Neutral Citation Number: [2026] CICA (Civ) 9

IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS FINANCIAL SERVICES DIVISION

CICA (Civil) Appeal No. 0028 of 2024
(Formerly FSD 0193 of 2023 (NSJ))

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)
AND IN THE MATTER OF KES POWER LIMITED

BETWEEN:

(1) AL JOMAIH POWER LIMITED
(2) DENHAM INVESTMENT LTD Appellants

and

IGCF SPV 21 LIMITED Respondent

Before: **The Hon Sir Richard Field, JA**
The Rt Hon Sir Jack Beatson, JA
The Hon Sir Michael Birt, JA

On the Papers

Draft circulated: 9 April 2026

Ruling delivered: 20 April 2026

JUDGMENT ON COSTS

Sir Richard Field, JA

Introduction

1. By its judgment dated 12 September 2025, this Court allowed the Appellants' appeal against the order of Segal J dismissing the Appellants' application to strike out the petition presented by the Respondent for the winding up of KES Power Limited ("KESP"), a Cayman Islands company

through which the Appellant and the Respondent held interests in a Pakistani electricity generating company, K-Electric Limited ("KESC"). In the light of this judgment, it was common ground that the Respondent should be ordered to pay the Appellants' costs below and in the appeal. The principal questions that arise for determination in this judgment are whether the Appellants are entitled to costs on the indemnity basis under GCR O.62, r.4(11), rather than on the standard basis, and whether the Appellants are entitled, notwithstanding GCR O.62, r.18 to recover the costs they expended in employing a firm of solicitors based in London and junior and senior counsel who had not been admitted in the Cayman Islands as an attorney at the time they provided the work which is claimed for. The Appellants also seek an order for: (i) an interim payment on account of their entitlement to costs; (ii) interest; and (iii) the costs of their submissions on costs.

The indemnity costs issue

2. GCR O.62, r.4(11) provides:

> "*The Court may make an inter partes order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently.*"

3. A claim for indemnity costs pursuant to GCR O.62, r.4(11) was an issue dealt with by this Court in *Al Jomaih Power Limited; (2) Denham Investment Ltd* [*Appellants*] *v (1) IGCF SPV 21 Limited; (2) Kes Power Limited* [*Respondents*][1], ("the first related appeal"), the judgment in which was issued on 3 February 2026. There, the Appellants had unsuccessfully appealed the order of Justice Asif refusing to grant an interim injunction against the Respondents for acting in a way alleged to be in breach of a Shareholders Agreement ("the KESP SHA") regulating the conduct of the parties in relation to KESP. The Respondents argued that they were entitled to indemnity costs in respect of the appeal, contending, inter alia, that: (i) the appeal had been hopeless since it involved a challenge to the judge's purely discretionary conclusion that the Appellants had come to the court with unclean hands and the Appellants had failed to refer in their skeleton argument to the test which must be satisfied before such an exercise of discretion can be overturned; (ii) an unheralded new point had been taken in the appeal; and (iii) the appeal was part of an attempt to hold on to injunctive relief obtained in Pakistan as long as possible despite clear warnings in the Cayman courts that the Pakistan proceedings were in breach of an exclusive jurisdiction clause in the KESP SHA mandating proceedings only in Cayman or England.

[1](Unreported CICA (Civil) Appeal No.0008 of 2025, 3 February 2026)

4. The lead judgment was given by Birt JA with which the President and I agreed. In paragraph 5 of his judgment, Birt JA referred to many of the cases where GCR O. 62, r. 4(11) has been considered, including *AHAB v Saad Investments Company Limited* [2013] (2) CILR 344 at [5]-[17] per Smellie CJ; *BL v JM* [2025] CIGC (Fam) 8 at [17]-[25] per Williams J; *Koa Capital LP v China Index Holdings Limited (Unreported),* FSD 235 of 2022, 20 April 2023 at [16] per Richards J; and *Re Jian Ying Ourgame High Growth Investment Fund (Unreported)*, FSD 225 and 258 of 2021, 27 January 2023 at [6]-[14] per Parker J.

5. In paragraph 6 of his judgment, Birt JA cited paragraphs 5 – 8 of my judgment in *Bobulinski v China Branding Group Limited,* Civil Appeal 26 of 2021, 14 June 2023, in which I observed that: (a) it was clear from the wording of GCR O.62, r. 4 that it will only be in an exceptional case that indemnity costs will be awarded, for instance where the Court is of the view that the conduct of the paying party is such as deserves a mark of disapproval; (b) for conduct to be unreasonable or negligent within O. 62, r. 4, it must be more than simply wrong or misguided in hindsight (in agreement with Smellie CJ's view in *AHAB V SAAD* [2013] 3 CILR); (c) advancing a [case] which is merely weak or unlikely to succeed is to be distinguished from one which is hopeless and the assessment of unreasonableness must avoid the wisdom of hindsight (in agreement with Henderson J's view in *Bennett v Attorney General* [2010 (1) CILR 478] at paras 6-9); and (d) the pertinency of Henderson J's reference to that part of Coulson J's judgment in *Fitzpatrick Contractors Ltd v Tyco Fire & Integrated Solutions (UK) Ltd* [2008] EWHC 1391 (TCC) that an order for indemnity costs was not justified by the mere fact that the paying party had been found to be wrong, either in fact or in law or both or by the fact that in hindsight the result of the case now being known, the position adopted may be thought to have been unreasonable.

6. In paragraph 7, Birt JA said:

> *"In short, the starting position is that costs should be awarded on the standard basis and there has to be something exceptional to justify an award of indemnity costs. This may occur if the paying party has conducted the proceedings or the part to which the order relates improperly, unreasonably or negligently (as specified in O.62, 4(11)) to such extent as to take the case out of the norm and justify, in the court's discretion, an award of costs on the indemnity basis."*

7. In support of their case for the award of indemnity costs in this appeal, the Appellants contend that the Respondent deliberately presented the winding up petition in breach of a contractual obligation contained in Schedule 4 of the KESP SHA in order to pressurise the Appellants to compromise a

dispute ("the Sage Dispute") with IGCF SPV 21 Ltd ("SPV 21"), Sage Venture Group Limited ("Sage") and that company's ultimate beneficial owner, Mr Shaheryar Chishty. In the Appellants' submission, the Respondent's presentation of the winding up petition was "egregious" and an abuse of process as being part of a litigation strategy involving claims wholly without merit in breach of the KESP SHA and bound to fail.

8. The Appellants recognise that there is limited authority as to what costs order is appropriate where a winding up petition is dismissed pursuant to section 95 (2) of the Companies Act[2]. They cite the decision of Mangatal J in *Re Rhone Holdings LP*[3] ("*Rhone Holdings")* where it was held that a petition to wind up an exempt limited partnership on just and equitable grounds was an abuse of process entitling the respondent to indemnity costs because it was in direct contravention of clause 5.12 of the Limited Partnership Agreement[4] and had caused the respondent to incur costs unnecessarily.

9. The Appellants also cite *In the Matter of Tyr Capital Partners SPC Ltd* (Unreported, FSD 370 of 2023 (DDJ), 21 June 2024) ("*Tyr Capital")* where Doyle J dismissed a winding up petition that had been found to have been presented in breach of clause 21 of the relevant Subscription Agreement[5] which clearly prohibited the winding up petition. At the end of his judgment Doyle J directed the parties to serve applications on ancillary matters including costs within 14 days, following which an agreed indemnity costs order was made against the petitioner.

10. The Appellants further submit that dismissal of a winding up petition in breach of s. 95 (2) is analogous to cases where a party has breached a jurisdiction clause by commencing proceedings in a non-chosen jurisdiction and they cite three cases in which it was held that costs would be awarded on the indemnity basis against a party who starts proceedings in breach of such a clause.

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[2] *"The Court shall dismiss a winding up petition or adjourn the hearing of a winding up petition on the ground that the petitioner is contractually bound not to present a petition against the company."*

[3] (Unreported, FSD 199 of 2015 (IMJ), 29 September 2015)

[4] *"The parties agree not to cause (a) an involuntary proceeding to be commenced or an involuntary petition to be filed seeking (1) winding up, liquidation, dissolution, reorganization, or other relief in respect of the Partnership …".*

[5] *"**Non-Petition**. The Investor agrees that it shall not, under any circumstances, (i) institute against the Fund or this Segregated Portfolio any bankruptcy, reorganisations, arrangement, insolvency, receivership or liquidation proceedings under any Cayman Islands law or similar law of any jurisdiction or (ii) apply for a receivership order under section 225 of the Companies Act (As Revised) of the Cayman Islands in respect of this Segregated Portfolio."*

11. In *Re BDO*[6], Parker J awarded indemnity costs against a party ("Argyle") who, in breach of the express terms of the applicable engagement letters and arbitration agreements, had brought proceedings in New York in the face of a warning that indemnity costs would be sought if such proceedings were instituted. In making this order, Parker J took into account the approach adopted in two cases decided in the Commercial Court in London, *Kyrgyz Mobil Tel Ltd v Fellowes International* [2005] EWHC 1329 (QB) ("*Kyrgyz Mobil*") and *A v B* [2007] EWHC 54 (Comm) ("*A v B*").

12. In *Kyrgyz Mobil*, the defendants had barefacedly claimed to be party to a transfer agreement giving them standing to bring proceedings against the claimant in Kyrgyzstan whilst at the same time ignoring a provision therein requiring all disputes to be determined by arbitration. In paragraph 42 of his judgment Cooke J said:

> "[42] *I have come to the following conclusions. First, in my judgment, the correct approach where there has been a breach of a jurisdiction clause by a party in initiating proceedings in a non-chosen jurisdiction is that the costs should be awarded on an indemnity basis. The reason for that is plain. If a party has breached his agreement, then the damages which flow from the breach of that agreement are all the costs incurred by the party who successfully relies upon the choice of jurisdiction clause. In my experience, the Commercial Court in particular but courts generally in this country adopt such an approach".*[7]

13. In paragraph [43], Cooke J went on to state:

> "[43] *This is not of course a straight breach of jurisdiction clause case because the position here is that the defendants, Fellowes, are not party to the relevant contract and the arbitration clause, as has been made plain on a number of occasions now. Nonetheless, the position is that what they did has been categorised or characterised as vexatious and oppressive on the basis that they could not possibly be in a better position than a party to that contract in circumstances where they relied on the contract in seeking relief in Kyrgyzstan. The starting point therefore must be that the claimants are entitled to indemnity costs in relation to this action, subject to any particular reasons which would detract from that."*

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[6] [2018 (1) CILR187]

[7] This part of Cooke J's judgment is wrongly stated in paragraph 2 of the Appellants' skeleton argument to have been paragraph [8].

14. In *Re BDO*, Parker J also referred in detail to paragraphs 9, 10, 11 and 15 of the judgment of Colman J in *A v B* which read as follows:

> *"9. I am bound to say that I have not previously encountered the practice as to costs orders where there has been breach of a jurisdiction agreement said by Cooke J. to be that which is generally adopted by the Commercial Court and by courts generally. Nevertheless, the rationale which he describes certainly provides some sensible foundation for such a practice. Thus, if a costs order in favour of a successful applicant for a stay or for an anti-suit injunction directed to giving effect to an arbitration agreement or an English jurisdiction clause must, save in exceptional cases be confined to costs on the standard basis, there would necessarily be a part of the successful applicant's costs of the application which it had properly incurred but could not recover by such an order because of the restrictive process of assessment. This unindemnified portion of costs would then be loss which could only be recovered as damages for breach of the jurisdiction or arbitration agreement, if such a damages claim were permissible. Where the cause of action for relief enforcing the agreement by stay or injunction in the English court and the cause of action for damages for breach of that agreement are, as they normally will be, the same, the effect of those authorities such as Berry v British Transport Commission, referred to in Union Discount v Zoller [2001] EWCA Civ 1755, will be to prevent separate proceedings for damages by reference to unrecovered costs, notwithstanding the breach of the arbitration or jurisdiction agreement."*
>
> *"10. This would give rise to a fundamentally unjust situation. There can be no question that the procedural consequence of conduct by a party to an arbitration or jurisdiction agreement which amounts to a breach of it and causes the opposite party reasonably to incur legal costs ought to be that the innocent party recovers by a costs order and/or by an award of damages the whole, and not merely part, of its reasonable legal costs. Against that background, it is necessary to ask whether there is any sustainable policy consideration which would require that unless there were some special circumstances, excluding the fact that it was an arbitration or jurisdiction agreement that had been broken, the successful party should have to forgo part of its costs or alternatively to bring a separate claim for damages to cover any shortfall on assessment of costs, considerations point very strongly indeed against either result. To forgo part of the loss would be unjust. To be placed in a position where the balance of the recoverable damages could not be quantified until after the costs had been formally assessed would involve delay in obtaining compensation properly due and a formalistic and cumbersome procedure which would in itself involve more costs and judicial time. Where the defendant who had been improperly impleaded in the English courts was outside the jurisdiction, no claim for damages could be brought in the English courts without submitting to the jurisdiction."*

> *11. In my judgment, provided that it can be established by a successful application for a stay or an anti-suit injunction as a remedy for breach of an arbitration or jurisdiction clause that the breach has caused the innocent party reasonably to incur legal costs, those costs should normally be recoverable on an indemnity basis.*
>
> *15. The conduct of a party who deliberately ignores an arbitration or a jurisdiction clause so as to derive from its own breach of contract an unjustifiable procedural advantage is in substance acting in a manner which not only constitutes a breach of contract but which misuses the judicial facilities offered by the English courts or a foreign court. In the ordinary way it can therefore normally be characterised as so serious a departure from "the norm" as to require judicial discouragement by more stringent means than an order for costs on the standard basis. However, although an order for indemnity costs will usually be appropriate in such cases, there may be exceptional cases where such an order should not be made. Although the requirement that the successful party should establish that the claimed costs were caused to be reasonably incurred (subject to the reversed evidential burden of proof in CPR 44.4(2)(b)) by the breach of the jurisdiction clause or arbitration clause will normally cater for those cases where the true cause of the expenditure on costs is the conduct of the successful party, there may be other cases in which an order for indemnity costs would not be appropriate. Without wishing to confine this flexibility in any way, it is not difficult to envisage that departure from the normal approach might be justified in a case where conduct on the part of the successful party has led the party in breach to believe that the chosen forum can be ignored. Further there may be cases in which the general conduct of the successful party, although not breaking the chain of causation, would nevertheless justify its being deprived of an order for indemnity basis costs. In such cases the need to reflect judicial disapproval of such conduct might justify an order for costs on the standard basis."*

15. Paragraphs 7 -8; 12 -13; & 15 of Parker J's judgment read as follows:

> "*7. Costs are not awarded as a matter of course on the indemnity basis. They will normally be awarded on the standard basis and will usually follow the event.*
>
> *8. GCR O.62, r.4(11) provides that the court may make an order for costs to be taxed on the indemnity basis if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently.*

> 9. *I have been referred to no Cayman authority on the question of what an appropriate costs order should be in circumstances similar to this case. There are authorities on the point in England. The English courts have held that the general costs order in relation to a party which commenced proceedings in a non-chosen jurisdiction in breach of an arbitration or exclusive jurisdiction clause is one which indemnifies the party compelled to enforce the contractual bargain in both the foreign proceedings and anti-suit injunction proceedings (as a form of damages)—see Kyrgyz Mobil Tel Ltd. v. Fellowes Intl. Holdings Ltd. (5) and A v. B (1) ([2007] EWHC 54 (Comm), at paras. 8-15).*
>
> 12. *These decisions [Kyrgyz Mobil and A v B] although not binding upon this court, are to my mind, especially in the absence of Cayman authority, persuasive in their reasoning and make for good policy. BDO Cayman has also referred me to an Australian authority Pipeline Services WA Pty. Ltd. v. ATCO Gas Australia Pty. Ltd. (6) ([2014] WAS 10, at paras. 17-25, per Martin, C.J. of the Supreme Court of Western Australia) which has recently followed A v. B (1).*
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> 13. *It seems to me that this court should also follow this line of authority. Where a party has been compelled to apply for an anti-suit injunction to restrain the continuation of foreign proceedings brought against it in breach of the parties' contractual bargain, it is fair and reasonable that it is compensated as a party which has been forced to deal with the consequences of a breach of contract.*
>
> 15. *In my view the evidence filed in this case shows that Argyle was seeking to obtain procedural and substantive advantages by commencing the New York proceedings which would not be available in the Cayman Islands (see paras. 96-97 of my judgment) and the costs order should discourage such conduct where there are clear contractual provisions which a party circumvents to obtain these tactical and other advantages. Moreover, such conduct in my view is also unreasonable."*

16. Parker J then went on to state that he did not regard Argyle's argument that there had been no breach of the clauses in question as being manifestly bad but found that Argyle had acted "unreasonably" for the purposes of O.62, r.4(11) in continuing with its "root and branch" opposition to the anti-suit injunction deploying "every conceivable argument". His decision was therefore based on the facts of the particular case rather than the adoption of the approach taken in *Kyrgyz Mobil* and *A v B*.

17. In a recent additional related appeal -- *(1) IGCF General Partner Limited and (2) The Infrastructure and Growth Capital Fund L.P. v White Crystals Limited*[8] -- ("the second related appeal") in which again the lead judgment was given by Birt JA (with which Beatson and Smellie

[8] (Unreported CICA (Civil) 0006 of 2025, 9 April 2026)

JJA agreed), Birt JA stated in paragraph 12 of his judgment, following his citation of paragraphs 9, 11, 12 & 13 of Parker J's judgment in Re BDO:

> "*Unlike in England and Wales (where there is no equivalent) the position in this jurisdiction is governed by O.62, r.4(11). It follows that, even where a party has instituted proceedings in breach of an exclusive jurisdiction or arbitration clause, he may only be ordered to pay costs on the indemnity basis if the court concludes that, in doing so, he has acted improperly, unreasonably or negligently. For my part, I think it likely that in many, if not most, cases of a party acting in breach of such a clause, he will be found to have acted unreasonably and the policy considerations articulated in the above three cases would point strongly towards indemnity costs being awarded. However, it will, as always, depend on the facts and the exercise of the court's discretion. For example, if the party had a tenable, although ultimately unsuccessful, argument that he was not in breach of the exclusive jurisdiction or arbitration clause and the court concluded as a result that he had not acted unreasonably then costs could only be awarded on the standard basis."*

18. In support for their contention that the Respondent's case that it was contractually entitled to present its winding up petition was manifestly hopeless, the Appellants cite Henderson J's observation in paragraph 6 of his judgment in *Bennett v AG* (op cit) that: *"There are … cases which are hopeless and which appear that way to any one with the requisite legal training. It is open to a judge to determine that it was unreasonable to bring such a claim or advance such a defence. The usual result of such a finding is that the unsuccessful party will pay costs on the indemnity basis …"*

19. The Appellants also rely on the view of Jones J in paragraph 15 of his judgment in *Al Sadik v Investcorp Bank BSS and Five Others* [2012(2)] CILR 33, prompted by the facts of *Amoco UK Exploration Co v British American Offshore Ltd* [9], that where a party had no legitimate basis for asserting a cause of action that was advanced for the purposed of pressurising the defendant to renegotiate the terms of a contract that had become economically unattractive, this could be improper conduct within the Cayman Rules which could also lead to an indemnity costs order under r.4 (11) if it can be characterised as substantive misconduct; for example, where the assertion of a particular cause of action may not have been initially improper but it was unreasonably pursued beyond the point at which the party must have realised it was bound to fail.

20. The Respondent strongly refutes the Appellants' contention that the winding up petition was "egregious" and "abusive". It submits that its case that the petition was not in breach of the KESP

[9] [2002] B.L.R. 135

SHA was arguable and was far from being manifestly hopeless, bearing in mind in particular that Segal J accepted it at first instance. The Respondent also relies on this Court's agreement in the related appeal with the view of Chief Justice Smellie in AHAB V SAAD that "for conduct to be unreasonable or negligent within O.62, r 4, it must be more than simply wrong or misguided in hindsight".

21. In my judgment, *Rhone Holdings* and *Tyr Capital* provide no real assistance in reaching a decision on the indemnity costs issue in this appeal. In the former case, he petitioner was in obvious breach of clause 5.12 of the Limited Partnership Agreement and any argument to the contrary (none of which was pursued) would have been manifestly hopeless. Further, in awarding indemnity costs, Mangatal J made no reference at all to GCR O.62, r.4(11) despite the direct applicability of this provision. As to *Tyr Capital*, as I have pointed out above, the indemnity costs order was agreed by the parties without the need for Doyle J to consider the applicability of GCR O.62, r.4(11).

22. Turning to *Re BDO,* I respectfully agree with what Birt JA said in paragraph 12 of his judgment in the second related appeal that is set out in paragraph 17 above.

23. Applying the approach enshrined in Birt JA's paragraph 12, and scrutinising the facts in this appeal through the lens of O. 62, r. 4(11), I have come to the conclusion that the conduct of the Respondent in: (i) presenting its petition to wind up KESP; (ii) opposing the Appellants' application to strike out the petition; and (iii) opposing the Appellants' appeal from Segal J's order, was not improper, unreasonable or negligent as required by O. 62, r. 4(11). The presentation of the winding up petition in this hard-fought litigation was not, in my view, an egregious abuse of the process of the court as now asserted by the Appellants but not asserted by them at the trial. Further, the grounds pleaded in the petition had substance and the Respondent's contention that the petition was not in breach of Schedule 4 to the KESP SHA was not manifestly hopeless; rather, it was reasonably arguable, particularly in light of the fact that Segal J, a very experienced judge of long standing in the FSD, upheld the Respondent's interpretation of that provision. As Henderson J wisely observed in *Bennett v Attorney General*, the assessment of unreasonableness of the paying party's conduct must avoid the wisdom of hindsight.

24. For these reasons, I find that the costs of the appeal and the proceedings in the Grand Court to be awarded to the Appellants should be taxed on the standard basis and not the indemnity basis.

The Appellants' claim to recover the costs of employing junior and senior counsel who had not been admitted in the Cayman Islands as an attorney at the time they did the work claimed for.

25. GCR O.62, r.18 provides:

> *(1) Work done by foreign lawyers may be recovered on taxation under these rules on the standard basis provided that — (a) the foreign lawyer has been temporarily admitted as an attorney; and (b) the work was done after the foreign lawyer was admitted.*
>
> *(2) Work done by foreign lawyers who are temporarily admitted must be fully itemised in the bill of costs and may not be treated as a disbursement.*
>
> *(3) Whenever a claim is made for work done by foreign lawyers, the taxing officer will investigate whether it has resulted in a duplication or increase in the cost of the proceedings and any such increase shall be disallowed.*
>
> *(4) Work done by local attorneys for the purpose of instructing foreign lawyers and vice versa shall be disallowed.*
>
> *(5) The taxing officer shall disallow any item which appears to have been incurred, or the costs of which appears to have been increased, because the successful party has engaged both local attorneys and foreign attorneys.*
>
> *(6) Time spent and disbursements incurred in respect of written and oral communication between foreign lawyers and local attorneys will be disallowed.*
>
> *(7) The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer than the paying party would have been required to pay if the successful party had employed only local attorneys.*

26. It is plain that, unless sub-rule (1) can be and is dispensed with by order of the court, costs ordered on the standard basis cannot include costs incurred in respect of work done by a foreign lawyer before he or she was temporarily admitted as an attorney.

27. Given my conclusion that the Appellants are entitled to costs assessed on the standard basis, the first issue I need to address is whether the court does indeed have power to dispense with O.62, r.18(1) ("the sub-rule").

28. In paragraphs 38 and 39 of their skeleton argument, the Appellants contend:

> *"[38] GCR O. 62, r 18(1) provides that work done by foreign lawyers may be recovered on taxation on the standard basis provided that the foreign lawyer has been temporarily admitted in the Cayman Islands and the work was done after he or she was so admitted. Where the foreign lawyer has not been admitted their fees*

> *cannot be recovered on taxation on the standard basis unless a dispensation is given*[10].
>
> *[39] In Re Grand State Investments was a case concerning a dispute[d] winding-up petition. In granting dispensation in that case, Parker J accepted that "the purpose of the prohibitions as to the recoverability of foreign lawyers' fees is to avoid duplication" and that "it was necessary to the Company's ability in this case to prepare its case to engage foreign counsel". The Court can, therefore, disapply GCR O.62, r.18(1), 18(4) and 18(6) if it considers it appropriate to do so."*

29. In addition, in support of their case that the sub-rule can be dispensed with, the last sentence in paragraph 65 of the Appellants' skeleton reads:

> *"In proceedings before this Court under CICA N0.8 of 2025 [the first related appeal] SPV 21 sought and were granted by this Court, permission to recover foreign counsel's costs."*

30. In fact, in the first related appeal the parties were agreed that O. 62, r.18 (1) could be dispensed with by the court and the Court proceeded on that basis given the need for a proportionate approach and awarded SPV 21 the costs referable to the work done by a junior counsel based in London.

31. In the first related appeal, SPV 21 relied on the following three authorities in support of its contention that the court could dispense with O. 62, r.18 (1): *Ritchie Capital Management LLC v Lancelot Investors Fund Limited* (Unreported, 4 March 2021); *Re Grand State Investments Limited* (op cit); and *Re Principal Investing Fund 1 Limited* (Unreported, 27 July 2023). Birt JA analysed the judgments in these cases in an attempt to discover and understand the judicial reasoning deployed therein.

32. Paragraphs 13 and 17 – 23 of Birt JA's judgment in the first related appeal read as follows:

> "*13. On the face of it, the wording of the sub-rule [O. 62, r.18 (1)] might be thought to suggest that, if a foreign lawyer is not temporarily admitted, fees for his work are not recoverable on a taxation on the standard basis. However, SPV 21 submits that such work can be recovered on a standard basis taxation even if the foreign lawyer has not been temporarily admitted provided that the court dispenses with this limitation in the sub-rule.*"

[10] *In Re Grand State Investments Limited* (Unreported) FSD Cause No. 11 of 2021 (RPJ), dated 17 March 2023.] (The footnote in the skeleton argument was fn 37)

"*17. In Ritchie Capital, a case decided on the papers, Parker J awarded costs on the standard basis. He then held at [34] that he would grant a dispensation from the sub-rule and allow foreign lawyers' costs even though they had not been temporarily admitted. He appears to have based his jurisdiction to grant this dispensation on [24] of the judgment of Kawaley J in Re General Shipping E Outlook Do Brasil SA [2020] (2) CILR 821. But in that case, Kawaley J had awarded indemnity costs and, as appears from the wording itself and is well-established judicially, the sub-rule is not applicable where costs are awarded on the indemnity basis. He did not therefore consider whether the requirement in the sub-rule could be dispensed with. Accordingly, the basis for Parker J's decision in Ritchie Capital that a dispensation could be granted where costs are awarded on the standard basis is not entirely clear to me.*

18. In Grand State Investments, Parker J awarded costs on the standard basis. He then went on to consider whether work done by foreign lawyers who had not been temporarily admitted could nevertheless be recovered on taxation. He stated at [42]:

> ***"**42. GCR O. 62, r, 18(1) provides that work done by foreign lawyers may be recovered on taxation on the standard basis provided that the foreign lawyer has been temporarily admitted in the Cayman Islands and the work was done after he or she was admitted. Where the foreign lawyer has not been admitted their fees cannot be recovered on taxation on the standard basis **unless a dispensation is given**." [**emphasis added]*

Parker J then went on to grant such a dispensation on the basis, inter alia, that the issues in the case raised issues of foreign law.

19. The authority given for the emphasised passage in the above quotation was Sagicor v Crawford [2008] CILR 482, a decision of Henderson J. Having looked at the judgment in that case, which was not included in the authorities before us, I am unable to see anything which suggests that there is an ability for the court to dispense with the requirement for temporary admission contained in the sub-rule. In Sagicor, costs were awarded on the indemnity basis and the issue which Henderson J decided was that the sub-rule did not apply where costs were awarded on the indemnity basis. He therefore allowed the costs of the foreign lawyers. A subsidiary point related to the terms of the Practice Direction 1/2001 which said that travelling and hotel expenses paid to foreign lawyers should not be recoverable on taxation. Henderson J held that this was simply a guideline and the court could allow such expenses where appropriate.

20. Accordingly, whilst it is clear that in Grand State Investments Parker J held that he had power to dispense with the requirement for temporary admission in the sub-rule, it is not clear to me that there was a firm foundation for such ruling.

> *21. Finally, in Re Principal Investing Fund, Kawaley J explained at [3(c)] of his judgment that he had made certain rulings in the course of an oral hearing including that he had approved the recovery of foreign lawyers'(including paralegals') costs pursuant to the sub-rule on the grounds that the that the financial and legal scale and multi-jurisdictional reach of the litigation justified the deployment of foreign legal capacity.*
>
> *22. He explained in the judgment that he had reserved his decision on other matters including whether costs should be awarded on the standard or the indemnity basis. He subsequently held in the judgment that pre-trial costs should be awarded on the standard basis but that the trial costs should be on the indemnity basis. Nothing further is said in the judgment about the costs of foreign lawyers. I accept it is to be inferred that Kawaley J's approval of the recovery of foreign lawyers' costs referred to at [3(c)] extended both to the pre-trial phase (when costs were awarded on the standard basis) as well as to the trial phase (where costs were on the indemnity basis), but the point was not specifically addressed. There is no consideration in the judgment of the sub-rule or whether the court has jurisdiction to dispense with the requirement for temporary admission contained in the sub-rule.*
>
> *23. In summary, whilst I accept that, certainly in two cases and possibly in a third, judges of the Grand Court have granted a dispensation from the requirement in the sub-rule and allowed recovery of the costs of foreign lawyers even where those lawyers have not been temporarily admitted, the reasoning in support of the existence of a jurisdiction to grant such dispensation, despite the apparently clear wording of the sub-rule, is somewhat sparse."*

33. In paragraphs 24 – 26 of his judgment, Birt JA refers to two cases, *General Shipping* (op cit) and *Scully Royalty Limited v Raiffeisen Bank International AG* [2022] (1) CILR 572, where the wording in parts of the judgments holding that foreign lawyers' costs were not recoverable appear to have resulted from counsels' agreement that there was no dispensation jurisdiction. In Birt JA's view, these observations in the two judgments cited suggested that the issue of whether there is jurisdiction to dispense with O.62, r.18 (1) remains uncertain and the existence of such jurisdiction remains an open question for authoritative resolution in a future case.

34. In this appeal, it is clear that the parties are not proceeding on the basis that they agree that the court has jurisdiction in a suitable case to dispense with the sub-rule and in the absence of the citation by either party of any authorities in addition to those that were considered in the first related appeal, I shall proceed on the basis that the Appellants rely on *Ritchie Capital Management LLC v Lancelot*

Investors Fund Limited; *Re Grand State Investments Limited* and *Re Principal Investing Fund 1 Limited* in support of their contention that the sub-rule can be dispensed with by the court.

35. The Respondent in its skeleton argument draws this Court's attention to the above-cited paragraphs 13, 17 – 23 in Birt JA's judgment in the first related appeal and points out that the Appellants have not cited any additional authorities.

36. I respectfully agree with Birt JA's analysis of *Ritchie Capital Management LLC v Lancelot Investors Fund Limited*; *Re Grand State Investments Limited* and *Re Principal Investing Fund 1 Limited* which demonstrates that none of those decisions are good authority for the proposition that the sub-rule can be dispensed with by the court.

37. In my view, in determining whether the court has jurisdiction to dispense with the sub-rule, the starting point is to establish sub-rule's meaning and effect.

38. Paragraph 2 of the Preamble to the Grand Court Rules provides:

> "*2.1 The Court must seek to give effect to the overriding objective when it (a) applies, or exercises any discretion given to it by these Rules; or (b) interprets the meaning of any Rule".* [Emphasis supplied]
>
> "*2.2 These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits*".

39. The purpose and content of the "overriding objective" is defined in the Preamble to the GCR as follows:

> *"1.1 The overriding objective of these Rules is to enable the Court to deal with every cause or matter in a just, expeditious and economical way.*
>
> *1.2 Dealing with a cause or matter justly includes, as far as is practicable -*
> *(a) ensuring that the substantive law is rendered effective and that it is carried out;*
> *(b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;*
> *(c) saving expense;*
> *(d) dealing with the cause or matter in ways which are proportionate*
> *(i) to the amount of money involved;*
> *(ii) to the importance of the case; and*

(iii) to the complexity of the issues;

(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other proceedings."

40. In my judgment, when construed in accordance with paragraph 2.2 of the Preamble, the words used in the sub-rule must be given their ordinary and natural meaning having regard to the wording of O.62, r.18 as a whole and the manifest purpose of the rule which is to protect attorneys admitted to practice in the Cayman Islands from competition posed by non-admitted foreign lawyers. So construed, the effect of the sub-rule in my opinion is that it prohibits the inclusion within an award of costs on the standard basis the costs of work done by a foreign lawyer when he or she was not admitted as an attorney in Cayman, subject only to there being an express rule within the GCR or contained in a statute that allows for the sub-rule to be in dispensed with in defined circumstances.

41. Neither side has cited a power to dispense provided by statute or other regulation passed by the Legislature and I am unaware of any such power. If there had been such a power, it would for certain have been cited to the Court. There is also no such power conferred by a rule within the GCR. In so stating, I make it clear that it is plain in my opinion that GCR O.2, r.1 ("Non-Compliance with rules") does not qualify as a power to dispense with the sub-rule since O.2 applies only to failures to comply with procedural requirements of the GCR and the sub-rule manifestly does not require compliance with a procedural rule.

42. I therefore find for the reasons given above that the Appellants are not entitled to recover the costs they incurred in respect of work done by the foreign lawyers they employed when those lawyers were not temporarily admitted as attorneys.

The Appellants' interim payment application.

43. The Appellants apply for an interim payment order on account of the costs that will be due after taxation in respect of the work done by: Bedell Cristin (the Appellants' Cayman attorneys); Steptoe International (UK) LLP ("Steptoe") (a London based law firm); and the following counsel based in London: Stephen Rubin KC; Leah Gardner (Mr Rubin's junior); and Iain Quirk KC. Messrs Rubin and Quirk and Ms Gardner practise from Chambers in London.

44. The sums claimed by the Appellants for the work done by the above law firms and counsel on the assumption that costs are to be taxed on the standard basis and that the Court grants the requested dispensation of the sub-rule are as follows:

Particulars of Party	Total Fees (US$)	Amount claimed (US$)	Percentage claimed
Bedell Cristin	571,376.00	285,688.00	50%
Steptoe	107,251.84	21,450.36	20%
Stephen Rubin K.C. (Fountain Court Chambers)	111,086.45	33,325.93	30%
Leah Gardner (Fountain Court Chambers)	18,056.59	9,028.95	50%
Iain Quirk, K.C. (Essex Court Chambers)	165,054.18	82,527.09	50%

45. None of the members of the Steptoe team or Ms Gardner was admitted temporarily as an attorney when the work claimed for was done by them and accordingly, for the reasons given above, no costs in respect of that work will be awarded.

46. Responding to an enquiry sent by the Court to the Appellants' attorneys, Bedell Cristin informed the Court that they understand that: [A] Mr. Rubin KC was admitted on a limited basis on 5 October 2023 and that of the total US$111,086.45 claimed for him, US$34,250.00 was incurred prior to his limited admission and US$76,836.45 was incurred after his limited admission; and [B] Mr. Quirk KC was admitted on a limited basis on 28 November 2024 and of his total costs of US$165,054.18, US$56,769.38 was incurred prior to his limited admission with the balance (US$108,284.80) having been incurred after his limited admission.

47. The claim in respect of the work done by Bedell Cristin is supported by a detailed Schedule to the affidavit of Ms Vered Mazin which she says is akin to a bill of costs and is relied on by the Appellants in accordance with paragraph 25(i) of the judgment in *Al Sadik v Investcorp Bank B.S.C.* [2019] (2) CILR 585.

48. The Respondent raises a large number of objections to the costs sought to be recovered by the Appellants, even after taking account of the fact that, if the sub-rule is not dispensed with, none of

the costs claimed in respect of work done by Steptoe and Ms Gardner will be recoverable. These objections include:

(i) Ms Mazin does not confirm that the Schedule shows the entirety of the costs for which the Appellants are liable to their legal advisers.

(ii) There are numerous Bedell Cristin entries in respect of liaising with Steptoe which are not recoverable on the standard basis of taxation. Thus, Mr Mallon (one of the Steptoe team) and Steptoe (the firm) are referenced in 487 of Bedell Cristin time entries which show that a large part of the work done by Bedell Cristin relates to communicating with Steptoe rather than carrying out substantive work in the proceedings.

(iii) The Schedule contains 48 duplicative entries.

(iv) The Appellants' engagement of as many as 20 fee earners was not reasonable, particularly when compared to the Respondent's team of only 5 fee earners at the height of the proceedings (4 ½ months in the lead up to the Appeal hearing). The Court should have in mind GCR. O. 62, r.18(7): "*The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer that he would have been required to pay if the successful party had employed only local attorneys.*"

(v) On a recovery on the standard basis, one would expect Bedell Cristin to recover US$118,387 and assuming an interim payment of 50% of Bedell Cristin's fees, if the costs are awarded on a standard basis, the amount of an interim payment payable in respect of Bedell Cristin's fees would be US$ 68,993.

49. It is very difficult on the material before the Court, including the points made by the Respondent summarised in paragraph 48 above, to come up with a percentage figure to fix the quantum of the interim payment in respect of Bedell Cristin's fees which will not overcompensate the Appellants following a taxation on the standard basis, but which nonetheless will amount to a reasonable sum in the circumstances. In my opinion, the appropriate percentage multiplier in this very unusual case where a great deal of work was done by another firm in London, the cost of which is not recoverable, is 35% giving a figure of US$199,981.60.

50. Turning to the costs incurred in respect of the work done by Mr Rubin KC and Mr Quirk KC after their limited admission as attorneys, I propose to adopt the percentages that the Appellants have applied in their table set out in paragraph 44 above and would accordingly include in the overall interim payment 30% of the US$76,836.45 claimed for Mr Rubin for work done after his limited admission, namely US$,23,051, and 50% of the US$108,284.80 claimed for Mr Quirk for work done after his limited admission, namely US$54,142.40.

51. The total interim payment I would order in favour of the Appellants is therefore US$277,175 which should be paid within 28 days of the handing down of this judgment.

Costs of the costs submissions

52. In paragraph 4.7 of their written submissions on costs, the Appellants seek an order that the Respondent is liable for the Appellants' costs of those submissions pursuant to the general rule that costs should follow the event. In my judgment, the Appellants should have such costs on the standard basis plus the costs of the evidence submitted to the Court.

Interest

53. In my judgment, the Appellants are entitled to an order for the payment by the Respondent of interest at 2.375% per annum on their costs of the appeal and below from the date when they paid those costs until reimbursement pursuant to the costs order made herein. For the avoidance of doubt, the sum paid by way of interim payment must be applied sequentially to the costs paid out by the Appellants, starting with the earliest costs incurred, so that interest will cease to run on the earliest costs first.

Conclusions

54. (1) The Respondent shall pay the costs here and below, such costs to be assessed on the standard basis and to be taxed if not agreed.

(2) The court has no power to dispense with any part of GCR O.62 r.18.

(3) By reason of Conclusion 2, the Appellants are not entitled to be awarded any costs in respect of the work done by Steptoe and Ms Gardner or in respect of work done by Mr Rubin KC and Mr Quirk KC before they were temporarily admitted.

(4) The Respondent must pay US$ 277,174.56 by way of an interim payment on account of costs within 28 days of the handing down of this judgment.

(5) The Respondent must pay interest at the rate of 2.375% per annum on the costs of the appeal awarded to the Appellants from the date when they paid those costs until reimbursement pursuant to the costs order made herein.

(6) The Appellants are awarded the costs of their submissions on the costs issues dealt with in this judgment to be assessed on the standard basis.

Sir Michael Birt, JA

55. I agree.

Sir Jack Beatson, JA

56. I also agree.