Neutral Citation Number: [2026] CICA (Civ) 1

IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CICA CIVIL APPEAL No. 0025 of 2024
(formerly G 0081 of 2023)

BETWEEN

ISLAND POOLS LIMITED

Appellant

and

(1) THE SUMMARY COURT OF THE CAYMAN ISLANDS
(2) THE DIRECTOR OF LABOUR

Respondents

(3) STERLING SECURITY SOLUTIONS

Intervener

Before: **The Rt Hon Sir John Goldring, President**
The Hon Sir Richard Field, Justice of Appeal
The Rt Hon Sir Jack Beatson, Justice of Appeal

On the papers

Draft circulated: 2 February 2026

Judgment delivered: 17 February 2026

RULING ON COSTS

Sir Richard Field, JA

Introduction

1. In these proceedings the appellant unsuccessfully appealed the decision of Justice Carter in the Grand Court by which she dismissed the appellant's application for judicial review of the Senior Magistrate's Ruling that "the competent complainant" in section 78 of the Criminal Procedure Code meant, in the case before him, "The Director of Labour". The result was that the charges brought against the appellant for contraventions of section 16 (offence 1) and section 31 (1) (offence 2) of the Labour Act had been brought within the six month time limit prescribed in section 78 of the Criminal Procedure Code, although the charges were laid on 10 May 2022, over two years after the last offence was allegedly committed in April 2020 and five years after the first offence was allegedly committed in November 2016.

2. Pursuant to the direction made in paragraph 81 of the judgment of this Court that the parties should serve written submissions as to costs both here and in the Grand Court, counsel for the Appellant, Mr Dixey, and counsel for the Respondents, Ms Marilyn Brandt of the Attorney General's Chambers, have each served submissions on the issue of costs in the appeal decided by this Court.

3. Both respondents are emanations of and financed by the state, viz the Government of the Cayman Islands, notwithstanding that they function separately from the Government pursuant to the doctrine of the separation of powers underlying the constitution of the Cayman Islands.

4. Justice Carter made no order as to costs when dismissing the appellant's judicial review application in the Grand Court and there is no appeal against that costs order. What is in issue therefore is the question of what order for costs if any should be made in respect of the appeal to this Court.

5. Mr Dixey contends that this Court should make no order as to costs which would be the invariable position where the Court dismisses an appeal brought by a convicted person in criminal proceedings.

6. Ms Brandt submits that the appellant's failed judicial review application was in the nature of a civil proceeding and the normal rule that costs follow the event in such proceedings should be applied with the result that the appellant should be ordered to pay the respondents' costs of the appeal.

The detailed case advanced on behalf of the appellant

7. At all times the appellant was a criminal defendant. As noted by Justice Carter when granting the appellant leave to apply for judicial review of the Magistrate's ruling, no appeal lay against that ruling to the Grand Court unless and until the appellant was found guilty of the charges laid against him in the Summary Court, in which case the appellant's convictions could be appealed on a point of law. The appellant therefore faced two choices following the Magistrate's ruling. It could proceed with the case in the Summary Court and then appeal any finding of guilt on the charges it faced to the Grand Court and thereafter to the Court of Appeal on the ground that the Magistrate had erred in law in holding that he had jurisdiction to try the appellant as exemplified by the decision of the CICA in *Clarissa De Costa v R* [CICA 19 and 20 of 2005, 11 August 2006] where reference was made to Somerfield CJ's dicta in *Gonzalez and Suarez v R* [1984] CILR 10.

8. Alternatively, the appellant could apply for judicial review of the Magistrate's ruling to be determined in advance of the charges coming on to be tried in the Summary Court.

9. In the event, at considerable cost to itself, the appellant *qua* criminal defendant elected to take the jurisdiction point by judicial review thereby avoiding putting all the parties and the complainant to the expense and inconvenience of a trial on the facts. It submits that in these circumstances it ought not now to be additionally prejudiced in costs for having taken the more efficient route in terms of both expense and time in which an issue of very considerable importance for the Summary Court was raised. The plain fact is that the respondents are asking this Court consciously and deliberately to close its eyes to the stark reality that taking the appellant route after trial as opposed to the judicial review route in the circumstances of this particular case would have resulted in the case being dealt with in exactly the same way, save that all of the costs and the time of the trial would have been thrown away. The respondents should therefore be seen to be seeking to take advantage of an opportunity to claw back their costs. This is unattractive when, by their own admission, if the appeal route had been adopted,

their costs would have been incurred in any event and they concede the court would not have awarded costs against the appellant.

10. In civil proceedings involving a matter of public importance where a party does not have a private interest in the outcome, the court can issue a protective costs order. This approach should be adopted by analogy here where the appeal involved a matter of public importance relating to criminal procedure which was arguable (as found by Justice Carter when granting leave to bring the judicial review proceedings) and had been brought at significant expense to the appellant.

11. It should also be considered that the outcome upon conviction in this matter, should one be returned, is likely to be a financial penalty and a compensation order, which may be in an amount less than the costs incurred by having unsuccessfully taken the point. While we do not live in an ideal world, it cannot be in issue that criminal defendants should not be subject to commercial factors when considering a plea to a criminal offence because "regardless of the guilt or innocence, it is cheaper to just plead guilty and take the hit." This is even more so where it was at least arguable that the court ultimately might not even have had the power to try the case at all.

12. Further, there would be no real prejudice to the finances of the Government if no order for costs was made in the appeal. The respondents' case was successfully conducted in both the Grand Court and the Court of Appeal by Ms Brandt who, given her previous experience as a criminal prosecutor in the office of the DPP, was particularly well placed to argue the point of law at issue in this appeal. This means that, were the Court of Appeal to make no order as to costs, the government would be in no worse position where the AG's Chambers have responded to the issue, than had the office of the DPP responded in a criminal appeal in the usual way which would not have led to an adverse costs order against the appellant.

<u>The detailed case advanced on behalf of the respondents</u>

13. The appellant, having been wholly unsuccessful before this Court, should bear the costs of the appeal in the ordinary course. The general rule, equally applicable in appellate proceedings, is that costs follow the event, this being a rule that serves the dual policy objectives of compensating the successful party and discouraging unmeritorious litigation. It is a principle

of long standing, recognised in this jurisdiction and across the Commonwealth, subject only to the Court's discretion to depart from it where the interests of justice so require.

14. The appellant's characterisation of the appeal as "for all intents and purposes a criminal appeal on a matter of law" is misconceived. In hearing this appeal, the Court was not exercising its criminal jurisdiction but its civil jurisdiction. The appellant having deliberately chosen judicial review as its vehicle to attack the Magistrate's ruling, it necessarily subjected itself to the civil costs regime in which the default position is that costs follow the event. This choice had procedural and substantive consequences. It allowed the appellant to challenge the Summary Court's jurisdiction to try the charges laid against the appellant at a preliminary stage but it meant that the established civil costs principles applied. In short, the Appellant cannot have it both ways. It cannot avail itself of the procedural advantages of judicial review and, when unsuccessful, seek the protection of the costs practice that applies only in the criminal jurisdiction. The law draws a clear line between those two routes, and it is that line which governs the proper approach to costs in this case.

15. Further, the appellant's reliance on *De Acosta v R* and *Gonzalez and Suarez v R* (op cit) in support of its case on costs is misplaced. Those appeals were straightforward appeals against conviction where the CICA was exercising its criminal jurisdiction which explains why the issue of costs did not arise in those cases.

16. As to the appellant's reliance on the fact that this case involved a novel and important point of statutory interpretation, while novelty is not disputed, it is well established that the mere fact that a case raises an arguable or important point of law does not, of itself, displace the ordinary rule on costs. Were it otherwise, unsuccessful parties could evade liability simply by framing their claims as novel or of public interest. That approach would undermine the compensatory principle which underpins costs and would create uncertainty in the law.

17. The appellant's contention that it would be inappropriate to order costs against it on the basis that, should it ultimately be convicted in the underlying proceedings, the financial penalty imposed might well be less than the quantum of costs now sought, is also misconceived. The imposition of costs in civil proceedings, such as judicial review and other civil appellate litigation, is not calibrated by reference to the scale of a potential fine or sanction in any parallel criminal matter. The suggestion that such liability should be alleviated because the pecuniary consequences of a conviction in the criminal proceedings might be modest is wholly irrelevant.

The two regimes are distinct. Criminal penalties are directed towards punishment and deterrence, while costs in civil proceedings exist to indemnify the successful party against the burdens of litigation. To elide the two is to conflate separate legal concepts and to undermine the rationale of the costs jurisdiction.

18. The appellant's submission that no prejudice would be suffered by the Respondent if no order for costs were made on the basis that Crown Counsel are salaried public servants should be firmly rejected. The Court of Appeal in *R (Mount Cook Land Ltd & Anor v Westminster City Council* [2003] EWCA Civ 1346 dealt with precisely this point in circumstances where the successful party was itself a public authority. At paragraph 82, the Court of Appeal stated:

> *"And, as to the full hearing point, had the matter continued to a substantive hearing with the same result, Mount Cook would undoubtedly have had to pay the Council's costs. There is force in Mr. Corner's argument that it would have been unfair for Mount Cook to have had the benefit of fully testing its case and to have lost without any risk of exposure to the Council's costs …*"

19. It has long been recognised that the entitlement to costs does not turn on whether the successful party has borne private expense in instructing external counsel. The principle is compensatory: it ensures that the party compelled to defend proceedings is reimbursed by the unsuccessful litigant, rather than leaving that burden to fall upon others. Public funds are no less finite than private resources. To suggest that the Government suffers no loss because it provides its own legal services ignores the reality that time and resources consumed by salaried Crown Counsel are diverted from other pressing public duties. Such an approach is inconsistent with principle and undermines the very policy on which the ordinary rule rests.

20. It is also of some note that the appellant now contends there should be no order as to costs, yet when it commenced these proceedings it expressly sought its own costs. The Notice of Motion filed by the appellant included a claim for costs, and it is plain that had the appeal succeeded, the appellant would have pressed for an order that the Respondents bear the costs of both the Grand Court proceedings and the hearing before this Court.

21. This highlights the inconsistency in the appellant's submissions. It cannot be the case that the principle that "costs follow the event" is to be applied only when it redounds to the appellant's

benefit, but disregarded when the appellant is unsuccessful. Such an approach undermines the coherence of the costs regime and would, if accepted, amount to one rule for a successful private litigant and another when the Government prevails.

22. The Court of Appeal has long affirmed that costs orders must be principled and not opportunistic. The compensatory rationale applies with equal force regardless of which party succeeds. The appellant, having invited the Court to make a costs order in its favour had it been successful, cannot now credibly argue that the same order should not be made when the outcome has gone against it. The principle is one of consistency and fairness: the unsuccessful party must bear the costs of the successful party, and there is no reason to depart from that rule in the present case.

Discussion and decision

23. It is not in dispute that the trial of criminal offences and appeals from decisions and verdicts reached in criminal proceedings are dealt with quite separately in the legislation and procedural codes establishing the different courts in the Cayman Islands from the legislative provisions and procedural rules relating to civil proceedings. Thus, criminal proceedings at first instance and on appeal are the subject of the Summary Jurisdiction Act (2015 Revision and the Criminal Procedure Code (2021 Revision) and Sections 11 and 22 of the Grand Court Act (2015 Revision) confer jurisdiction in both criminal proceedings including appeals from the Summary Court and Part III of the Court of Appeal Rules (2015 Revision) confers the Court's appellate criminal jurisdiction. In contrast to the foregoing, civil proceedings are dealt with quite separately both in the Grand Court Rules (2023 Revision) that include Order 53 that deals with applications for judicial review, in Order 62, rule 4 (2) and (5) that deal with costs in civil proceedings and in the Part II of the Court of Appeal Rules that confers the Court's civil jurisdiction.

24. After careful consideration of the elegantly expressed submissions advanced by Mr Dixey, I find myself nonetheless constrained to accept the core submission advanced by Ms Brandt that in hearing and deciding this appeal this Court is not exercising its criminal jurisdiction governed by Part III of the Court of Appeal Rules but its civil jurisdiction governed by Part II of those Rules. The consequence is that there should be an award of costs against the appellant pursuant to the principle enshrined in GCR O. 62 r. 4 (2) and (5) (which apply to this Court by virtue of

Rule 28 of the Court of Appeal Rules) unless it appears to the Court that in the circumstances of the case some other order should made as to the whole or any part of the costs.

25. I turn then to consider whether in the circumstances of this appeal, some order other than an order for costs against the appellant should be made as to the whole or any part of the costs. In my judgment, this is a case where the principle of costs following the event should be applied. The appellant freely chose to challenge the Magistrate's order by an application for judicial review under O. 53 GCR that was manifestly a civil proceeding in which the Grand Court and this Court would be exercising their civil rather than their criminal jurisdiction. The facts that: (i) in consequence of this choice, the time and costs of a criminal trial in the Summary Court were avoided; and (ii) the respondents would not have been awarded their costs if they had prevailed in a post-conviction appeal to the Grand Court based on a point of law, do not constitute good grounds for disapplying the "costs follow the event" principle.

26. As related in paragraph 17 above, apprehending that Mr Dixey was submitting that the respondents could not show that they had suffered financial loss on which to base an application for costs because Ms Brandt, like other Crown Counsel, are salaried employees of the Government, Ms Brandt cites in response paragraph 82 of the judgment of the Court of Appeal *R (Mount Cook Land Ltd & Anor v Westminster City Council* [op cit] in answer to this apprehended point. In my view this citation is not an answer to the point because, as submitted by Mr Dixey in his reply submissions, this decision did not involve a criminal defendant and because it is clear from the report that Westminster City Council were represented by independent counsel, Mr Timothy Corner QC and Mr. Robert Palmer instructed by the Council's Director of Legal and Administrative Services.

27. As recorded in paragraph 18 above, Ms Brandt also submits, without identifying the authority she is relying on, that it has long been recognised that the entitlement to costs does not turn on whether the successful party has borne private expense by instructing external counsel. She contends that the principle is compensatory: it ensures that the party compelled to defend proceedings is reimbursed by the unsuccessful litigant, rather than leaving that burden to fall on upon others. To suggest that the Government suffers no loss because it provides its own legal services ignores the reality that time and resources consumed by salaried Crown Counsel are diverted from other pressing public duties.

28. It would have been helpful if we had had cited to us the authorities to which Ms Brandt implicitly refers. In his reply submissions to the aforementioned points made by Ms Brandt, Mr Dixey does not rely on the indemnity principle that lies at the root of an award of costs but rather contends that the Government would have faced the incurring of the same legal representation costs whether the post-conviction appeal route had been taken which would not have resulted in an adverse costs order or the judicial review route had been taken. In any event: (i) it was decided long ago in England that where a successful party was represented by one or more inhouse salaried lawyers, that party could recover costs calculated by reference to the costs incurred in employing the lawyers, see *Henderson v Merthyr Tydfil Urban Council* [1900] 1QB 434; (ii) since the 1960s such costs have been approached in England on the basis that the bill of costs was as though it were the bill of an independent lawyer with the successful party specifying the period of time that had been spent by the employee on the case and postulating (A) the proper cost per hour of the time so spent having regard to a reasonable estimate of the overhead expenses of the successful party, including the reasonable salary of the employee; and (B) the proper additional sum to be allowed over and above bracket (A) by way of further profit costs: see *Re Eastwood (deceased)* [1975] Ch 122 at p.132 D-E; and (iii) whilst the aforementioned approach to such costs may throw up a special case where it appears reasonably plain that the indemnity principle would be infringed, it would be impractical and wrong in all cases of an employed barrister or solicitor to require a total exposition and breakdown of the activities and expenses of the legal department of the successful party with a view to ensuring that the principle is not infringed; see *Re Eastwood (deceased)* at p.132 E-F (followed and applied by the Court of Appeal in *Cole v British Telecoms plc* [2002] Costs LR 310).

29. In light of these longstanding authorities, I am of the clear view that the fact the respondents were represented by a salaried employee in the person of Ms Brandt is no bar to an order that the appellant pay the costs of the appeal and for the reasons given above I propose that this Court should so order.

Sir Jack Beatson, JA

30. I agree

Sir John Goldring, President

31. I also agree.