[2022] JMSC Civ.101

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. CLAIM NO. 2011 HCV 04582

BETWEEN	**JUDE CONSTANTINE BETTY**	**CLAIMANT/APPLICANT**
AND	**BERNARD WELLINGTON**	**RESPONDENT/INSURED**

IN CHAMBERS

Ms. Suzette Campbell instructed by Burton Campbell and Associates for the Applicant

Mr. Vaughn Bignall instructed Bignall Law for the Respondent

Heard: May 12th 2022 and June 15th 2022

Civil – Leave to intervene to set aside default costs certificate – Civil Procedure Rules 1, 64 and 65 – Whether insurer can intervene to set aside a default costs certificate – Whether default judgment constitutes proceedings that would properly allow for the insurance company to intervene.

CARNEGIE, MASTER (AG.)

INTRODUCTION

[1] The respondent filed a claim in July 19th 2011, for damages for negligence arising from a motor vehicle accident which occurred on or about the 3rd day of March 2011. This accident occurred along Molynes Road in the parish of Saint Andrew, where the defendant (hereinafter referred to the insured) whether by himself, his servant and or agent negligently drove, managed or controlled Toyota motor car

license plates PD 0582 owned by the insured and insured under Advantage General Insurance Company Limited (hereinafter referred to as the applicant).

[2] By all accounts the insured was served the claim form on the 23rd February 2012 as averred in the Affidavit of Service filed October 31st 2012. The insured having failed to file an acknowledgment of service, default judgment was entered against the insured on February 25th 2013. Assessment of damages took place on February 5th 2016, in the absence of the insured and damages awarded. The Registrar entered final judgment August 14th 2017. A bill of costs and Notice to Serve Points of Dispute were served on the applicant on 25th January 2018.

[3] The default costs certificate was filed 13th April 2018 and signed by the Registrar on the May 9th 2018, against the insured on the basis that the insured did not file any points of dispute.

[4] The applicant filed an application for permission to intervene on November 29th 2019, for the purpose of setting aside the default costs certificate, on the basis that the default costs certificate was improperly issued.

[5] The notice of application for court orders filed on November 29th 2019 reflected the following orders sought –

1. Permission be granted to the applicant to intervene in the claim herein solely to dispute the issuing of the default costs certificate.
2. That the default costs certificate granted 13th April 2018 be set aside
3. The costs of this application be awarded to the applicant
4. Such further and other relief as this honourable court deems fit.

[6] The hearing of the application for court orders filed November 29th 2019, was adjourned to May 12th 2022 for one hour and Counsel were ordered to file written submissions in support of the application. Attorney-at-law for the respondent having not complied with the orders that were previously made January 24th 2022, to file and exchange written submissions and a list of authorities in accordance

with Practice Direction Number 8 of 2020, was not given additional time to comply. The Attorney-at-law for the applicant's objected to the suggestion by the attorney-at-law for the respondent that the attorney-at-law for the applicant to proceed to make submissions and the matter be adjourned to afford the respondent time to file written submissions as this would be prejudicial. The attorney-at-law for the respondent presented orally, as it would not be furthering the overriding objective in granting any further adjournment in respect of the application.

SUBMISSIONS

[7] Submissions on behalf of the applicant are summarized as follows:

1. Is the applicant authorized to intervene in the claim for the purpose of disputing the default costs certificate?

[8] Written and oral submissions by the applicant's attorney-at-law were prefaced by what the applicant states, is a principle of law, 'that an insurer has a right to intervene in a claim brought against its insured. The right to intervene the applicant's attorney-at-law submits, is derived from the contract of insurance which was issued by the applicant to the insured providing coverage of his Toyota Corolla Motor vehicle licenced PD 0582, and exhibited to the affidavit in support of the application filed November 29th 2019.

[9] The applicant's attorney-at-law submitted that condition 5 of the contract of insurance exhibited, granted the applicant authority to intervene in any claim brought against the insured as a result of a liability under the policy of insurance.

[10] The attorney-at-law for the applicant submitted that the right to intervene in a claim is for the benefit of the insured, but a right of the insurer. The applicant referenced **Linton Williams v Jean Williams, Harris Williams and Insurance Company of the West Indies** (1989) 26 JLR p. 175. **Vandyard Dacres & Carla Dacres v Tania Reid** SCCA No. 103/2000; **Ramsook v Crossley** Privy Council Appeal No. 0077 of 2015, in support of the point to intervene. All three decisions were in respect of the insurer seeking the right to intervene based on contractual relationship with the

insured. Orders were made in those decisions allowing the insured to intervene pursuant to a contractual right they have even though they were not the paying party, but because their interest would have been affected.

[11] Attorney-at-law for the applicant submitted that the sequence of events that led to the default costs certificate being issued in this instance, comes with certain implications tantamount to a judgment. In this regard, the attorney-at-law for the applicant would regard the process leading up to the application filed November 29th, 2019, as proceedings for the purpose of making the application.

> 2. Whether the service of the bill of costs and Notice to Serve Points of Dispute was proper service within the meaning of Rule 65.18 of the Civil Procedure Rules?

[12] The attorney-at-law for the applicant, submitted that the claim form and particulars were served personally on the insured and the default judgment and notice of assessment of damages among other documents were served on the insured by registered mail.

[13] The applicant averred that the defendant reported that his vehicle was involved in an accident. As a consequence, the applicant informed the insured by registered letter dated 25th of January 2012, of his obligations to forward to the applicant any court documents served on him so that the applicant can take conduct on his behalf. As such the insured is obliged to serve any document on them (applicant).

[14] The attorney-at-law submitted also that the applicant was not present at the assessment of damages which took place on February 5th 2016, where a final judgment was entered which included an order of costs to the respondent to be taxed if not agreed.

[15] The attorney-at-law for the applicant submitted also that the final judgment was served on the applicant on August 16th 2017 and on the 25th January 2018, a Bill of Costs with Notice to Serve Points of Dispute were served by the respondent's

attorney-at-law on the applicant as averred in affidavit of service filed on 12th April 2018. These documents the attorney-at-law for the applicant took as courtesy copies, in the absence of an order for substituted service accompanying the documents. On the 18th May 2018, the Final Costs Certificate were served on the applicant.

[16] The attorney-at-law for the applicant submitted that the applicant ought not to intervene in a matter without first giving notice to the insured, to ensure there is no prejudice. Hence, the applicant's attorney-at-law submitted that the respondent ought to have served the insured in such circumstances. The attorney-at-law for the applicant relied on **Linton Williams v Jean Williams** et al in respect of this point.

[17] In support of her submission the attorney-at-law for the applicant referenced Civil Procedure Rules (CPR) 65.18(1) which provides:

> "65.18 (1) Taxation proceedings are commenced by the receiving party –
>
> (a) Filing the bill of costs at the registry; and
>
> (b) Serving a copy of the bill on the paying party."

[18] The attorney-at-law for the applicant submitted that entitlement to indemnity does not make the insured's insurance company the paying party for the purposes of CPR 65.21. Further as submitted by the attorney-at-law there was no other affidavit filed other than the Bill of Costs for the purposes of 65.18 (b) which does not include a third party.

[19] The Attorney at- law for the applicant continued by outlining permitted actions by a receiving party under the CPR:

> "65.21 A receiving party who is permitted by rule 65.20, to obtain a default costs certificate does so by filing –
>
> (a) An affidavit proving –
>
> (i) Service of the copy bill of costs; and

(ii) That no points of dispute have been received by the receiving party."

[20] The Attorney-at-law for the applicant submitted referencing CPR 65.21, that it is clear that there must be service of the Bill of Costs and Notice of Points of Dispute on the paying party before the respondent becomes entitled to a default cost certificate.

[21] Attorney-at-law for the applicant further submitted that CPR 65.18 (1) (b) does not include a third party and that the default costs certificate was wrongly issued as the respondent failed to serve the insured with the Bill of Costs.

[22] Paragraph 4 of affidavit in the support of the application for the applicant stated that it was a term of contract of insurance that the applicant could undertake the defence of any court proceedings which was brought by a third party and which would result in an indemnity being granted under the contract of insurance.

[23] The attorney-at-law for the applicant further submitted in these circumstances that it was the insured who should have been served as a party to the proceedings. To effect service on the applicant with the Notice of Points of Dispute and Bill of Costs would have necessitated the respondent's attorney-at-law applying for substituted service. The attorney-at-law for the applicants, submitted that the insured not being served, nor was a substituted service application made to serve the applicant, constituted improper service on the applicant. In these circumstances attorney-at-law for the applicant submitted that since the service of the documents (The Bill of Costs and the Notice to Serve Points of Dispute) was relied on by the respondent to prove they were entitled to the default costs certificate, the issuing of the default costs certificate on the applicant was irregular.

3. The Court's jurisdiction to set aside default costs certificate

[24] Attorney-at-law for the applicant placed reliance on **Advantage General Insurance Company Limited v Marilyn Hamilton 2019 JMCA APP at 29 paragraph. 67** for her submission that the issuing and setting aside of a default

costs certificate is similar to the procedure for entry of and setting aside a default judgment and should be set aside as of right just as in CPR 13.2. Attorney-at-law for the applicant submitted that under CPR 13.3, that a default judgment would be set aside if the applicant can show that he has a real prospect of defending the claim. Further, that good reason for setting aside default costs certificate is that the insured did not know about the default costs certificate.

[25] The attorney-at-law for the applicant submitted further that the sum awarded on the uncontested taxation was perversely exorbitant having regard to the simplicity of the matter, an uncontested assessment of damages which was managed or could have been managed by junior counsel.

Submissions on behalf of the respondent in response to the application are summarized:

[26] The attorney-at-law for the respondent in his oral response made submissions on three grounds: if there was a right to intervene whether or not proceedings were served on the correct party and who is the paying party.

[27] In his oral submission attorney-at-law for the respondent submitted that there were no proceedings which the applicant should be granted leave to intervene. There were no proceedings in the court for bill of cost, and therefore the right to intervene did not arise. Attorney-at-law for the respondent further submitted that if the applicant is not a party to the proceedings, they had no *locus standi* and therefore the applicant has no right to intervene to set aside the default cost certificate.

[28] Further attorney-at-law for the respondent submitted that if the applicant is not the paying party, the applicant has no *locus standi* to be in front of the court. The attorney for the respondent submitted that if in fact the insured is the paying party this would include the applicant and the service would be proper.

LAW AND ANALYSIS

[29] The main issues for consideration are:

1. Whether the entry of a default judgment constituted proceedings for applicant to intervene to set aside the default cost certificate.

2. Whether the default costs certificate issued to the applicant should be set aside; and

3. Whether the applicant, has a right to intervene to set aside the default costs certificate;

Whether the entry of a default judgment constituted proceedings for the applicant to intervene to set aside a default costs certificate.

[30] The CPR does not operate to exclude the entry of a default judgment from what constitutes proceedings.

[31] CPR 1 (1) Civil Proceedings include Judicial Review and applications to the court. under the Constitution under Part 56.

(2) These Rules do not apply to the following proceedings –

Proceedings when the court acts as a Prize Court; and

Any other proceedings in the court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

[32] I do not agree with the submission by the attorney-at-law for the respondent that the application ought not to have been brought because there were no proceedings. What is of relevance, is whether in the circumstances the application should be granted to allow for the applicant to intervene would further the overriding objective.

Whether the applicant has a right to intervene to set aside the default costs certificate

[33] The right to intervene by the applicant is grounded in statute. The Motor Vehicles Insurance (Third-Party Risks) Act (“hereinafter referred to as the Act”) provides:

> "18(1) If after a certificate of insurance has been issued under subsection (9) of section 5 in favour of the person by whom a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under subsections (1), (2) and (3) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, **the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment, the amount covered by the policy or the amount of the judgment, whichever is lower, in respect of the liability, including any amount payable in respect of costs and any sums payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments**."(emphasis added)

[34] By virtue of this subsection, the applicant is required to honour any liability incurred by its insured in keeping with the terms of its insurance policy. The contract exhibited to the affidavit filed on November 29th 2019, in support of the notice of application for leave to intervene confirms the contractual relationship that exists between the insured and applicant, at the time of the accident. The applicant's filing of the application is a recognition of the statutory provisions under the Act and contractual obligations which flow from same.

[35] In **Linton Williams v Jean Wilson, Harris Williams and Insurance Company of the West Indies** (1989) 26 JLR 172, Rowe P (as he then was) was asked to consider inter-alia whether the insurance company could intervene in a suit. This decision is distinguished on its facts, however, the principle is applicable in this instance. In that case, the interlocutory judgment was set aside, and leave was granted to defend. The appellant appealed the lower court's decision, claiming that the insurer had no *locus standi* to set aside the judgment, and also to defend the claim in its own name. The learned judge reversed the order to allow the insurance company to intervene on the basis that the insurer wished to be entered in its own interest, as opposed to having a singular interest in the claim, to either show that

the insured was not liable or, if liable, to ensure the damages awarded were appropriate. Rowe P held that the right to set aside a default judgment is a general right which goes beyond intervening to set aside a default judgment.

[36] Rowe P, at page 178 stated:

> "The stranger, such as the respondents, who obtained an interest by virtue of the obligations prescribed by Section 18 of the Motor Vehicle (Third Party Risk) Act can apply in the name of the insured for leave to set aside the default judgment, or can apply in his own name for a similar Order...."

[37] In the case of **Advantage General Insurance Company Limited v Doreen Wright [2016] JMCA Civ. 31**, the Court of Appeal was asked to consider a decision of Batts J. In that decision it was held that the insurance company would be liable to pay costs and as such a declaration was granted to that effect. Morrison P, (as he then was) held:

> "This appeal raises a short, but important, point of construction in relation to section 18(1) of the Motor Vehicle Insurance (Third Party Risks) Act (the Act). The issue to be determined is whether section 18(1) obliges a motor vehicle insurer (the insurer) to pay costs and interest to a third party to whom, subject to any applicable policy limit, it is liable to pay the amount of a judgment obtained against the holder of an insurance policy issued by it (the insured).

At paragraph 37 Morrison P, further stated:

> "…The result of this is that, as used in section 18(1), the word 'including' must be read as having expanded the insurer's liability to a third party respondent to include (i) interest on the total judgment from the date it is pronounced to the date of payment; and (ii) costs."

[38] From Morrison P's ruling, it follows that the obligations under Section 18(1) of the Act extends to costs that have been awarded in this matter.

[39] The recent Court of Appeal decision of **Advantage General Insurance Company Limited v Alessandra Labeach and Anthony Alexander Powell [2022] JMCA Civ 20** examined: whether the appellant had a right to intervene in the claim in its own name, without giving notice to the insured, and whether the learned judge was

correct in refusing to exercise her case management powers. The former offers guidance in respect of this application at bar.

[40] Brown JA, in in arriving at his decision referenced **Stuart Sime's A Practical Approach to Civil Procedure 11th Edition**, on the point of whether the court could exercise its discretion to allow a person to intervene in a matter. Brown JA found credence in the example that where the intervener's legal property, or financial rights will be directly affected, the court's discretion to allow the applicant to intervene may be exercised. Brown JA also made reference to the case of **Gurtner v Circuit and Anor [1968] 2 QB 587** where Lord Denning opined:

> *"… It seems to me that when two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters in dispute to 'be effectually and completely determined and adjudicated upon' between all those concerned in the outcome."*

Brown JA continued at paragraph 33:

"In any event Diplock LJ (as he then was) conceptualized the application to intervene as an expression of the rules of natural justice."

Quoting Diplock LJ:

> *"a person who was to be bound by a judgment in an action brought against another party and directly liable to the plaintiff upon the judgment should be entitled to be heard in the proceedings in which the judgment is sought to be obtained. A matter in dispute is not…effectually and completely 'adjudicated upon' unless the rules of natural justice are observed and all those who will be liable to satisfy the judgment are given an opportunity to be heard. In the case of an ordinary insurer, this does not arise in practice, since the standard terms of a liability third party give to the insurer the contractual right to conduct the defence of the running-down action in the name of the assured."*

[41] Having regard to the fact that there is a contract between the applicant and the insured, the applicant has established a right to intervene. Applying the dicta of Brown JA, it would therefore be in keeping with the rules of natural justice to allow

the applicant to be heard in circumstances where they would be affected financially including costs flowing from the default judgment, as prescribed under the Act.

Whether the default costs certificate issued to the respondent should be set aside

[42] In the case of **Advantage General Insurance Company Limited (Formerly United General Insurance Company Limited) v Marilyn Hamilton [2019] JMCA App 29**, the applicant sought to have a default costs certificate which was issued set aside by the Court of Appeal. The main ground for the application was that there was "good reason" to have the default costs certificate set aside.

[43] McDonald-Bishop JA, in agreeing with judgement of P Williams JA (as she then was), made reference to Rule 65.22 of the CPR stating in relation to the grounds for setting aside a default costs certificate in paragraph 4:

> *"Rule 65.22 discreetly makes provision for the setting aside of default costs certificate. It provides:*
>
> *(1) The paying party may apply to set aside the default costs certificate.*
>
> *(2) The registrar must set aside a default costs certificate if the receiving party was not entitled to it.*
>
> *(3) The court may set aside a default costs certificate for good reason.*
>
> *(4) An application to the court to set aside a default costs certificate must be supported by affidavit and must exhibit the proposed Points of Dispute."*

[44] In expounding on what must be established in an application brought under CPR 65.22, McDonald-Bishop stated:

> *"[14] Accordingly, there is only one criterion to be satisfied for the setting aside of default costs certificates under rule 65.22(3), and that is, that "good reason" exists for so doing. Neither the CPR nor the relevant authorities has provided an exhaustive list or closed category of factors that may constitute "good reason". It may very well be that some of the matters that are required in the consideration of an application for relief from sanctions may be relevant considerations in determining whether good reason exists for the setting aside of a default costs certificate. The requirement for the application to be made promptly may be one such consideration."*

> *[15] There cannot be, however, any hard and fast rule that the requirements under rule 26.8 of the CPR, must be applied, be it strictly or modified, to applications brought under rule 65.22(3). The question of what constitutes good reason for the purposes of the rule, falls to be determined upon an objective consideration of the particular facts and circumstances of each case, with the application of sound judgment and the overriding objective to deal with the case justly."*

[45] P Williams JA in paragraph 55 opined:

> *"... The difference between rule 65.22(2) and rule 65.22(3) is that in the former a registrar is obliged to set aside the default costs certificate if the receiving party is not entitled to it, whereas in the latter the court has a discretion to set aside the certificate where good reason is shown."*

P Williams JA further opined that the use of the word "must" in 65.22(2) create an obligation on the court for the default costs certificate to be set aside, while the use of the word "may" in 65.22(3) indicates that the Court ought to utilise its discretion to determine if a "good reason" for setting aside the default costs certificate has been put forward. The relevant rule for the purposes of this application therefore is CPR 65.22(3). In this regard, further reference is made to P Williams JA decision in looking at what would constitute a "good reason", P Williams JA went further to state at paragraph 56:

"In a decision of this court from an application made in chambers, **Henlin Gibson Henlin and Calvin Green v Lilieth Turnquest [2015] JMCA App 54**, F Williams JA (AG) (as he then was), stated the following at paragraphs [34] and [35]:

> *"[34] The words 'good reason', (which are used in rule 65.22(3) of the CPR), have been judicially considered in several cases. One such case is **Kleinwort Benson Ltd v Barbrak Ltd** and other appeals; **The Myrto (No 3) [1987] 2 All ER 289**. This is how the words were discussed at page 300 c, of the report: 'The question then arises as to what kind of matters can properly be regarded as amounting to 'good reason'. The answer is, I think, that it is not possible to define or circumscribe the scope of that expression. Whether there is or is not good reason in any particular case must depend on all the circumstances of that case, and must therefore be left to the judgment of the judge…'*
>
> *[35] Many of the other cases that discuss the phrase 'good reason' cite the **Kleinwort Benson case**. What all these cases confirm is whether good reason exists or not is a matter left to the individual judge's discretion and is dependent on the particular facts and circumstances of each case."*

[46] P Williams JA went further to state that the requirements for setting aside a default cost certificate are similar to that for setting aside or varying a default judgment. P Williams JA further opined in paragraph 67:

> *"The courts have always retained wide powers to set aside default judgments on such terms as it thinks just since it is recognised that there was no decision on the merits of the claim and the CPR set out the procedure for setting aside or varying a default judgment at Part 13. There must be a similar power to set aside a default costs certificate. The guidance given by Brooks JA as to the issues that should factor into the exercise of this power are more appropriate than the factors that govern the exercise of the discretion in an application for relief. These issues therefore will be utilised in considering this application. While these issues will be considered separately, the ultimate question is whether there is overall good reason for setting aside the default costs certificate."*

[47] The "guidance" of Brooks JA (as he then was) referenced by the learned judge is found at paragraph [14] of **Rodney Ramazan and Ocean Faith NV v Owners of Motor Vessel (CFS PAMPLONA) [2012] JMCA App 37** Brooks JA stated *inter alia*:

> "[14] … Without attempting to stipulate mandatory requirements, it would seem that those issues would include:
>
> (1) the circumstances leading to the default;
>
> (2) consideration of whether the application to set aside was made promptly;
>
> (3) consideration of whether there was a clearly articulated dispute about the costs sought;
>
> (4) consideration of whether there was a realistic prospect of successfully disputing the bill of costs; …"

i. The circumstances leading to the default

[48] CPR 65.18(1) provides that the Bill of Costs ought to be served on a "paying party", or the party liable to pay costs. I agree with the attorney-at-law for the applicant that notwithstanding the contractual relationship which flows from section 18(1) of

the Act, the circumstances in this instance does not make the applicant the "paying party", or for that matter, a party to the proceedings.

Rule 64. 2 (1) which states "paying party" means the party liable to pay costs. The attorney at law for the applicant submitted that notwithstanding the right to intervene the applicant would have to had to give notice to its insured to avoid prejudice. In this regard, the definition of a "paying party" in respect of the applicant does not apply. In these circumstances the default costs certificate should have been served on the insured, as the applicant at the point of issuing the default costs certificate was not a party to the proceedings.

[49] **Blackstone's Civil Practice, 2022** page 341, provides:

> *"Service is the process by which one party seeks to brings a document to the attention of another party. The document may be the claim from, service of which notifies the defendant that proceedings have been issued against them, or any other document in the proceedings."*

In the circumstances the insured ought to have been served.

[50] CPR 65.21(1) provides that a default costs certificate may be obtained when the receiving party files an affidavit proving that the Bill of Costs was served and that there were no points of dispute received by the receiving party.

[51] In this instance, the applicant was served with the Bill of Costs and Notice to Serve Points of Dispute. However, the insured was not served the Bill of Costs and Notice to Serve Points of Dispute. Points of Dispute were not filed as a result.

The default costs certificate was issued in the absence of what constitutes proper service of the bill of costs and points of dispute. I find there was no proper basis for issuing the default costs certificate.

ii. Consideration of whether there was a clearly articulated dispute about the costs sought

[52] Having not served the bill of costs and points of dispute on the insured who is the paying party would have resulted in no opportunity given to ventilate the issue of costs. There was a requirement for the insured to respond within 28 days which could not have been complied with as the insured was not served the Bill of Costs, as party to the proceedings and the paying party.

iii. Consideration of whether the application to set aside was made promptly

[53] Bill of Costs and the Points of Dispute were served on the applicant on the January 25th 2018 and the application was filed November 29th 2019. The applicant not being made a party to the proceedings nor being privy to initial documents seemingly delayed the applicant's filing the notice of application to intervene to set aside the default costs certificate.

[54] On the evidence presented the insured would have been served all the originating documents except for the notice of assessment and points of dispute and the insured would not have been aware of service of the latter as they were not served on him. The applicant averred they would not have known that the insured was not served the Bill of Costs and the Notice to Serve Points of Dispute.

[55] I accept the submission by the attorney-at-law on behalf of the applicant that the delay in making the application to intervene to set aside the default costs certificate, was due to the respondent not serving the Bill of Costs and Notice to Serve Points of Dispute on the insured, but on the applicant in circumstances where the applicant not being a party to proceedings did not know the insured was not served. By their own admission the respondent averred that they served the applicant the Bill of Costs and Notice of Points of Dispute and not the insured.

iv. consideration of whether there was a realistic prospect of successfully disputing the bill of costs

[56] The submission made by attorney-at-law for the applicant regarding the sum awarded on the uncontested taxation having regard to the simplicity of the matter,

which was managed or could have been managed by junior counsel appears to have merit. The applicant being heard on the sum awarded on the uncontested assessment of damages would satisfying the principle of natural justice, as opined by Brown JA: **Advantage General Insurance Company Limited v Alessandra Labeach and Anthony Alexander Powell [2022]**.

I find the applicant has fulfilled the criteria for good reason as set out by P Williams JA **Advantage General Insurance Company Limited (Formerly United General Insurance Company Limited) v Marilyn Hamilton [2019]**.

CONCLUSION

[57] By virtue of its contractual relationship with the insured and its liability by virtue of section 18(1) of the Act, the applicant is granted to intervene to set aside the default costs certificate in its own right. I find also that good reasons have been established to set aside the default costs certificate. In the circumstances, granting the order would further the overriding objective under CPR 1.1(1). The following orders are granted therefore**:**

1. Permission is granted to the applicant to intervene in the claim solely to dispute the default costs certificate
2. Default costs certificate granted on the 13th April 2018 to be set aside
3. That costs of this application is awarded to the applicant
4. Leave to appeal granted
5. Applicant's attorney-at-law to prepare, file and serve orders herein.