# In The Supreme Court of Bermuda

**CIVIL JURISDICTION**

**2016 No: 312**

**IN THE MATTER OF AN APPLICATION FOR SECURITY FOR COSTS**

**AND IN THE MATTER OF THE RULES OF THE COURT OF APPEAL**

**AND IN THE MATTER OF THE REGISTRAR'S SUMMONS UNDER RULE 2/7**

**BETWEEN:**

**1) AYO KIMATHI**
**2) DAVID TUCKER**

**Appellants**

**And**

**1) THE ATTORNEY-GENERAL FOR BERMUDA**
**2) THE MINISTER OF HOME AFFAIRS**
**3) THE EXECUTIVE OFFICER OF THE HUMAN RIGHTS COMMISSION**

**Respondents**

## CHAMBERS RULING

*Application for Security for Costs (Rules of the Court of Appeal 2/10)*
*Late Adjournment Requests of Appeals from the Supreme Court*

Date of Hearings: Tuesday 5 September 2017 and Thursday 19 October 2017

Date of Ruling: Tuesday 24 October 2017

Mr. Eugene Johnston and Dawn Johnston (J2 Chambers) for the Appellants

Mr. Bryan Myrie and Ms. Lauren Sadler-Best (Attorney-General's Chambers) for the First and Second Respondents

Mr. Allan Doughty and Ms. Gretchen Tucker (Beesmont Law Ltd) for the Third Respondent

RULING of Registrar Shade Subair Williams

## Introductory

1. The Respondents seek an order for security for costs for the due prosecution of this appeal against the final judgment of the learned Hon. Chief Justice, Ian Kawaley in Judicial Review proceedings dealing with the boundaries of freedom of expression and public speech. The appeal is fixed to proceed during the upcoming Court of Appeal session on 8 and 9 November 2017.

2. The Appellants object to the making of a security for costs order. On 5 September 2017 I refused to make a security for costs order in favour of the Appellants' primary submission is that this is a case of wide public and constitutional importance and that they fall under the category of unsuccessful private-citizens in pursuit of non-frivolous constitutional claims. The Appellants successfully asserted that the exception to the general rule of costs to follow the event applies. However, I gave liberty to the Respondents to restore the application for security for costs which was heard on 19 October 2017.

3. The Appellants now, by informal email correspondence, seek an adjournment of the Appeal from the November 2017 session to the March 2018 session.

## The 5 September 2017 Hearing

*Order of Directions on Registrar's Summons*

4. By summons dated 15 August 2017 and issued by me (in my capacity as Registrar of the Supreme Court) pursuant to Rule 2/7 of the Rules of the Court of Appeal ("the Rules"), the

parties first appeared before me on Tuesday 5 September 2017. On that occasion Mr. Eugene Johnston and Mrs. Dawn Johnston appeared on behalf of both Appellants. The Respondents were present through their Counsel, namely Crown Counsel Mr. Brian Myrie holding for Ms. Sadler-Best on behalf of the First and Second Respondents and Mr. Allan Doughty appearing on behalf of the Third Defendant.

5. On 5 September 2017 I ordered various directions preparatory to the hearing of the appeal. I also confirmed the fixture of the appeal hearing dates to be 8 and 9 November 2017. The Respondents were initially hesitant to agree to the appeal being listed in the November 2017 session but reluctantly confirmed their availability after Mr. Johnston pleaded against further delay and insisted on the appeal proceeding in November 2017 as fixed.

6. A draft copy of my Order was provided by the Court to Mr. Johnson on the following day, 6 October 2017. Mr. Johnston was directed to liaise with opposing Counsel to ensure that the Order was correctly stated. I further directed Mr. Johnston to file the Order, if and once agreed, with a back-page affixed and the requisite stamp duty thereon.

*5 September 2017 Oral submissions on Security for Costs:*

7. Mr. Doughty made an application for security for costs. While joining Mr. Doughty in the application, Mr. Myrie apologized for being unable to make fuller submissions with the support of case law. He explained that he was merely holding for Ms. Lauren Sadler-Best who was unavailable to attend.

8. Mr. Doughty and Mr. Myrie complained that Mr. Johnston had been non-responsive to their attempts for pre-hearing discussions on security for costs and other possible disputes. Mr. Doughty informed the Court that Mr. Johnston had not replied to any of his emails to this effect. Mr. Johnston accepted that he had not engaged in any discussions with Counsel and remarked '*I am going to keep my powder dry until I see whether my learned friends make an untenable submission. Our view is that there should be no order for security*'. Mr. Johnston then proceeded to make full oral submissions before me opposing the Respondents' application for a security for costs order.

9. I pause here to record the Court's disapproval of this ambush-style approach to security for costs applications. These applications are a standard component of hearings on summonses issued under Rule 2/7. On the vast majority of occasions, the Registrar will make an order for security of costs. Counsel are always expected to engage in pre-hearing dialogue with one another in order to ascertain if an agreed position on security can be reached prior to the hearing before me. In this case, Mr. Johnston ought to have made it known to opposing Counsel in advance of the hearing that he intended to argue against the making of an order

for security for costs. Had he done so, the Respondents would have known to prepare accordingly.

10. On hearing the oral arguments which proceeded, Mr. Doughty submitted that this case is not, strictly speaking, a constitutional matter and that an order for security for costs in the sum of $30,000[1] would be appropriate as the First Appellant is a foreign national living outside of Bermuda. Crown Counsel, Mr. Myrie joined Mr. Doughty in these submissions.

11. Mr. Myrie, stated that his office made unsuccessful attempts to ascertain from Mr. Johnston an agreed position on whether, on the first part, this is truly a public interest matter and, on the second part, how much it would likely incur in legal fees. Without the benefit of a hard-copy of the judgment to hand, Crown Counsel relied on the judgment of the learned Hon. Chief Justice, Ian Kawaley, in *Mahesh Sannapareddy v The Commissioner of the Bermuda Police Service and The Attorney General [2017] SC (Bda) 54 Civ (5 July 2017)* to support his submission that this is the approach expected of the Crown.

12. Mr. Johnston, in contemplation of a possible order as a '*fall-back*' position, argued that any security for costs order should only be set in the amount necessary to pursue the overseas appellant (said by Mr. Johnston to be residing in Washington DC, USA) in execution of the final Court order. Counsel for the Appellants suggested that the more appropriate sum would be in the range of $2,500. However, as his primary point, Mr. Johnston relied on *The Minister of Home Affairs and The Attorney General v Michael Barbosa Civil Appeal No. 3 & 3A of 2016* where the Bermuda Court of Appeal upheld the general rule opposing costs orders against unsuccessful private-citizen litigants in non-frivolous constitutional actions. This rule was stated by the learned Justice Stephen Hellman at first instance in *Barbosa* and also in *Holman [2015] SC (Bda) 70 Civ (13 October 2015)* where he followed the approach of the South African Constitutional Court in *Biowatch Trust v Registrar: Genetic Resources and Others [2009] ZACC 4* and the Eastern Caribbean Court of Appeal decision in *Chief of Police et al v Calvin Nias (2008) 73 WIR 201*.

13. Mr. Johnston also referred to the judgment of the Court of Appeal in *The Allied Trust & Allied Development Partners Ltd v The Attorney General & The Minister of Home Affairs Civil Appeal No. 22 of 2015* where an order for costs was made, notwithstanding the constitutional claims relied on. Mr. Johnston sought to distinguish the *Allied Trust* case from the case at bar on the grounds that both parties in *Allied Trust* were commercial bodies and that the result of that case would have no greater impact on the general public at large. Mr. Johnston directed my attention to paragraph 22 of Supreme Court judgement of the learned Chief Justice which reads in part:

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[1] At the 5 September 2017 hearing Mr. Doughty estimated that the costs for Third Defendant would likely come to less than $15,000.00.

"*On its face this application raised what appeared to me the most difficult questions about the limits of free speech in relation to public debate or 'political speech' which this Court has been confronted with in the post-1968 Constitution era…*"

14. On 5 September 2017 I refused to make an order for security for costs. I agreed that the constitutional nature of the case, albeit an application for judicial review, justified foregoing a costs order. In refusing to make an order for security for costs, I relied in large part on the costs ruling of the Chief Justice made on 2 May 2017 wherein he refused to make a final award for costs in this case at first instance. Paragraph 9 of that ruling reads as follows:

*"In my judgment the appropriate award is for this Court to make no order as to costs. I base this on the following findings:*

*(a) the Applicants are private citizens who have been unsuccessful overall;*
*(b) the Applicants have neither acted unreasonably in bringing the present proceedings nor in the manner in which they have prosecuted them. The application has helped to develop entirely new Bermudian law in a field of public importance;*
*(c) the non-constitutional issues were of limited significance in costs terms and were not entirely discrete in any event (e.g. the interpretation of both section 31(5) of the Bermudian Immigration and Protection act 1956 and section 8A(1) of the Human Rights Act 1981 was materially shaped by the constitutional arguments); and*
(d) *the partial success the 2nd Applicant achieved was of little or no significance in costs terms."*

15. Mr. Johnston also reminded the Court that the Second Appellant is a Bermudian national residing in Bermuda and that this should negate any concerns related to an overseas appellant. Mr. Johnston asserted that the public issues arising under this appeal are important and broad enough, in any event, to bring this case squarely under the *Barbosa* rule. The Appellant's argument stressed that in all likelihood the appeal hearing would not result in a final costs order against the Appellants whether they were successful or not and whether they resided in Bermuda or not.

16. However, having some sympathy for the Crown's lack of preparedness due to the absence of pre-hearing dialogue with Mr. Johnston, I allowed Mr. Myrie the opportunity to file the authorities he wished to rely on for my further consideration and review on the subject of security for costs. I granted the Respondents liberty to apply accordingly. (I accept, having further reviewed the 5 September 2017 Order, that it is not clear on its face that the Respondents had liberty to restore the application for security for costs. Notably, Counsel for the Crown attempted, through correspondence with the Court, to correct this as a clerical error. However, such attempts seem to have fallen on deaf ears.)

## Non-Compliance with the Registrar's Order of Directions (5 September 2017)

17. I directed that the Appellants were to pay the aggregate sum of $500 in Court fees ($400 for the hearing fee and $100 for the costs of the Record pursuant to Rule 2/9) on or prior to Friday 22 September 2017. However, the requisite $500 payment was not made until Monday 9 October 2017, over two weeks after the directed timeframe.

18. I also directed for the filing of six (6) paginated and indexed copies of hearing bundles without specifying a date for completion. It is apparent on the face of the 5 September 2017 Order that another clerical error occurred on the stated deadline for the filing of the hearing bundles which erroneously reads '*Friday 24 February 2017*'. Notably, this error was also identified by Crown Counsel via correspondence with the Court. However, an uncorrected copy of the Order was nevertheless filed and signed by me.

19. It is also noted that during the 5 September hearing Mr. Johnston expressed his agreement with the proposed index for the hearing bundles, as provided by Mr. Doughty. However, to date copies of the actual the hearing bundles have not been filed, notwithstanding that the appeal is fixed to proceed in two weeks from now. Consequently, on 19 October 2017 I directed that the Respondents would have leave to file a joint Respondent hearing bundle. It is expected, however, that the hearing bundle would follow the proposed and agreed index referred to in the 5 September hearing.

20. I further directed for the Appellants' submissions to be filed and served on or prior to Friday 6 October 2017. The Appellants are in breach of this direction as submissions have not yet been filed. Consequently, I extended the timeframe for the filing of the Respondents' submissions.

21. My direction for the filing of a joint authorities bundle on or prior to Monday 16 October 2017 has also been breached.

22. Moreover, Mr. Johnston under a cover letter dated 9 October 2017, filed the draft Order (without importing the clerical changes requested by the Respondents) in excess of a month's delay following the 5 September hearing. The filed Order did not have back-page affixed, contrary to my direction. In the said letter Mr. Johnston stated, "*We have affixed $25.00 in revenue stamps on this letter, because the draft Order did not have a back-page, and introducing one would be of no use*."

23. Collectively, these breaches necessitated the listing of a second hearing before the Registrar as I had Rule 2/17[2] under consideration.

[2] Rule 2/17 is on Non-Compliance with Conditions of Appeal

**The 19 October 2017 Hearing**:

24. On 8 September 2017 the Crown filed a bundle of authorities under a skeleton argument on security for costs, leave having been given to do so on 5 September 2017.

25. Pursuant to a Notice of Hearing, dated 16 October 2017, Counsel for the Respondents appeared before me on 19 October 2017. On this occasion Crown Counsel, Ms. Sadler-Best, appeared for the First and Second Respondents and Mr. Doughty and Ms Tucker for the Third Respondent.

*Appellant's Request for an Adjournment of the Appeal*

26. Mr. Johnston, whose practicing certificate was recently suspended, did not appear before me on 19 October. Mrs. Dawn Johnston did not appear either. No other attorney appeared to hold for Mr. Johnston. Instead, he sent the following email correspondence on the day of the hearing:

"*Good morning,*
*Unfortunately, both Appellants are overseas. One lives there, and the other is accompanying his son for a medical emergency.*
*I am unable to practice for reasons I cannot explain in this email. But I expect the lunacy around that to end as early as next week.*
*I cannot appoint another lawyer to act on my behalf this morning. It would be professionally embarrassing for both them and me. I can't take instruction to do that.*
*If I was able to appear I would request, on behalf of the Appellants, that the matter be moved from the November to the March list, and that new directions be given for the record (which is prepared), the Appellants' skeleton argument (which is also prepared) and the Respondents' skeleton arguments.*
*The Registrar has no power to act pursuant or (sic) O. 2/17.*
*It may be best to make those orders today. And to give another date if the Respondents insist that security of costs is still an issue.*
*I would appreciate if this email is brought to the Registrar's attention. (I will follow it with a letter.)*
*Sincerely,*
*Eugene"*

27. The 19 October hearing before me proceeded and both attorneys for the Respondents confirmed their willingness for the appeal to proceed substantively in the upcoming session.

28. Untimely applications for the Registrar to adjourn appeals listed before the full Court will not be granted. Where an adjournment is sought after a fixture is secured before the full Court, the adjournment application will likely be listed to be heard before the full Court on the first day of the upcoming session. Neither party should presume that the application to adjourn will be successful. Counsel are expected to actively continue in their preparations of the appeal on the basis that adjournment request may very well be refused.

29. For these reasons any application for me to adjourn this appeal is refused. However, the Appellants' application to adjourn may be listed for hearing before the full Court upon receipt of a formal written request.

*Application for Order for Security for Costs*:

30. The Respondents renewed their request for an order for security for costs. Notwithstanding my earlier refusal, I have now been asked to make an order for security for costs based on the poorness of the conduct of the Appellants thus far in prosecuting this appeal. Counsel for the Respondents rely on the Appellants' failure to comply with my 5 September 2017 directions, as particularized above. Counsel also criticized Mr. Johnston for being generally non-responsive and therefore uncooperative in following the spirit of the overriding objective. It is on this basis that I have now been asked to reconsider the position for an order for security of costs.

## Summary of the Law on Security for Costs in Appeals from Constitutional Actions

31. Generally, the starting point in appeal cases is that an order for security for costs will be made unless the parties agree otherwise.

32. Rule 2/10 on security for costs reads:
*The appellant shall within such time as the Registrar of the Supreme Court directs deposit such sum as shall be determined by such Registrar or give security therefor by bond with one or more sureties to his satisfaction as such Registrar may direct for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant:*
*Provided that no deposit or security shall be required where the deposit would be payable by the Crown or Government department.*

33. Rule 2/11 further provides:
*The Court may, where necessary, require security for costs or for performance of the orders to be made on appeal, in addition to the sum determined under Rule 10 of this Order*.

34. However, the rule on costs for constitutional cases was made clear by the Court of Appeal in The Minister of Home Affairs and The Attorney General v Michael Barbosa in citing Sachs J in Biowatch Trust v Registrar: Genetic Resources and Others [2009] from the Constitutional Court of South Africa:

"*What the general approach should be in relation to suits between private parties and the state*

*[21] In Affordable Medicines this Court held that as a general rule in constitutional litigation, an unsuccessful litigant in proceedings against the state ought not to be ordered to pay costs. In that matter a body representing medical practitioners challenged certain aspects of a licensing scheme introduced by the government to control the dispensing of medicines. Ngcobo J said the following:*

*"The award of costs is a matter which is within the discretion of the Court considering the issue of costs. It is a discretion that must be exercised judicially having regard to all the relevant considerations. One such consideration is the general rule in constitutional litigation that an unsuccessful litigant ought not to be ordered to pay costs. The rationale for this rule is that an award of costs might have a chilling effect on the litigants who might wish to vindicate their constitutional rights. But this is not an inflexible rule. There may be circumstances that justify departure from this rule such as where the litigation is frivolous or vexatious. There may be conduct on the part of the litigant that deserves censure by the Court which may influence the Court to order an unsuccessful litigant to pay costs. The ultimate goal is to do that which is just having regard to the facts and the circumstances of the case...*"

*… [23] The rationale for this general rule is three-fold. In the first place it diminishes the chilling effect that adverse costs orders would have on parties seeking to assert constitutional rights. Constitutional litigation frequently goes through many courts and the costs involved can be high. Meritorious claims might not be proceeded with because of a fear that failure could lead to financially ruinous consequences. Similarly, people might be deterred from pursuing constitutional claims because of a concern that even if they succeed they will be deprived of their costs because of some inadvertent procedural or technical lapse. Secondly, constitutional litigation, whatever the outcome, might ordinarily bear not only on the interests of the particular litigants involved, but on the rights of all those in similar situations. Indeed, each constitutional case that is heard enriches the general body of constitutional jurisprudence and adds texture to what it means to be living in a constitutional democracy. Thirdly, it is the state that bears primary responsibility for ensuring that both the law and state conduct are consistent with the Constitution. If there should be a genuine, non-frivolous challenge to the constitutionality of a law or of state conduct, it is appropriate that the state should bear the costs if the challenge is good, but if it is not, then the losing non-state litigant should be shielded from the costs consequences of*

*failure. In this way responsibility for ensuring that the law and state conduct is constitutional is placed at the correct door.*

*[24] At the same time, however, the general approach of this Court to costs in litigation between private parties and the State, is not unqualified. If an application is frivolous or vexatious, or in any other way manifestly inappropriate, the applicant should not expect that the worthiness of its cause will immunize it against an adverse costs award. Nevertheless, for the reasons given above, courts should not lightly turn their backs on the general approach of not awarding costs against an unsuccessful litigant in proceedings against the state, where matters of genuine constitutional import arise. Similarly, particularly powerful reasons must exist for a court not to award costs against the state in favour of a private litigant who achieves substantial success in proceedings brought against it…*"

35. The Court of Appeal in *Barbosa* went on to say at paragraph 10 of the *Barbosa* Judgment:
"*…. I do, however, sound this note of caution as to its application. The general rule in constitutional cases should not be applied blindly. Individual cases may involve features which justify some departure from the general rule. Often, constitutional issues will be linked with other claims. Sometimes success or failure will be partial rather than total and sometimes as in the present case, there will be an appeal. In the end, the Court has to make a just order according to the facts of case…*"

36. In citing the *Barbosa* Judgment, the learned Chief Justice in *Mahesh Sannapareddy v The Commissioner of the Bermuda Police Service and The Attorney General [2017] SC (Bda) 54 Civ (5 July 2017)* stated at paragraph 21:
*"It is impossible to overstate the significance of the Court of Appeal for Bermuda's decision in Barbosa in terms of promoting access to the Court by litigants wishing to seek constitutional relief. Implicit in the new costs regime is the notion that the State should be willing to bear its own costs in assisting the Court to construe the Constitution in the context of adjudicating a citizen's non-frivolous complaint that his or her fundamental rights have been contravened."*

37. It is worth noting that the case of *Sannapareddy* was brought before the Court as a judicial review application. The claim for constitutional relief was an alternative argument relating to the proper construction of section 23(6) of PACE. While the constitutional claim was not pursued on account of a concession by the Respondent, the same constitutional law submissions were successfully relied on in support of the other claims.

38. The Attorney General intervened as an Interested Party to be heard on the constitutional claim which was later abandoned. The withdrawal of the constitutional claim was made clear in the early part of the first day of the hearing. Notwithstanding, the Attorney General remained in Court throughout the action without seeking permission to be excused.

39. At para 24 of the *Sannapareddy* judgment, the learned Chief Justice stated, "*In light of the Barbosa principles of which the Attorney General was of course aware, the Intervener should ideally have put the Applicant on warning that an adverse costs order would be sought if it was considered that pursuit of the constitutional relief application was unreasonable.*"

## Analysis

40. My assessment on the need for an order for security for costs is a judicial function rather than an administrative task. It is incumbent on the Registrar to determine what the final costs order may entail if the Appellant loses the appeal. This task is assigned to the Registrar by Rule 2/10. For this reason, it is necessary for me to have regard to the line of authorities provided in considering whether a final costs order by the full Court is likely.

41. I find that this case is of sufficient constitutional character and public importance to come within the *Barbosa* rule on costs. The fact that this case was brought as a Judicial Review action does not deprive it of its entitlement to the same costs considerations as is given to constitutional claims. After all, this is a case centering on the freedom and rights of expression through public speech. The constitutional characterization of this case, to my mind, equally applies to Mr. Tucker's claim which unsuccessfully challenged the Executive Officer's decision to investigate and refer the Human Rights Complaint to the Human Rights Tribunal for adjudication on the allegation of contravention of section 8A(1)(b) of the Human Rights Act 1981.

42. In the *Sannapareddy* judgment, the learned Chief Justice cited *Jaroo v The Attorney-General [2002] UKPC 5* at paragraphs 24 and stated in referring to the case of *Jaroo* "*This case is of little assistance in elucidating how constitutional applicants should conduct themselves with a view to avoiding having to pay constitutional costs. Moreover, it confirms the appropriateness of the procedure adopted by the Applicant here. Rather than filing a freestanding application under section 15 of the Constitution before exhausting his ordinary public law discretionary remedies by way of judicial review, the Applicant sought judicial review as his remedy…*". For this reason, I do not agree that this case should be treated as a non-constitutional claim merely because the Appellants were properly exhausting alternative procedural remedies as a first measure for constitutional relief.

43. At paragraph 18 of the Crown's written submissions, it is submitted, as a reason why the Applicant should pay security for costs, that the Applicant has not proved impecuniosity. As a matter of general principle, I accept that where impecuniosity is relevant and in dispute, it must be supported by evidence before it is found to be a fact. To this extent, I have had careful regard to the case of *Nasser v United Bank of Kuwait [2002] 1 All ER 401*.

However, in this case, the Appellants did not advance impecuniosity as a ground for the avoidance of a security for costs order. Further, I am not persuaded that the financial ability of an Appellant is a proper basis upon which I should depart from the principles stated in *Barbosa* when assessing the need for an order for security of costs in constitutional cases. In the *Sannapareddy* judgment, the learned Chief Justice stated at paragraph 27, "*Absent such unusual circumstances, however, it is wrong as a matter of principle to suggest that special constitutional costs should be subjected to a means-based test*." Accordingly, I refuse to make an order for security for costs on the basis of there being no evidence of impecuniosity.

44. The *Barbosa* rule on costs for constitutional cases is not an inflexible rule which should be followed blindly. Having regard to the particular facts and circumstances of the case, I find that the Appellants' conduct in prosecuting this appeal thus far deserves censure. The Appellants have flagrantly failed to comply with my directions ordered on 5 September 2017 and the appropriateness of a wasted costs order by the full Court is clearly arguable. However, I find that such a wasted costs order is likely to be restricted to (i) the impact of delayed compliance and outright non-compliance with the 5 September 2017 order and (ii) the need for the 19 October 2017 hearing. (Notably, it does not appear that Counsel for the Respondents intended to pursue a listing of the second hearing to argue security for costs. Ms. Sadler-Best remarked at the outset of the 19 October 2017 hearing that she intended to apply for security before the full Court instead. The principal purpose for listing the 19 October 2017 hearing was to allow Counsel to be heard on the non-compliance points.)

45. I find that a security for costs order measured against a wasted costs order is appropriate. The commensurate sum in security is $5,000.00. This contemplates an estimate sum in wasted costs and an estimate sum in security for any costs necessary to pursue the overseas First Appellant.

## Conclusion

46. The Appellants are ordered to pay the collective sum of $5000.00 into the Court as security for the due prosecution of this appeal. The requisite $5000.00 sum may be made up in part or whole by bond with up to 2 sureties. Such payment and/or bond shall be made on or prior to Monday 30 October 2017.

47. The application for me to adjourn the appeal and vacate the hearing dates for 8 and 9 November 2017 is refused. Contingent on a formal letter to the Court filed no later than Thursday 26 October 2017 in request of an adjournment; this matter will also be listed to appear before the full Court on Monday 30 October 2017 for the hearing of the adjournment application.

48. A corrected copy of the 5 September 2017 Order importing the stated clerical amendments to the Order will be provided by the Court.

49. Costs reserved and to be determined by the full Court.

Dated this 24th day of October 2017

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**SHADE SUBAIR WILLIAMS**
**REGISTRAR OF THE SUPREME COURT**