

Judgment 70/2004

**Guernsey International Trustees Ltd and
Bennett v Virani
- Royal Court (Civil Action File 495)
- 16th April 2004**

Taxation of costs in Royal Court and Court of Appeal proceedings – Royal Court (Costs and Fees) Rules, 2000 and Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) Rules, 1964 – full and partial indemnity principle – litigant in person not entitled to recover an allowance for time spent in preparing or presenting his case – travel costs from Kenya and living expenses in the UK while pursuing the litigation – recovery of retainer fees charged by Kenyan Advocates.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 16th day of April, 2004 before Patrick John Talbot, Esquire, Q.C. Lieutenant Bailiff; sitting alone

GUERNSEY INTERNATIONAL TRUSTEES LIMITED

and

TIM BENNETT

v

PRAPHULBALA VIRANI

AND

PRAPHULBALA VIRANI

v

GUERNSEY INTERNATIONAL TRUSTEES LIMITED

and

TIM BENNETT

WHEREAS on 15th April, 2004 the Lieutenant Bailiff considered an application by the Defendants for the taxation of the costs in these proceedings both before the Royal Court and the Court of Appeal and heard thereon Mrs. P. N. Virani in person and, with the leave of the Court, appearing by her husband Mr. Nazirali Virani and Advocate S. J. Bailey Counsel for Guernsey International Trustees Limited and Tim Bennett and whereas the Lieutenant Bailiff ORDERED that all sums in relation to these matters held in the Courts Security for Costs Account be released to Mrs. Virani forthwith;

The Lieutenant Bailiff this day gave judgment in the terms attached hereto and AWARDED costs in favour of the said Mrs. Virani in the sum of £242,725.68 and further ORDERED that the costs of these taxation proceedings should be met by the said Tim Bennett and Guernsey International Trustees Limited.

S M D ROSS
Her Majesty's Deputy Greffier

OFFICIAL TRANSCRIPT

FRIDAY 16TH APRIL 2004

IN LA COUR ORDINAIRE

Before

Patrick John Talbot, Esq., QC

Lieutenant Bailiff

VIRANI v. TIM BENNETT & GSY. INT. TRUSTEES

Taxation of Costs

(2.30 p.m. Hearing commences)

(Discussion re e-mail from Kenya)

LIEUTENANT BAILIFF: Have we got any accounts, Mr. Virani?

MR. VIRANI: On the accounts I was advised that the auditor was not there yesterday, and that he is trying to obtain the accounts as soon as possible and what I told my wife, that if need be, for that particular part of the judgment, you can reserve your judgment, if need be, if you require to do so.

LIEUTENANT BAILIFF: Alright, well I'll ponder on that whilst I'm getting there.

MR. VIRANI: I don't know what he has stated there actually, I don't have the sight of the e-mail or anything; this is what he told me.

H.M. DEPUTY GREFFIER: It's a letter sir, and one is from Mr. Jowhal, I don't think that will print.

LIEUTENANT BAILIFF: May I have a look on the screen?

(The Lieutenant Bailiff looks at e-mail on screen)

(Long pause)

LIEUTENANT BAILIFF: There's lots of stuff about Mr. Mutungi's affidavit and various submissions.

MR. VIRANI: I think that letter has come as well as a fax, I think, that's that same attachment he sent, I talked to him at lunchtime.

LIEUTENANT BAILIFF: Okay, thank you. Now, Miss Bailey, do you want to have a look at these, I've taken them into account. I can tell you they are not going to change the way in which I give judgment on this particular part of the case.

ADVOCATE BAILEY: I wouldn't want to waste your time then, sir.

LIEUTENANT BAILIFF: And that's not a point, Mr. Virani, that necessarily goes against you.

MR. VIRANI: I have no objections sir.

LIEUTENANT BAILIFF: I know it's difficult, I'm grateful, and I'm perfectly happy to receive them on that basis. You can have a look afterwards if you want to, Miss Bailey.

ADVOCATE BAILEY: Thank you sir.

LIEUTENANT BAILIFF: Is there anything else that you've submitted that you want to make sure I've read apart from the letter?

MR. VIRANI: Really it's just that my concern is that since we did not go into every detail of the affidavits and all the costs sessions, I hope that your judgment has looked at all these matters.

LIEUTENANT BAILIFF: I've looked at the lot.

MR. VIRANI: Then I am happy, thank you.

LIEUTENANT BAILIFF: I now propose to give my decisions and reasons on the two costs taxations, the costs of the Royal Court proceedings and the costs of the proceedings before the Court of Appeal.

1. The background to these two sets of proceedings can be found, in sufficient detail, in the judgment of the Court of Appeal delivered on 4th December 2002 and in my judgment delivered on 1st August 2003.
2. On 16th September 2003 I heard an application from the Virani parties ("the Viranis") for the costs of the proceedings and that the costs should be taxed on a full indemnity basis. On the same day I ordered that the former trustees should pay the costs of the Viranis on the full indemnity basis under Rule 48(2) of the Royal Court Civil Rules 1989 and I gave my reasons for making this order at the start of the sitting of the Court on 17th September 2003.
3. The Bailiff has appointed me, for all purposes of the taxations, as the person to conduct the taxation of the costs of the proceedings, and of the hearing before the Court of Appeal, under Rule 6(1)(b) of the Royal Court (Costs and Fees) Rules, 2000 and the Court of Appeal (Civil Division) Costs and Fees (Guernsey) Rules 2002, to which, unless it is inappropriate, I shall refer jointly as "the Costs and Fees Rules".
4. Since the appeal was not "finally determined or disposed of" before the coming into force of the Court of Appeal Costs and Fees Rules on 1st January 2003, I consider that those Rules apply to the taxation of all the costs of the Court of Appeal hearing, although judgment was delivered on 4th December 2002. A post-judgment application in relation to leave to appeal was heard by the Court of Appeal on 18th March 2003 and, in my judgment, it was only when that application was finally dealt with by the Court of Appeal that it could be said that the appeal had been "finally determined or disposed of". In case I am wrong in this conclusion, there seems to me to be no real difference between the results of taxing the costs of, and incidental to, the appeal under the 2002 Rules or taxing them under the group of rules referred to in Rule 12 of the 2002 Rules which were in force until 31st December 2002, since the taxation of these costs was ordered to be on the full indemnity basis in para. 63 of the judgment of the Court of Appeal dated 4th December 2002.
5. For the sake of completeness I record that I am taxing the costs of the two sets of proceedings to include the costs of all applications before the Bailiff, the then Deputy Bailiff Day, and

Lieutenant Bailiff Hancox and before me on 24th – 28th March of 2003 which led to my judgment dated 1st August 2003.

6. The provisions of the Costs and Fees Rules govern the conduct of the taxations by me and, as is to be expected, contain many provisions of direct relevance. There are only a few differences between the wording of the respective Royal Court and Court of Appeal Rules and, where necessary, I shall draw attention to any such difference when I reach the appropriate part of my decision.
7. It is important, first, to note the definition of “costs”, which is in the following form:

“Costs” in Part II of these Rules, includes –

- (a) recoverable Advocates’ fees and other recoverable amounts;
- (b) costs on a full or partial indemnity basis”.

In the Royal Court Costs and Fees Rules the reference to costs on a full indemnity basis has these words added “under Rule 48 of the Royal Court Civil Rules, 1989”.

8. The hearing of the taxations commenced on 16th September 2003 (after I had made the order for costs and the order for taxation of the Viranis’ costs on the full indemnity basis) and continued until 18th September 2003, when I gave directions for the making of affidavit evidence by the Viranis, and any other deponents who they wished to swear affidavits on their behalf, including affidavit evidence of Kenyan law and practice relating to the remuneration of Kenyan advocates and, most importantly, evidence vouching the costs, expenses and disbursements claimed by the Viranis.
9. The hearing resumed on 15th April 2004 and was concluded today, 16th April 2004. The Viranis lodged a very large amount of affidavit evidence and original vouchers, much of it rather late. In my judgment, it is important to remember that it is the responsibility of the Viranis, as the persons whose costs are to be taxed, to “submit [his] bill of costs and all necessary papers and vouchers” (Rule 7(3)). It must, therefore, follow that if they were, for instance, to submit bill of costs without such “necessary papers and vouchers”, the Court would be almost bound to require them to comply with Rule 7(3) within a time limit, which is, indeed, what I directed the Viranis to do on 18th September 2003 at the end of the first part of the hearing of the taxations.
10. Although the Viranis have, after one agreed extension of time and also well after that extension had expired, lodged masses of documents, nearly all of which are original documents, they have also tabulated or otherwise collated most of the contents of the documents lodged; their approach has, however, in my view, increased the time taken to complete the taxations. Making proper allowances for the fact that the Viranis have appeared in Court as litigants in person (although they acted with the help of their Kenyan Advocate Mr. Salpat Singh. Jowhal, to whom I shall refer as “Mr. Jowhal”, on 16th – 18th September 2003), I consider that their approach to the lodging of vouchers and other documents has imposed a very heavy burden on the Court. In my view, it is the Viranis to address arguments on the basis of the documents and vouchers presented to the Court rather than for the Court itself (or, indeed the former trustees) to have to wade through the documents lodged seeking to find an answer to any questions which need deciding.

11. I now refer to Rule 2 of the Costs and Fees Rules, by which, where material, is in the following terms:-

“2(1) In civil proceedings, the maximum Advocates’ fees recoverable shall be ... the costs of and incidental to the proceedings which have been incurred by the party to whom costs have been awarded and which are reasonable in amount and reasonably incurred.

(2) The maximum Advocates’ fees recoverable shall (unless the Court orders otherwise) be limited to £150 per hour.”

[As a result of sub-rule (3) the current rate for the year 2003 is £167 per hour]

“(4)The provisions of this Rule are without prejudice to the powers of the Court under Rule 48(3) of the Royal Court Civil Rules, 1989(b) (payment of costs of security therefore on a full or partial indemnity basis).

(5)

(6) In relation to costs awarded on a full or partial indemnity basis, all costs shall be allowed except insofar as they are unreasonable in amount or unreasonably incurred; and any doubts which a person appointed under Rule 6 to conduct a taxation may have as to whether such costs are reasonable in amount or reasonably incurred shall be resolved in favour of the receiving party.”

I shall, therefore, where appropriate or necessary, resolve any such doubts which I may entertain in favour of the Viranis in accordance with Rule 2(6) of the Royal Court Rules and Rule 3(6) of the Court of Appeal Rules.

12. Other provisions of the Costs and Fees Rules are also relevant for this taxation, including Rule 3 of the Royal Court Rules which relates to allowances of witnesses attending to give evidence (whether or not they actually give evidence); and it is to be noted in this respect that Rule 11(1) of the Royal Court Rules provides that in relation to civil proceedings “witness” includes a party to the proceedings. This is relevant here since, in the proceedings brought by the former trustees, Mr. and Mrs. Virani, and their son and daughter i.e. all the Virani family, were each joined as separate defendants. I add that Mrs. Virani, as the protector with power to remove the former trustees from office was the only plaintiff in the proceedings brought by her against the former trustees.
13. The application of Rule 3(3)(a) and (b) to the facts of this case has occupied a reasonably large part of the hearing of the taxations which I have conducted, and I shall return to deal with witnesses’ allowances and allowances generally later and, in particular, to the Viranis’ claims for travelling, lodging and subsistence allowances and their very substantial claims for loss of remuneration (to which in their capacity as witnesses Rule 3(3)(a) specifically relates).
14. Other questions arise on the taxations relating to the purchase of law books and legal periodicals by the Viranis for their own use and for the use of their Kenyan Advocate Mr. Jowhal. In this regard it seems to me that Rule 4(1) of the Royal Court Costs and Fees Rules applies, and I shall consider that Rule and the definition of “items” in Rule 11(1) later in this judgment.
15. Before I turn to the specific sums claimed by the Viranis as costs I consider it is necessary for me to make a few general points.
16. First, the taxations relate to taxation of costs, and not to damages. There is no power vested either in the Court of Appeal or in the Royal Court to award anything other than costs properly

so-called; that means costs, expenses and disbursements. This is an important distinction in this case since several of the claims for “costs” made by the Viranis, some of which I dismissed on 17th and 18th September 2003, are clearly claims for damages relating to alleged breaches of trust by the former trustees or alleged negligent mal-administration of the assets of the Virani trusts by the former trustees or matters arising out of trust accounts prepared in an un-audited form by the former trustees and dated, I think, 12th September 2003, which simply do not arise for decision on these taxations. If Mrs. Virani were to decide to pursue any such claims, she would have to do so, in my judgment, by way of fresh proceedings issued by her against the former trustees or fresh proceedings brought by the new trustee, Cannon Trust Company Limited (to which I shall refer as “Cannon”) against the former trustees. I need say nothing more at this stage about this general point other than to stress that I am not intending to encourage or discourage either Mrs. Virani or Cannon in relation to any such course of action.

17. Secondly, I am appointed to tax the costs of the Viranis, and not of any other legal person, including costs of any company controlled by any one or more of them or in which they may have a beneficial interest as shareholders or in which they may be either directors with an expectation of director’s fees or employees of a company, unless, that is, the financial terms of their employment have been adversely affected, in a contractual way, as a result of the Viranis’ considerable personal involvement in these proceedings and attendance at the Courts in Guernsey to give evidence and address the Courts.
18. It is also necessary for me to say a few words about the indemnity principle. Costs awarded on the full indemnity basis are awarded so as to indemnify the party who is successful for the costs, expenses and disbursements he has incurred in the litigation. This may not amount to a full indemnity, since Rule 2(6) of the Royal Court Rules and Rule 3(6) of the Court of Appeal Rules impose a possible limitation on recovery in the following terms:-

“... all costs shall be allowed except insofar as they are unreasonable in amount or unreasonably incurred.”.

So, as is said on page 171 of Cook on Costs 2003, relating to the assessment of costs in England and Wales under the Civil Procedure Rules, “the winner (the receiving party) may have agreed an unreasonable charging rate with his solicitor; unreasonable work may have been done; .. and unnecessary disbursements may have been incurred. All of these are matters over which the loser (the paying party) had no control and it would be wrong for the receiving party to be indemnified for them”.

19. I agree with the approach taken by Cook and consider that this approach applies equally to the taxation of costs in Guernsey on the full indemnity basis or the partial indemnity basis.
20. An issue arose in the English courts on the application of the indemnity principle in the late 1990’s whether the application of the indemnity principle should be on an “item by item” basis or whether it only provided a “global cap, so that the receiving party may recover on assessment uplifted hourly expense rates which are judged to be reasonable, even if they exceed the rates that the solicitors were entitled to receive from their client under a contentious business agreement, provided that the total amount allowed between the parties did not exceed the total amount the solicitors were entitled to recover from their client” (Cook p.173). The English courts came down in favour of the item by item approach in General of Berne Insurance Co. v. Jardine [1998] 2 All ER 301 and Nederlandse Reassurance Groep Holding NV v.

Bacon & Woodrow [1998] 2 Costs LR 32, both decisions of the English Court of Appeal. On this question also I shall adopt the “item by item” basis of taxation which I regard as preferable to, and fairer than, the global cap approach, and the argument before me has proceeded throughout the taxations on the basis that the item by item approach is the appropriate one.

21. I have also considered whether it would be appropriate for me to make an award under Rule 10 of the Costs and Fees Rules as to my own costs, fees and expenses as the person conducting the taxations, defined in Rule 11 as “the Commissioner”. In the exercise of my discretion under the Rule 10, I have decided that it would be inappropriate for me to make any such award in this case.
22. One further general point remains. Is it within my power to make an order that either the Viranis or the former trustees should pay the costs of and occasioned by the taxations or part of such costs? Advocate Bailey on behalf of the former trustees contends that there is no power to make such an order for costs. But I reject that submission. It is well known that taxation of costs can be both laborious and expensive; and it would be unjust, in my view, for that expense in each case to be borne separately by the paying and receiving parties themselves, whatever the circumstances of the case may be and whatever justice may otherwise require. But I consider that the power in Section 1 of the Royal Court (Costs and Fees) (Guernsey), Law 1969, under which the Royal Court Rules were made, and the powers in Sections 18(2) and 44 of the Court of Appeal (Guernsey) Law 1961, under which the Court of Appeal Rules were made, are sufficiently wide to permit me to order, if I were so to decide that the costs of the taxation, or some part of them, should be paid by one of the parties to the other. In my judgment, such costs would form part of “the costs of and incidental to all proceedings” (a phrase forming part of Section 1(1) of the 1969 Law). My decision is, in my opinion, also fortified by the inclusion in Rule 10(1)(b) of the Costs and Fees Rules of a power in the Commissioner to order any party to give security for costs. It seems to me that, since the Commissioner has a power to order security for costs, that can only relate to the costs of the taxation hearing, whether conducted orally or by written representations or both. I therefore rule that the Courts’ discretion as to costs “of and incidental to all proceedings” granted to them by the Law includes the costs of the taxation of costs. A Commissioner appointed to conduct a taxation is taxing costs within the proceedings, and is not, in my judgment, acting in a separate, free-standing set of proceedings.
23. I now turn to deal with the specific sums claimed by the Viranis as costs to which they are entitled on the full indemnity principle.
24. The Viranis claimed costs under wide-ranging heads of claim. I shall collect under one heading the claims for reimbursements of the legal costs of Ozannes, Guernsey Advocates, the legal costs of Mr. Jowhal, a Kenyan Advocate retained by the Viranis and a claim for personal litigating costs by Mr. Virani and Mrs. Virani as litigants in person.
25. I allow the Viranis the total cost to them of Ozannes’ fees of £21,483.70, plus interest at 3% above the base rate from time to time of Lloyds Bank, as claimed by Ozannes in the Cause issued by them against Mr. and Mrs. Virani. I allow interest from 28th June 2001, the date of the Cause, to the date of my decision, namely, 16th April 2004. The parties should agree the sum of interest between them; this should be on the basis of simple interest and not interest with compounded rests.
26. The position is somewhat more complicated in the case of Mr. Jowhal’s fees. He has charged the Viranis under a series of invoices a total of £70,201.45, including interest, for services rendered by him to them, which seemed to have started in about late November 2000. I refer in

this regard to my decision on 18th September 2003, given with reasons why in principle Mr. Jowhal's fees are disbursements properly incurred in the proceedings by the Viranis, without needing to repeat in this decision those reasons. Mr. Jowhal's fees include about 157.5 hours of chargeable time and two separate "retainer fees" of £15,000 each claimed pursuant to the terms of two separate retainer agreements made between him and Mr. and Mrs. Virani dated respectively the 23rd March 2001 (relating to the on-going litigation in the Royal Court between the Viranis and the former trustees) and 9th November 2001 relating to an appeal from the decisions of Lieutenant Bailiff Hancox in June – November 2001. There is expert evidence before the Court from two Kenyan Advocates, Mr. Gautama and Mr. Mutungi, which is helpful in explaining the position of Kenyan Advocates and their rights to claim what are called "instruction fees" in relation to suits issued in the High Court of Kenya. There is also an affidavit from Mr. Jowhal himself. Further, under the retainer agreements Mr. Jowhal's hourly fees were set at £156 per hour. In my judgment, although such retainer fees would probably not be recoverable in the case of Guernsey Advocates, who customarily now charge an hourly rate for their services, the total basis of fees charged by Mr. Jowhal to the Viranis under the two contracts of retainer, is not unreasonable. Therefore, taking into account his hourly charging rate of £156, and pro-rating the two retainer fees of a total of £30,000 across the 157.5 hours or so for which he has charged, a total charging rate of just under £350 per hour is found. I consider that such an hourly rate, although on the high side in Guernsey, cannot properly be described as unreasonable in the taxation of costs in the Royal Court of Guernsey and the Court of Appeal. I had a little doubt on this question, but, in accordance with Rule 2(6) of the Royal Court (Costs and Fees) Rules and Rule 3(6) of the Court of Appeal (Costs and Fees) Rules, I resolve this doubt in favour of the Viranis, the receiving parties. However, part of the costs claimed by the Viranis represents fees charged to them by Mr. Jowhal between November 2000 and about 10th April 2001, during which time they still retained Ozannes as their Guernsey Advocates. Advocates within Ozannes, of course, had full rights of audience before the Guernsey courts and continued where necessary to exercise them on behalf of the Viranis until Ozannes' retainer was determined by the Viranis by about 10th April 2001. In my judgment, although it was not unreasonable for the Viranis to have retained Mr. Jowhal, (indeed, it cannot be unreasonable, in my judgment generally for a client to retain a second firm of lawyers) it is unreasonable for them to claim the costs of two sets of lawyers, namely, Ozannes and Mr. Jowhal, in respect of the same period, particularly where Ozannes were continuing to represent them before the Royal Court. I have carefully considered Mr. Virani's oral and written submissions, including the letter delivered to the Court earlier today, but I have not been persuaded that my decision in this issue is wrong, I therefore, disallow under this head the sum of £7,878. The sum, therefore, allowed in relation to Mr. Jowhal's costs and fees, as a proper disbursement incurred by the Viranis, is £62,323.45.

27. The Viranis also claimed to be reimbursed a sum of over £27,400 for the time spent by Mr. Virani, who has both appeared as a litigant in person and represented his wife and children on many occasions before the Royal Court and the Court of Appeal (with the consent of the Courts) between 20th April 2001 and the present time. This sum is claimed in relation to time spent in preparing for hearings, preparing affidavits and skeleton arguments and other Court documents, delivering documents to the Royal Court and the Greffe, including bundles for the Court of Appeal in July 2002 for the hearing, which took place in mid-September 2002, and time spent addressing the Royal Court and the Court of Appeal on the many days of hearing in these two sets of proceedings. Mr. Virani has, on any view, expended a prodigious amount of time and energy in achieving success for his wife, himself and their two children in the

litigation between the Viranis and the former trustees. I consider, if I may say so, that the results obtained by him with very considerable assistance from Mr. Jowhal, for the Viranis represent an outstanding achievement on his part. He has had to endure set-backs, which in due course the Court of Appeal reversed, and has stood firm against what often seemed to the Viranis, and sometimes to the Court, to have been an unnecessarily severe and intransigent position held by the former trustees. If I were otherwise able to do so, I would be extremely keen to allow the Viranis most, if, perhaps, not all, of the large sum claimed by them for Mr. Virani's devoted and unselfish attention to their cause in the proceedings. But I have reached the conclusion that, as a matter of Guernsey law, I am unable to allow any part of the claim for reimbursement of his costs incurred in conducting the litigation on behalf of the Viranis. I much regret having to reach this conclusion.

28. Unlike England and Wales, where since 1975 under the terms of the statute, litigants in person have been entitled to recover as part of their costs an hourly rate for their labours (albeit not a very generous rate) there is no such law in force in Guernsey. As I understand the position, sometimes members of the Guernsey Bar agree to act for litigants on a *pro bono* basis and sometimes, in the past, before the introduction of the current Legal Aid scheme, the Bar itself has provided assistance for penurious litigants by arranging for an Advocate to appear on such a basis. The position of the Viranis was I feel somewhat different. They decided to dispense with the services of their Guernsey Advocates, Ozannes, and they either could not find any other Guernsey Advocates to act for them, or they decided that they wished to appear by Mr. Virani, who would be acting with the assistance of Mr. Jowhal, a most experienced, senior Kenyan Advocate. In my judgment, the position in Guernsey relating to a claim by a litigant in person for the recovery of a time-based sum to represent a charge for his labours is the same as the position in England and Wales was before the passing of the Litigants in Person (Costs and Expenses) Act 1975. This position is described in a line of English cases, including *London Scottish Benefits Society v. Chorley* (1884) 13 QBD 872, per Bowen LJ at pp. 876 – 877, *Harold v. Smith* (1860) 5 H. & N. 381 and the more recent decision of the English Court of Appeal *Butland v. Watts* (1970) 1 Q.B. 27. In the last cited case Donaldson J said, in giving judgment at first instance:

“First, the objections all involve a single point of principle, namely, whether a litigant in person, not being a solicitor, can in any circumstances recover costs which are based upon or reflect loss of earnings resulting from time spent in acting on his own behalf in the litigation. Secondly, whilst I feel constrained by authority to allow the objections, the reasoning which supports the reported decisions that solicitor litigants in person should recover more than their out-of-pocket expenses seems to me to support a similar decision in favour of lay litigants in person, and, had I been free to do so, I should have reached a different decision....”

29. In the Court of Appeal in *Butland v. Watts* the principle that a litigant in person, other than a solicitor, was not entitled to claim costs in respect of his time spent in preparing his case was maintained by Danckwerts LJ, at pp. 35 G – 37 C and Sir Gordon Willmer at pp. 37 F – 38 B. I have been unable to discover any assistance in Guernsey case law. But the position appears to be that under the established practice of the Royal Court a litigant in person is not entitled to recover an allowance for time spent in preparing and presenting his case. It is, I regret, not, therefore, possible for me to award the Viranis a sum to compensate them for Mr. Virani's successful efforts on their part. In the absence of a Law upon the lines of the English statute of 1975, it is not possible for me to grant such an allowance. I doubt whether it would represent

costs, properly so called, or expenses, since it is, on proper analysis, I believe, not possible to value on any established basis the time spent in preparing and presenting a case as a litigant in person, whereas it is possible to assess whether a fee claimed by an Advocate for preparing and presenting a case is or is not in line with current professional charging practice. I am sufficiently concerned about the absence of a provision giving assistance to litigants in person to recover time based charges, as to recommend so far as I am able, that, when legislative time is available, attention should be given to remedying this apparent injustice.

30. In case I am wrong, and Mr. Virani is entitled to a sum for his preparation time, I would have awarded the Viranis a sum of £20,000 in respect of Mr. Virani's time spent preparing and presenting their cases to the Royal Court and the Court of Appeal. Both Courts were, I believe, greatly assisted by his labour and his attention to detail. If I may say so, he has presented his arguments with considerable skill and, often, with good humour.
31. Now I shall deal with sums claimed to reimburse the Viranis for travelling costs, lodging costs whilst in Guernsey and other matters of a similar nature. First, I shall deal with reimbursement of the cost of air tickets between Nairobi and London and London and Guernsey. The Viranis live in Kenya but since 1979 they have also maintained a family home in Epsom (which I shall call the "Epsom house"). In the circumstances relating to this litigation they have used the Epsom house on many occasions over the period between, say, September, 2000, just before the commencement of the two sets of proceedings, and the present time as a base, have kept much of the Court papers there and a considerable law library purchased so as to enable Mr. Virani to represent the Viranis in Court and to present written skeleton arguments. By maintaining the Epsom house the Viranis have, in my judgment, reasonably limited their living costs whilst they have been necessarily in the United Kingdom preparing for Court hearings or en route between Nairobi and Guernsey or Guernsey and Nairobi. Otherwise, they would have had to have obtained hotel or other rented accommodation at, no doubt, quite a considerable expense.

I shall deal with the claim of the Viranis for a sum to compensate them for the use of the Epsom house during the course of this litigation, later in this decision.

32. Under the head of travelling costs I allow the following sums:-
- £4,694.45 + £26,492.65 + £1,891.20 + £2,026 making a total of £35,104.30 less a total of £1,851 for Mrs. Virani's travelling costs in February and March 2001 for a consultation or consultations with Mr. Jowhal and Miss Virani's return flight for a consultation with Mr. Jowhal in February and March 2001. In my judgment, the expenditure of that total sum of £1,851 for consulting with Mr. Jowhal at a time when the Viranis were still represented by Ozannes was an unreasonable expenditure within the context of the taxations of costs in this case. I shall, therefore, allow the sum of £33,253.30 for air travel for the Viranis.
33. The Viranis also claim the costs of taking taxis to the airport between the Epsom house and London Gatwick Airport and between Guernsey Airport and St. Peter Port, and occasional taxis within the Town at an aggregate rate of £70 per visit for 27 visits. Although I have some doubt as to whether to allow the whole of this claim, this is a case where it is, in my judgment, proper for me to resolve that doubt in favour of the Viranis under the Costs and Fees Rules. I, therefore, allow the sum of £1,890 in respect of taxis.
34. Next I deal with a claim for reimbursement of the cost of accommodation in Guernsey on the 27 visits, which the Viranis or Mr. and Mrs. Virani have made to Guernsey for the purposes of the

litigation. The total sum claimed is £4,397.77 and I allow this sum in full. I have no doubt that it is properly claimed.

35. I also allow in full the claim by the Viranis for recovery of a sum for food and general expenses, which are often lumped together under the heading “subsistence”, of £5,360. I have no doubt that this sum is also properly claimed. I now deal with sundry claims for the recovery of court transcript charges, courier charges, postal charges, the cost of executing a Power of Attorney, affidavit swearing charges, Greffe costs and photocopying charges. I allow these claims in full. In my judgment, they are reasonable and certainly not unreasonable and I reject the suggestion of Advocate Bailey on behalf of the former trustees that in some way the Viranis should be limited to the sums claimed at the September 2003 hearings of these taxations. If I were to do so, that would, in my judgment, be unjust. Although it may have taken them some time, the Viranis have lodged a detailed affidavit from Mr. Virani, as I directed they should, with a very large amount of vouchers and other documents and have, in my judgement, very largely done their best to assist the Court in understanding their claims. Although I may have had some doubt as to some of these charges, including the photocopying charges, again I decide that doubt in their favour under the terms of the Costs and Fees Rules. Under all these heads taken together, I allow the total sum of £10,709.91.
36. In order to prepare himself for presenting skeleton arguments and oral argument in Court, Mr. Virani, on behalf of the Viranis, purchased law books and took out a subscription in the name of his daughter, the Defendant Miss Virani, to the New Law Journal; the total cost of books and the magazine subscription amounts to £1,607.20. In my judgment, these costs were reasonably incurred and are recoverable in full. This is clear from Rule 4(1) of the Costs and Fees Rules, which relates to the purchase of items, a term defined in Rule 11(1). In my view, although the definition of “items” is not entirely clear, they probably include law books and a legal magazine subscription taken out in order to make submissions to the Court and, in any event, I consider that the costs of purchasing the books and taking out the magazine subscription comes within the scope of an order for costs, including the recovery of expenses and disbursements, on the full indemnity principle. I, therefore, allow the whole sum of £1,607.20. The Viranis also claim a total sum of £1,929.86 as the total of a large number of purchases of stationery, printing ink, paper, and other matters relating to printing and collating documents for Court proceedings. I consider they are entitled to this sum in full. Equally, I allow in full the cost of purchasing a computer and a printer for use by the Viranis in presenting material to the Court in the sum of £1,698.00. In my view, such purchases were reasonably made and the total purchase price was not an unreasonable price.
37. The main aim of the Viranis was to replace the former trustees with a new corporate trust corporation, Canon Trust Company Limited. It is, of course, the case that when there is a change of trustees of trusts and Advocates are used to effect the change by preparing the necessary deeds of retirement, appointment, and vesting of trust assets, legal costs will be incurred. The Viranis would, therefore, have incurred costs of this general nature whether or not the litigation had occurred. The Viranis claim a total of £19,477.86 in respect of Canon’s charges, which are itemised in exhibits NRV3 to Mr. Virani’s affidavit dated 2nd January 2004. At the hearing in September 2003 I allowed the relatively modest sum in this context of £890.35 in respect of Canon’s charges. In doing so I relied upon a letter from Canon to Mr. Virani dated 30th December 2002. The claim was described in the Virani’s then bill of costs as Canon’s charges for handling documents and administrative charges. Since that hearing Canon has provided a further letter dated 3rd December 2003, in which a very substantially increased

claim is made for what is described in the letter as “...fees and/or disbursements as charged to the various ‘Virani Group’ entities, which are directly attributable to your legal proceedings versus [the former trustees]”. The schedule in the letter claims fees on a quarterly basis and Canon’s Mr. Chris Bisson claims that Cannon does not charge on a time basis. It is surprising, in my view, that this claim is now made by Canon on what seems to be an entirely different basis from their earlier claim and I am of the view that the sum charged is, in any event, an unreasonably high charge. I am also concerned that much of the invoice may not in fact relate to these proceedings, even though Mr. Bisson claims that the fees and/or disbursements are directly attributable to the proceedings. In the circumstances, although I accept that a claim of this nature is not unreasonable, I find that the sum claimed is an unreasonably large sum and I, therefore, allow a sum which I consider not to be unreasonable, namely, £5,000. This sum is in addition to the sum £890.35, which I allowed in 16th – 18th September 2003 hearings. There is therefore a total in respect of Cannon’s charges of £5,890.35.

38. The Viranis claim also Carey Langlois’ costs incurred on behalf of Canon relating to the hearing on 29th January 2003, when I ordered the transfer of trust assets and the completion of the retirement and appointment deeds. The sum claimed under this head is £4,586. In my judgment, part of these costs clearly relate to work which would have had to have been done even if the proceedings had not been brought. I, therefore, consider that it is unreasonable to claim the whole of the costs of Carey Langlois and I find that the sum of £3,500 would be a sum which would be not unreasonable to claim. Extra charges incurred because the proceedings were on foot and because a hearing was required before the trust’s assets were properly transferred by the former trustees to Canon and the deeds completed. The Viranis also claim a further sum of £2,200 incurred by them to Carey Langlois between October 2001 and March 2002 in fending off an apparent attempt by the former trustees to wind up the trust companies. I consider such a charge to have been reasonably incurred and that it is a reasonable sum to claim. I, therefore, allow the sum £2,200 under this head. The total sum in respect of Carey Langlois is therefore £5,700.
39. During the September 2003 hearings of these taxations I allowed the Viranis the sum of 225,000 K SHS for audit costs. Mr Virani has returned to this issue in paragraph 16 of his affidavit sworn on 2nd January 2004 and attempts, on behalf of the Viranis, to claim a further sum for the fees of a second auditor. I confirm, as I decided on 18 September 2003, that I consider the employment of two sets of auditors to have been unreasonable and I, therefore, confirm the allowance of a sum of which a sterling equivalent is £1,875 under this head.
40. A similar claim is made in paragraph 22 of that affidavit for reimbursement of administrative costs of a Kenyan company Arrow Hi-Fi E.A. Limited (“Arrow”). Arrow seems to have performed administrative tasks on behalf of the Viranis, both of whom are directors of Arrow, to enable information to be presented to the Court in the form of Mr. Virani’s affidavit dated 2nd January 2004 and written submissions. A sum of £2,396 is claimed under this head. According to Mr. Virani the work was done by Arrow’s Chief Financial Officer and, in my view, it was reasonably incurred and the sum claimed is a reasonable sum. Since the work was done by someone in a financial position in Arrow, I consider that, in the circumstances of the case, it was a disbursement and that the sum of £2,396 is properly claimed. I therefore allow it in full.
41. The Viranis next claim, under paragraphs 17, 23 and 29 of Mr. Virani’s affidavit dated 2nd January 2004, very substantial borrowing costs paid or payable to NatWest under a loan facility taken out in September 2000 and on credit card balances and on Kenyan borrowing. I disallow this claim in full. I consider that it is unreasonable to claim from the paying party the

borrowing costs of a receiving party, unless, perhaps, the receiving party is on the breadline or otherwise financially disadvantaged, neither of which I find applies in the case of the Viranis, who are wealthy people. In my judgment the paying party, here the former trustees, is entitled to expect that the receiving party can pay its bills as and when they become due and does not need to borrow in order to do so; I am aware of course that borrowing is sometimes taken out as a commercially strategic step. In my view to allow borrowing costs as part of costs, expenses and disbursements would generally be a dangerous step for the Court to take. I am firmly of the view that in the circumstances of this case it would be unreasonable to allow any of the claimed interest as costs, expenses, and disbursements of the litigation and I, therefore, reject the claim. I would add that, in any event, the express purpose for which Mr. Virani borrowed £15,000 from NatWest in September 2000 was to pay off existing Barclay Card balances and to purchase a car, and that, although Mr. Virani had told me that he did not use the funds for that purpose but used them in and about the litigation (which evidence I accept) I do not consider that that factor would have made these loan interest charges recoverable by Mr. Virani from the former trustees as part of the costs of the proceedings.

42. In order that all my decisions on the taxations are contained in the same reasons document, I confirm that, for the reasons I gave on 18th September 2003, the sums of £400,000 claimed for alleged medical stress or trauma and £45,000 claimed as the lost value of an opportunity to Miss Virani to purchase a flat, claimed respectively under paragraphs 27 and 28 of the bill of costs dated 17th September 2003, were rejected by me since, in my judgment, they were not claims for costs, expenses or disbursements but claims for damages. These claims did not therefore come within the scope of the taxations.
43. I also reject the claim made in paragraph 20 of Mr. Virani's affidavit dated 2nd January 2004 for £185 as an alleged replacement cost for a suitcase damaged whilst being carried by air. The documents produced in support of this claim in fact, as I read them, show that the Viranis were provided with replacement luggage for the damaged suitcase; accordingly, they have not established any loss under this head and I, therefore, reject it in full.
44. Next I deal with a claim for telephone charges which have been helpfully collated in exhibit NRV6 to Mr. Virani's affidavit dated 2nd January 2004. The claim for reimbursement of telephone charges relates both to calls made on Arrow's account and debited to Mr. Virani's account at Arrow in a sterling equivalent of £1,169.27 for the period between September 2000 and September 2003, and call charges between October 2000 and December 2003 on six different accounts, including accounts relating to the Epsom house and mobile phones in a total of £10,596.81. I consider that some part of the reclaimed telephone charges would almost certainly relate to the personal affairs of the Viranis and not to the litigation, but it is to be noted that only international calls have been claimed for. I have applied a discount of 20% to the total claimed on the six accounts so as to ensure the Viranis are not over compensated for their reimbursable telephone charges, but I have applied no such discount to the claim for reimbursement of Mr. Virani's account at Arrow. I, therefore, allow a total sum of £9,646.72 for telephone charges. These charges also include fax charges.
45. I now turn to deal with a claim made by the Viranis for recovery of a very substantial part of the costs of their U.K. housing relating to the Epsom house. First, I reject in full the claim for £2,200 apparently spent on buying clothes to endure the U.K. and Guernsey climate. Since the Epsom house had formed the U.K., temporary base for the Virani family following its purchase in 1979, I consider it unreasonable to claim such an item.

46. As I have said, the Epsom house was bought in 1979. All three of the Virani children went to university in London. The eldest daughter finished at NESOCOT in 1991, Mr. Virani junior finished at London University in about 1994 or 1995 and the younger Virani daughter, Miss Alwina Virani, also went to London University finishing in 2001 and then did the legal practice course at the College of Law in Guildford, Surrey, until mid-2002. During their studies each of the children lived in the Epsom house. The claim made by the Viranis is for a substantial proportion of the running costs of the Epsom house, including the cost of utilities (namely, gas, electricity and water) the cost of running two cars, both of which had been bought in the mid-1990s, including fuel and maintenance costs and a cost of living differential to represent the fact that living in the Epsom house is, according to the Viranis, substantially more expensive than living in Kenya. These various claims are dealt with in paragraphs 12, 14 and 27 of Mr. Virani's affidavit dated 2nd January 2004. The claim is made on the basis of 22 months out of a period of three years. In considering this claim it is necessary for me to set out shortly a procedural chronology of the litigation. Both sets of proceedings commenced in mid-October 2000 and there were many hearings between 20th October 2000 and 9th February 2001. I consider that it is not unreasonable for the Viranis to claim that for two months of this period of about four months it was appropriate for them to base themselves in the Epsom house. Ozannes' retainer was determined by 10th April 2001 and thereafter Mr. Virani has acted in person and as representative for all the Viranis. As I have mentioned earlier in this decision, he first appeared in the Royal Court before the Bailiff on the 20th April 2001 and then appeared before Lieutenant Bailiff Hancox on various applications on 11th May 2001 and between 25th and 29th June 2001. I consider that it was not unreasonable for the Virani family to have based themselves during the period between 20th April and 29th June 2001 in the Epsom house for a total period of two months.
47. Mr. Virani then appeared before Lieutenant Bailiff Hancox on 4th and 5th October 2001, when orders were made against which, in due course, the Viranis appealed successfully, to the Court of Appeal. I shall allow a period of one month between about late September and late October 2001 as a period which is, in my view, not unreasonable for the Viranis to have based themselves in the Epsom house. In January 2002 Mr. Virani says that he delivered documents in person to the Court of Appeal here in Guernsey, and I accept his evidence. In these papers he sought leave to appeal from the single judge of the Court of Appeal, and in about early March 2002 such leave was granted to the Viranis. In the next three months or so it was necessary for Mr. Virani to prepare and then lodge bundles of documents for the Court of Appeal, and Mr. Virani says that in the first week in July 2002 he came to Guernsey to deliver the bundles of documents for the Court of Appeal; again, I accept his evidence. What, then, would be a period which would not be unreasonable for Mr. and Mrs. Virani to have based themselves in the Epsom house in order to ensure that this necessary preparatory work was completed in good order and in good time? In my judgment, it is not unreasonable for the Viranis to have spent a total of two months between January and early July 2002 based in the Epsom house for those purposes, and I shall allow that period as well.
48. The Court of Appeal heard the Viranis appeal and allowed it in a hearing on 18th September 2002, and gave their judgment on 4th December 2002. The judgment was delivered by post or fax. The Viranis claim that it was not unreasonable for them to have remained in the Epsom house during the period of, say, about two weeks before the Court of Appeal hearing in September 2002, and two weeks after the delivery of the judgment on 4th December 2002, that is to say, a total period of about sixteen weeks. I reject this contention. I consider that it would

not have been unreasonable for the Viranis to have based themselves during the period between, say, 1st September and 11th December 2002 in the Epsom house for a period of six weeks.

49. The next hearing in Court took place before me on 29th January 2003, when a short hearing of just over an hour took place during which I ordered the transfer of the trust assets and the completion of deeds of retirement and appointment of new trustees. I consider that it was reasonable for the Viranis to have spent a period of two weeks based in the Epsom house for the purposes of preparing for, and taking part in, that hearing. Then, on 18th March 2003, there was a further hearing before the Court of Appeal during which the Court dismissed the former trustees' application for leave to appeal to the Privy Council. Between 24th and 28th March 2003 I heard a series of heavily contested, and largely complicated, applications in the two sets of proceedings. I delivered judgment on these applications by post or fax on 1st August 2003. I consider that it would not have been unreasonable for the Viranis to have based themselves in the Epsom house for a period of six weeks for the purposes of the March 2003 hearings, and I shall allow such a period. Finally, I heard applications, to which I have already referred earlier in the Decision, as to the incidence of costs and the nature of taxation on 16th September 2003 and I conducted the first part of these taxations of costs between 16th and 18th September 2003. The taxations had been concluded on 15th and 16th April 2004. In my judgment, it would not have been unreasonable for the Viranis to have based themselves in the Epsom house for one month for the purposes of the September 2003 hearing and a further one month for the purposes of the April 2004 hearings. I shall, therefore, allow a further period of two months in all for the taxation hearings as a period, which I find would not have been unreasonable for them to have based themselves in the Epsom house.
50. Taking the periods between 20th October 2000 and 16th April 2004 together I conclude that it would not have been unreasonable for the Viranis to have based themselves in the Epsom house for a total of 12½ months. In my judgment to claim the costs of living there for any longer period would be an unreasonable claim. I shall, therefore, tax the costs, expenses, and disbursements claimed on the basis of 12.5 months and not on the basis of 22 months. It would be a too difficult a task to value the claim in relation to U.K. subsistence by taking figures for the precise periods which I have identified; in my judgment, I must take a broad brush approach. But I should make clear again that I consider that, by using the Epsom house, the Viranis have probably saved the former trustees a considerable sum of money. For otherwise the Viranis would have had to rent premises for short periods, which I believe to be an expensive exercise, or to have stayed in hotels, which I believe to be a more expensive exercise. Equally, the Viranis would have had to rent a car or, as they claim, two cars. I have allowed for the cost of two cars, although I entertained a doubt whether it was proper to do so. But I have, in accordance with the Costs and Fees Rules, resolved that doubt in favour of the Viranis. I have also entertained a further, more serious, doubt about the claim for a cost of living differential. I have not been persuaded, on the basis of Mr. Virani's evidence, that such a differential properly amounts to £1,200 per month; but even if the evidence did establish that, I consider that to allow such a claim, in addition to allowing the costs of utilities, etc., would be an unreasonable item, save in relation to the purchase of food and other household necessities. I consider that it would not be unreasonable for the Viranis to claim a sum of £800 per month, making a total of £10,000 for the 12.5 months. Turning to the claims for utilities, costs and vehicle running and maintenance costs, I accept the method of calculation used by the Viranis in paragraphs 12 and 27 of Mr. Virani's affidavit dated 2nd January 2004 and in paragraph 12 of his affidavit dated 13th April 2004. I, therefore, allow a total sum of £7,500 in respect of car

running and maintenance costs (12.5 x 600) and a further sum of £2,981.09 ($£8,585.53 \div 36 \times 12.5 = £2,981.09$) for 12.5 months utilities charges.

51. I now turn to the part of the claims of the Viranis, which I have found most difficult to resolve. Under paragraphs 14, 15, 19, 34 and 36 of Mr. Virani's affidavit dated 2nd January 2004, the Viranis claim loss of remuneration by Mr. and Mrs. Virani, loss of commission on car sales by Arrow, loss of dividends from Arrow and the reimbursement of the costs of employing additional staff to replace Mr. and Mrs. Virani whilst they were based in the U.K. I am able to dispose of the claims for dividends from Arrow and additional staff costs first. In my judgment, the evidence does not disclose that Mr. Virani or Mrs. Virani have lost dividends from Arrow as a result of, or in connection with, the litigation. The claim, therefore in my view, fails at the first hurdle. Nevertheless, I would also point out that in the company minutes and accounts lodged with the Court under paragraph 14 of Mr. Virani's affidavit dated 2nd January 2004, as was confirmed by Mr. Virani orally in his submissions on 15th April 2004, Arrow has not passed dividends since it started business and the claim, therefore, appears to me to be an unreasonable one. Secondly, I consider that to claim both loss of remuneration and the costs of employing additional staff, which seems to me, anyhow, to be an expense of Arrow and not of the Viranis, contains a degree of double counting. In my judgment, the Viranis' claim for the cost to Arrow of employing additional staff is an unreasonable one, and in any event, is not justiciable by the Viranis, but only by Arrow.
52. The Viranis' claim for lost commission on the part of Mr. Virani and Mrs. Virani whilst they were based in the U.K. must also, in my view, be rejected in full. The evidence lodged by the Viranis in support of the claim is slight. Whereas each of their service contracts establishes an entitlement to commission, the evidence lodged by them does not, in my judgment, establish how much commission they might have enjoyed as a result of cars sold by Arrow through their individual sales skills, over the period of the litigation or, over the period of 12.5 months, during which I have found it would not have been unreasonable for Mr. and Mrs. Virani to have based themselves in the U.K. for the purposes of running the litigation, and appearing in Court in Guernsey. I must, therefore, reject the claim for lost commission in full.
53. Under each of the service contracts dated 20th February 2000 under which Mr. Virani and Mrs. Virani respectively are employed as salaried employees of Arrow, their entitlement to salary (300,000 K SHS per month for Mr. Virani and 200,000 K SHS per month for Mrs. Virani) can be withheld from them by Arrow if they are absent from work for a period of at least one week. Arrow has decided to pay Mr. and Mrs. Virani for five months in the calendar year 2001, for six months in the calendar year 2002 and for five months in the calendar year 2003 up to October 2003. Their permitted salary is kept in reserve by Arrow, but I do not consider that that point is germane to this part of the claim. In my judgment, both Mr. Virani and Mrs. Virani have established by admissible evidence that they have lost a substantial part of their remuneration from Arrow during the course of the litigation. Whilst I consider that it is not unreasonable for them to claim reimbursement of remuneration as an item, I consider that the claims made by them both for 20 months lost salary are unreasonable. In any event, a proper reading of the internal memo from the chief accountant of Arrow to the directors, including Mr. and Mrs. Virani, dated 15th November 2003, headed "Salary/Remuneration/Reserve" suggests that during the period between January 2001 and October 2003 Mr. Virani and Mrs. Virani respectively have been refused their salaries for a total of 18 months (seven months in 2001, six months in 2002 and five months in 2003 up to October 2003). I consider that it would not have been unreasonable for the Viranis to have claimed as an expense of the litigation loss of remuneration

for each of Mr. and Mrs. Virani for a total period of 12.5 months during the course of the litigation this is, of course, the same period as the total period which I have allowed in relation to the U.K. subsistence claims, and the same reasoning applies. I, therefore, allow in the case of Mr. Virani a sum of £31,250 for lost remuneration ($300,000 \text{ K SHS} \times 12.5 \div 120$) and for Mrs. Virani a total sum of £20,833.33 ($200,000 \text{ K SHS} \times 12.5 \div 120$). The total sum recovered under the loss of remuneration claim is, therefore, £52,083.33. This sum represents both loss of remuneration within the scope of Rule 3 of the Royal Court (Costs and Fees) Rules, being loss of remuneration by witnesses, and reimbursement of proved loss of remuneration by Mr. Virani and Mrs. Virani under the full indemnity principle.

54. Finally, the Viranis also claim a further sum of £12,754.23 as a sum which they claim Mr. and Mrs. Virani are obliged to reimburse Arrow for lost net profits on two Audi cars as supplied by Arrow to Mr. Jowhal in part payment of his invoices. I reject this claim. Arrow decided, with the encouragement or agreement of Mr. and Mrs. Virani, to supply Mr. Jowhal with these cars on an ex-factory basis, but the result of that decision cannot, in my judgment, properly be claimed from the former trustees. In my view it is an unreasonably claimed item of expenditure and it may also not truly represent costs, expenses or disbursements of or incidental to the proceedings. I, therefore, reject this claim in full.

That is the end of my decision and my reasons. If you want to know how much it all adds up to, £242,725.68 or thereabouts.

MR. VIRANI: Of which, I think about- sum is in the Greffe here to remove £17,000 odd, and we want an order that this should be paid forthwith.

LIEUTENANT BAILIFF: You've had that already; I made that yesterday.

MR. VIRANI: I know you made the order about releasing, but what I'm trying to say is that this the total amount of which we have to remove what had been deposited in the Greffe.

LIEUTENANT BAILIFF: From this?

MR. VIRANI: Yes, so-

LIEUTENANT BAILIFF: That money is part of it, but the £17,000, wasn't that the overpaid fees?

MR. VIRANI: Excess fees we had.

LIEUTENANT BAILIFF: That's not here, that's nothing to do with the costs.

MR. VIRANI: So what I'm trying to say is that we would like to have an order that this payment must be made forthwith, now.

LIEUTENANT BAILIFF: How much?

MR. VIRANI: The whole amount.

LIEUTENANT BAILIFF: I see. What do you say about the costs of the taxation, who should pay those?

MR. VIRANI: They should pay because it's them who have been dragging the matter all the way.

LIEUTENANT BAILIFF: Well they sought the taxation.

MR. VIRANI: So they should pay for it.

LIEUTENANT BAILIFF: And they haven't paid anything like this sum into Court, have they?

MR. VIRANI: Nothing. It is hardly a small figure, just to please the Court.

LIEUTENANT BAILIFF: I thought I ordered payment out of some- what was the sum yesterday, Mr. Ross? I can look it up on my notes, I'll look it up on my notes-

H.M. DEPUTY GREFFIER: About £53,000 sir, is that?

LIEUTENANT BAILIFF: £40,000 approximately Mr. and Mrs. Virani I ordered out yesterday.

MR. VIRANI: Of which £17,000 excess fees-

LIEUTENANT BAILIFF: That was £57,000 in all, of which £17,000 was excess fees.

MR. VIRANI: Okay, so basically then there was the balance whatever it is-

LIEUTENANT BAILIFF: The balance is £200,000 approximately, a little over. So you say that the Guernsey International Trustees Limited and Mr. Bennett should pay the costs of the taxation?

MR. VIRANI: Of course, because they have brought me into the Court, I never wanted these proceedings.

LIEUTENANT BAILIFF: That I understand but in relation to the conduct of the taxation, you say that you've had to come to Court to get more than the £40,000 that's paid in Court, do you?

MR. VIRANI: How you mean, £40,000?

LIEUTENANT BAILIFF: There's only £40,000 paid into Court in respect to costs. I have taxed the costs at £200,000 more than that.

MR. VIRANI: Yes, but it's fair that since they have really taken me around the bend, I don't think I should be appointed to pay the taxation under any circumstances, because there's also some places where I wanted to raise an argument like £185, I mean, the bills I provided for my suitcase which was broken-

LIEUTENANT BAILIFF: I think there are more important points than that.

MR. VIRANI: I know, but I have to say that I was never reimbursed for this suitcase, either British Airways can be contacted or Flybee can be contacted for this matter.

LIEUTENANT BAILIFF: Right. What do you say Miss Bailey?

ADVOCATE BAILEY: I can repeat the submission I made yesterday sir, I'll go through those again if you want me to, but obviously you've already heard that.

LIEUTENANT BAILIFF: No you don't need to. I shall order that the costs of the taxations be paid on the recoverable basis by the- by the former trustees, Guernsey International Trustees Limited and Mr. Bennett. It can be seen by the way in which I have calculated the 12.5 month period and also by the way I've calculated travel costs, subsistence costs, and taxi fares and accommodation costs, that I have done my best to reflect in the sums awarded the costs of conducting the taxations.

MR. VIRANI: I have no arguments about that sir, my only problem is that we will now have to institute a separate action to recover the others, which form part of the damages, et cetera, that you have-

LIEUTENANT BAILIFF: Well you know Mr. Virani that as far as procedural steps are concerned you can always ask the Greffe for assistance as to how you can and how you can't properly do that, but you must take your own advice as to what you want to do, as I have made clear in my decision.

Are there any other applications; does either side wish to-

MR. VIRANI: We wanted to find out sir, what happens to the wasted costs on application?

LIEUTENANT BAILIFF: Well that's part of the proceedings, what you may wish to do, and I'm taking off my hat as a Commissioner, and putting on my hat as a Lieutenant Bailiff, because I've conducted the taxations as a Commissioner. You have an outstanding application, which, from memory, may be dated something like March or January 2003.

MR. VIRANI: Yes sir.

LIEUTENANT BAILIFF: I gave some very, very general guidance about wasted costs during the course of, I think, 18th September, it may have been before. You may want to wait Mr. Virani, you may want to wait and see whether your order for costs is paid up by the former trustees.

MR. VIRANI: So we are to wait for them to appeal, basically in other words.

LIEUTENANT BAILIFF: Do you need leave to appeal if you want to appeal, Miss Bailey?

ADVOCATE BAILEY: I believe so, sir.

LIEUTENANT BAILIFF: Well you don't have any instructions presumably?

ADVOCATE BAILEY: I don't, no, sir.

LIEUTENANT BAILIFF: Either side may make any application to me if it's appropriate for leave to appeal in writing. Mr. Virani, did you hear me finish it? I said either side may make an application for leave to appeal in writing and unless I decide a telephone hearing is necessary I shall deal with it on the basis of written submissions.

MRS. VIRANI: I just feel sad sir, that Mr. Virani didn't get his litigation costs, he worked so hard.

LIEUTENANT BAILIFF: Well you've heard what I had to say about that Mrs. Virani. I don't need to add anything to my judgment, I have covered the legal position.

MRS. VIRANI: Yes, I understand-

LIEUTENANT BAILIFF: Let me explain to you, I have covered the legal position, I've also explained my own views about the matter.

MRS. VIRANI: That's way I said I just feel sad.

LIEUTENANT BAILIFF: Okay. Any other matters arising this afternoon, Mr. Virani, Mrs. Virani?

MR. VIRANI: All we can say is that to a certain degree we are glad that it's, most of it is over.

LIEUTENANT BAILIFF: I bet you are, quite understandable. Miss Bailey?

ADVOCATE BAILEY: No thank you, sir.

LIEUTENANT BAILIFF: Well Mr. Ross, I propose to rise. I am most grateful for the assistance of Mr. Virani and Miss Bailey on this difficult matter.

MR. VIRANI: Sir, can I ask you one question?

LIEUTENANT BAILIFF: Yes Mr. Virani?

MR. VIRANI: Did we- if we find going through that- are we ordering the transcript of this as well?

LIEUTENANT BAILIFF: I hope it will be prepared very early next week and then approved by me.

MR. VIRANI: Then would it be possible to write to you or would it be necessary to write to the Greffe if we feel at certain places we need some clarification, though I have most of my notes now.

LIEUTENANT BAILIFF: No, I've finished my decision, you will probably get something like 28 or 30 pages of typed reasons and you've got the reasons there. This is the end of the taxations, Mr. Virani.

MR. VIRANI: So in other words are you also ordering now that this money be paid forthwith?

LIEUTENANT BAILIFF: I'm not, the normal period is 28 days, Mr. Ross?

H.M. DEPUTY GREFFIER: I believe it is sir, 28 days, yes.

LIEUTENANT BAILIFF: Then I'm not going to make an order for payment forthwith. I make an order for payment.

MR. VIRANI: So the only thing that's going to be released to me is about the money that's already in the Greffe?

LIEUTENANT BAILIFF: The money that's in the Greffe at the moment- obviously you can ask Miss Bailey outside Court, see if her client is going to pay you more quickly.

MR. VIRANI: Okay fine. Thank you very much sir.

(4.00 p.m. Hearing concludes)

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I, Suzanne Margaret O'Neill hereby certify the foregoing to be a correct and complete extract, prepared to the best of my skill and ability from the tape-recording of the proceedings in this case.

..... Suzanne M. O'Neill

Tuesday 20th April 2004