] NIJB 11.

[14] Order 62, Rule 11 is plainly engaged in the present circumstances. While the solicitors concerned have already been granted – and have availed of – an opportunity to make their case, through counsel's submissions on 29th March 2012 and in their subsequent affidavit, I shall defer finalising this issue until they have been given a further opportunity (in the words of the rule) "*… to appear and show cause why an order should not be made*". The case will be listed at 9.45am on 27th April 2012 for this purpose. In passing, I reiterate the observation which I made to Mr. Levey (appearing with Mr. Ronan Lavery QC on behalf of the Appellants) that it would seem inappropriate for either of the Appellants' counsel to appear for the purpose of making representations to the court pursuant to Rule 11(4). The reason for this is that in every sphere of litigation instructed counsel are engaged to represent the client, rather than the instructing solicitor. Furthermore, elementary principles of professional ethics dictate that counsel must at all times exercise care in to avoid situations where conflicting interests or duties may arise.

The Further Programming of these Appeals

[15] The issues to be considered under this heading *include* the following:

(a) The previous order for costs thrown away against the Appellants.

(b) The blamelessness of the Appellants in the acts, defaults and events described in this ruling.

(c) The consideration that the Appellants are exercising a *right* of appeals and their associated right of access to a court under the common law (per ***R –v- Lord Chancellor, ex parte Witham*** [1998] QB 575) and in accordance with Article 6 ECHR.

(d) The question of whether the appeals proceedings should be stayed, for a finite or indefinite period, until the Appellants have discharged their liability under the previous costs thrown away order.

(e) The court's final ruling on costs arising out of the wasted hearing on 29th March 2012.

It would plainly be premature to determine the programming issue at this stage.

The Denouement

[16] The parties addressed the court on the totality of the above issues both in writing and at a further hearing on 10th May 2012. The court has considered the parties' written and oral submissions. In ***Ridehalgh –v- Horsefield*** [1994] EWCA. Civ 40 the Master of the Rolls recorded, at the outset of the judgment of the court, that the question to be determined was:

> "*In what circumstances should the court make a wasted costs order in favour of one party to litigation against the legal representative (counsel or solicitor) of the other?*"

Sir Thomas Bingham MR described this as "*a question of great and growing significance*". The judgment of the English Court of Appeal proceeded to give guidance. Historically, the power exercised by the High Court in these matters was one of the repository of powers belonging to its inherent jurisdiction. In due course, this was regulated by Order 62, Rule 8(1) RSC, which empowered the court to make a wasted costs order –

> "*… where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or any other misconduct or default.*"

This Rule was subsequently amended , by the introduction of Order 62, Rule 11, embracing the following revised terminology:

> "*…where it appears to the court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition …*".

It is apparent that the Northern Ireland counterpart – paragraph [13], *supra* – is modelled *verbatim* on this provision. Later in England and Wales the wasted costs regime became statutory, per Section 51 [6] and [7] of the Supreme Court Act 1981, a somewhat more elaborate model which was not extended to Northern Ireland.

[17] In ***Ridehalgh,*** the Master of the Rolls said the following:

> "*Our legal system, developed over many centuries, rests on the principle that the interests of justice are on the whole best served if parties in dispute, each represented by solicitors and counsel, take cases incapable of compromise to court for decision by an independent and neutral judge, before whom their relationship is essentially antagonistic : each is determined to win, and prepares and presents his case so as to defeat his opponent and achieve a favourable result.*"

His Lordship then identified two competing interests in tension with each other:

> *"The argument we have heard discloses a tension between two important public interests. One is that lawyers should not be deterred from pursuing their clients' interests by fear of incurring a personal liability to their clients' opponents; that they should not be penalised by orders to pay costs without a fair opportunity to defend themselves; that wasted costs orders should not become a back-door means of recovering costs not otherwise recoverable against a legally-aided or impoverished litigant; and that the remedy should not grow unchecked to become more damaging than the disease.*

The other public interest, recently and clearly affirmed by Act of Parliament, is that litigants should not be financially prejudiced by the unjustifiable conduct of litigation by their or their opponents' lawyers. The reconciliation of these public interests is our task in these appeals. Full weight must be given to the first of these public interests, but the wasted costs jurisdiction must not be emasculated."

Next, it was noted that the decision of the House of Lords in ***Myers –v- Rothfield*** [1939] 1 KB 109 (at pp. 115, 117) is authority for five fundamental propositions:

(1) The court's jurisdiction to make a wasted costs order against a solicitor is quite distinct from the disciplinary jurisdiction exercised over solicitors.
(2) Whereas a disciplinary order against a solicitor requires a finding that he has been personally guilty of serious professional misconduct the making of a wasted costs order does not.
(3) The court's jurisdiction to make a wasted costs order against a solicitor is founded on breach of the duty owed by the solicitor to the court to perform his duty as an officer of the court in promoting within his own sphere the cause of justice.
(4) To show a breach of that duty it is not necessary to establish dishonesty, criminal conduct, personal obliquity or behaviour such as would warrant striking a solicitor off the roll. While mere mistake or error of judgment would not justify an order, misconduct, default or even negligence is enough if the negligence is serious or gross.
(5) The jurisdiction is compensatory and not merely punitive."

The Court of Appeal held that in determining whether to make a wasted costs order, a three stage test is to be applied:

" (1) Has the legal representative of whom complaint is made acted improperly, unreasonably or negligently?

(2) If so, did such conduct cause the applicant to incur unnecessary costs?
(3) If so, is it in all the circumstances just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs? (If so, the costs to be met must be specified and, in a criminal case, the amount of the costs)."

Subsequently, in ***Medcalf –v- Mardell*** [2003] 1 AC 120, the House of Lords endorsed the correctness of this approach. Notably, Lord Steyn observed that an allegation of "*improper*" misconduct is the most serious of the three charges which the rule permits: see paragraph [35]. Lord Rodger placed some emphasis on the discretionary nature of the power which the court exercises in cases of this kind. He observed, *inter alia*:

> "*All kinds of mitigatory circumstances may be relevant to the exercise of that discretion*".

[18] I consider that the conditions for the making of a wasted costs order against the Appellants' solicitor are satisfied in the present case. In this respect, I refer to, but to not repeat, the litigation history rehearsed in paragraphs [1] – [4] above and the analysis, findings and conclusions contained in paragraphs [5] – [12]. These impel to the further conclusion that costs have been "*… wasted by failure to conduct proceedings with reasonable competence and expedition*", in the language of Order 62, Rule 11. However, following anxious reflection and not without some reluctance, I decline to make a wasted costs order against the Appellants' solicitors. The sole reason for this is my assessment that, based on my intimate familiarity with this litigation, such an order would, as a matter of probability, be antithetical to the values and standards enshrined in the over-riding objective, as it would be likely to generate further disruption, uncertainty, delay and, quite possibly, increased cost. I also take into account the position of the Appellants. Their solicitor, an officer of the court, has represented unequivocally in open court that his clients are most anxious to have these appeals heard and finally determined. I record this representation accordingly. Taking into account, *inter alia*, the principle of equality of arms, I attribute some weight to the consideration that, in a complex case which, when finally decided, will have highly serious consequences for the Appellants, their interests are best served by the preservation of a scenario in which their present legal representation arrangements continue. Accordingly, in the special circumstances of this case I decline to make a wasted costs order against the Appellants' solicitor.

[19] The court has been asked by the Respondents' legal representatives, in terms, to add some teeth to the order for costs thrown away made against the Appellants in this court on 22nd February 2012. I direct that such costs be paid by 31st May 2012 or, in default, be referred to taxation by 14th June 2012 at latest.

[20] I reaffirm the court's *ex tempore* ruling on 10th May 2012 that these appeals are relisted for hearing on 14th and 15th June 2012. I reiterate the court's further direction that (a) the authorised appeal bundles are to be

properly presented and (b) all unauthorised bundles are to be recovered from the Court Office. The time limit for compliance with this direction is 18th May 2012.