



Neutral Citation Number: [2024] EWHC 176 (KB)

Appeal nos.: QA-2021-000107; QA-2021- 000162

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/02/2024

Before :

MR JUSTICE SOOLE
sitting with Senior Costs Judge Gordon-Saker as assessor

Between :

Mr HON SHU PANG
Mrs YEUNG MIN PANG

**Claimants/
Respondents**

- and -

JUSTIN ZINDA

**Defendant/
Appellant**

Approved Judgment

This judgment was handed down remotely at 10.30am on 1st February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MR JUSTICE SOOLE

Mr Justice Soole :

1. By my Order dated 22 February 2023 (amended 6 March 2023 under the slip rule) I allowed the Appellant's appeal to the extent of ordering an oral hearing before Senior Costs Judge Gordon-Saker in respect of certain costs determined by Costs Judge James on a provisional assessment; and ordered the Respondents to pay 40% of the Appellant's costs of the appeals, to be summarily assessed by Judge Gordon-Saker at the conclusion of that hearing.
2. For the details of my judgment (dated 22 February 2023) on the appeal I refer to the approved transcript.
3. By Order dated 14 June 2023 Judge Gordon-Saker made orders consequent upon the oral hearing; and gave directions for the summary assessment of the Appellant's costs of the appeals. These included orders for him to file a statement of costs in Form N260 and for the summary assessment to be determined without a hearing.
4. In the light of the decision of the Court of Appeal in R (Isah) v. Secretary of State for the Home Department [2023] EWCA Civ 268, by Order dated 28 July 2023 I varied my Order of 22 February 2023 so that the summary assessment of the Appellant's costs should be before myself, sitting with Judge Gordon-Saker as assessor. By Order dated 28 November 2023 I refused the Appellant's application to set aside that variation.
5. The Appellant has not filed a statement in Form N260 but has provided the following particular documents: (i) an amended statement of costs relating to the permission hearings before me on 19 July and 27 October 2022; (ii) a statement of costs relating to the substantive appeal hearing on 17 February 2023; (iii) a statement of costs relating to the hearing on 22 February 2023 when I delivered oral judgment; (iv) schedules of 'work on documents' for the hearings on 19 July 2022, 27 October 2022 and 17 February 2023; and (v) a schedule of 'cases read', i.e. legal authorities for all hearings.
6. The Respondents replied with written submissions dated 3 July 2023 prepared by their Counsel Mr Riddell. The Appellant responded with a written submission dated 8 August 2023. As appears above, it was not until my Order of 28 November 2023 that the summary assessment could proceed. I am most grateful to Judge Gordon-Saker for his assistance. The decision is my own.

A preliminary point on the Order dated 19 July 2022

7. The Order dated 19 July 2022 (i) does not include any grant of permission to appeal; and (ii) is silent on the issue of costs.
8. CPR 44.10 includes: '*(1) Where the court makes an order which does not mention costs – (a) subject to paragraphs (2) and (3), the general rule is that no party is entitled – (i) to costs... (2) Where the court makes – (a) an order granting permission to appeal; ... and its order does not mention costs, it will be deemed to include an order for applicant's costs in the case.*'

9. Accordingly the 'general rule' applies and there is no order for costs in respect of the Order dated 19 July 2022. The final Order of 22 February 2023 did not change that position.

The Appellant's claim

10. The Appellant's schedules divide the claim into two essential elements: (i) Preparation for/attendance at hearings; (ii) disbursements.

Preparation for/attendance at hearings

11. This claim again engages CPR 46.5, which provides as material:

"(4) The amount of costs to be allowed to the litigant in person for any item of work claimed will be –

- (a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or*
- (b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46." [£19 per hour].*

12. The three schedules of 'work done on documents' for the respective hearings on 19 July 2022, 27 October 2022 and 17 February 2023 claim a total 543.91 hours work: divided as 19 July, 159.5 hours (also expressed as 6.4 weeks); 27 October, 189.3 hours (7.6 weeks); 17 February, 195.11 hours (7.8044 weeks). The schedule for 'cases read' for all hearings cites three pages of authorities and claims 64.6 hours (2.6 weeks). This produces a total preparation time of just over 608 hours, also expressed as just over 24 weeks.
13. The primary basis of claim is for loss of earnings as a supply teacher at 4 schools; in each case resigning his contracted employment in order to work on the appeal. The first such employment was 4.1.22-1.4.22, resigning on 8.2.22, The second was 23.5.22-21.7.22, resigning on 15.6.22. The third was 7.10.22-16.12.22, resigning on 7.10.22 to work on this and another matter. The fourth was 14.11.22-2.12.22, with an offer of work at the school until 21.7.23; resigning with effect from 5.12.23.
14. These produce a total claimed loss of earnings (net of tax and national insurance) of $£5168.79 + 4184.59 + 7934.29 + 4627.85 = £21915.52$; in respect of a total period in excess of 27 weeks.
15. It was plainly unnecessary and unreasonable for the Appellant to have given up employment to prepare for this appeal and the relevant hearings. With all due allowance for his position as a litigant in person, there was no good reason to take any time off employment. All the work could have been done outside working hours. The claim for loss of earnings is accordingly refused.

16. Turning to the alternative claim for time reasonably spent, at £19 p.h. (CPR 46.5(4)(b)), the three schedules of ‘work done on documents’ show excessive, unnecessary and repetitive work. By way of examples, this is particularly noticeable in the time spent on (i) assembling bundles and (ii) reading of transcripts relating to the underlying action.
17. As to bundles, the schedules show (i) for the hearing on 19 July 2022, 55 hours assembling 6 bundles (ii) for the hearing on 27 October 2022, 82 hours assembling 6 bundles with the same description (ii) for the hearing on 17 February 2023, 85 hours assembling 6 bundles. Whether or not this work involves overlap in work or calculation, it is plainly unreasonable to spend a total 222 hours (or any of the totals claimed for the individual hearings) on this task.
18. As to the underlying action, each of the schedules shows the reading and re-reading of transcripts of hearings and judgments in the underlying action, in particular the hearings before HHJ Auerbach, HHJ Moloney KC and May J. By way of example, consideration of the transcript of the hearing before May J on 16 June 2020 is referred to in the schedules for 19 July 2022 (2.6 hours), 27 October 2022 (also 2.6 hours) and 17 February 2023 (2.64 hours). The transcript of the hearing before that judge on 19 May 2019 is likewise considered for 4.8, 4.8 and 4.895 hours.
19. Leaving aside the apparent duplication of work and/or the identity of the number of hours spent, there is no good reason for spending any time on reading into the underlying action and its hearings. A further example is the item described as ‘Reviewing All Indexes to Trial Bundles combined by the Applicant to show the apportionments of documents within the claims and counterclaim’ which appears in each schedule for, respectively, 5 hours, 5 hours and 4.785 hours.
20. In these unsatisfactory circumstances the Court has no better option than to take a ‘broad brush’ approach to the assessment of a reasonable amount of time spent in preparation for the relevant hearings on 27 October 2022 and 17 February 2023.
21. For ‘work done on documents’, and erring on the side of generosity, I would allow preparation time of 50 hours for each of the hearings on 27 October 2022 and 17 February 2023, i.e. a total 100 hours.
22. For ‘cases read’, the schedule claims 64.6 hours and cites 3 pages of authorities. The time spent is excessive and unreasonable, but not as obviously so as the rest of the Appellant’s preparation. Although he researched cases of no apparent relevance, and only one was advanced in argument, I proceed on the basis that a litigant in person may proceed along a number of dead ends in his legal research. Again erring on the side of generosity, I shall allow 40 hours under this head.
23. These preparation costs total 140 hours. At £19 p.h., this produces **£2660**.
24. Attendance at hearings: For 27 October 2022, I will allow 4 hours; for 17 February 2023, the claimed 6 hours: total 10 hours at £19 p.h. = £190. For 22 February 2023, I allow the claimed £263.99 for one day’s loss of earnings, net of tax and NI. Costs compensate for net loss and are not taxable. Total under this head: **£454**.

Disbursements

27 October 2022

25. Items 12-15: allowed in total **£72.80**.
26. Items 16-17: the total of £660 for photocopying the bundles (£600) and stationery (£60) is unreasonable because of the excessive size of the bundles including the unnecessary transcripts and judgments in the underlying action and the apparent duplication of work. I allow **£400**.
27. Item 18: Transcripts claimed at £1896.18. This total is comprised of (i) transcripts of hearings before/judgments of HHJ Moloney KC in January 2020: £1001.28 + £435.54; (ii) a transcript described in the exhibited invoice as a hearing on 16 June 2021 with the appeal reference QA-2018-000015: £459.36. From the papers in the appeal bundles, I infer that the latter must be the transcript of the hearing before May J on 16 June 2020: see bundle 2 p.276; also bundle 1 p.382. Transcripts of the hearings in the underlying action were unnecessary for these appeals on the assessment of costs; and their cost unreasonably incurred. Further, and in any event, there is no basis for recovery of the cost of a transcript obtained in connection with a separate appeal. I make no award under this head.
28. Item 19: Court fee (**£275**) allowed.

17 February 2023

29. Item 4: Printing/photocopying bundles; stationery: total claimed £834.22. For the same reasons as in respect of the 27 October 2022 hearing, and also taking account of the fact that the appeal was now being heard on a narrower basis, I reduce this to **£400**.
30. Items 6-9: travel expenses allowed in full at **£81**.
31. Item 11: drafting statement of costs: 3 hours at £19 p.h. allowed in full = **£57**.

22 February 2023

32. Travel to Court: **£33** allowed in full.
33. Total on 100% basis: £2660 + 454 + 73 + 400 + 275 + 400 + 81 + 57 + 33 = **£4433**. Standing back, I round this up to **£4500**.
34. Total on 40% basis: **£1800**.