

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**(CIVIL DIVISION)**

**DP No 1/2008**

**BETWEEN**

**ROBERT IOABA** of Rarotonga

**Plaintiff**

**AND**

**CARYN CHILWELL** of Rarotonga

**Defendant**

Hearing date: 11 November 2009

Counsel: ✓ Mr Little for the Plaintiff  
 Mr Vakalalabure for Defendant

Decision: 16 November 2009

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**JUDGMENT OF GRICE J (COSTS)**

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1. On 11 November 2009, I awarded damages of \$47,422.54 in favour of Mr loaba following a hearing over a collision between a motorcycle ridden by Mr loaba and a car driven by Miss Chilwell.
2. Counsel made oral submissions on the issue of costs after I delivered my judgment. I said I would deliver reasons in writing but I intended to award full solicitor/client and experts costs in favour of Mr loaba. I said that the reason for the award was:
  - (a) a Calderbank made early in the Claim by Mr loaba to Miss Chilwell for settlement of \$15,000.00 had received no response, and
  - (b) the Defendant had failed to meet timetable directions which meant that Mr loaba had to file applications to enforce those directions.
3. Mr loaba's costs amounted to \$26,981.00. These included legal costs of \$18,279.95 and the cost of the expert witness, Colin Wyngrove, of \$7719.00 (NZ\$) (being \$6,200.00 (AUD), converted to NZ\$ at 1.245 on 10 November 2009). Mr Little said no VAT is payable on the expert costs as Mr Wyngrove is not registered for VAT. No claim is made for any other witnesses expenses.

4. The High Court Fees, Costs and Allowance Regulations 2005 provide at Regulation 8:

*"8. Scale of Solicitors' Prescribed – (1) The scale of solicitors' costs prescribed in the Fourth Schedule to these Regulations shall be payable to the solicitors and shall apply in respect of an award of costs in any proceedings in the High Court commenced on or after the date of the coming into force of these Regulations.*

*(2) Notwithstanding anything contained in paragraph (1) the Court upon giving judgment, or making an order, or upon adjourning or dismissing any proceeding may fix such additional solicitors' costs as to that which may be prescribed by any enactment or regulation, as is fair and reasonable in the circumstances of each case to do so."*

5. Schedule Four prescribes the scale costs in the matter as a percentage of the amount of the claim together with various amounts for payment of Statement of Claim and other steps in the proceedings. This is not fair and reasonable in this case. The expert costs allowed according to Scale (fifth schedule) are \$60.00 per hour together with preparation.
6. Costs should generally follow the event and amount to a reasonable contribution to the costs actually and reasonably incurred by the successful party. An accepted and common practice in the Cook Islands is to start at 66% of the actual solicitor-client costs.
7. Mr loaba sought full indemnity costs. He had made a settlement proposal of \$15,000.00, on a "without prejudice basis save as to costs". Mr Little produced the letter from his office dated 17 October 2007 sent on behalf of Mr loaba to Miss Chillwell making this proposal. She acknowledged receiving this letter. She then gave it to Mr Vakalalabure. A further letter dated 15 April 2008 from Mr Little to Mr Vakalalabure also marked "without prejudice save as to costs" seeking settlement discussions did not draw a reply either. I do not place any weight on this letter as it contained no proposal. But it is another illustration of the Defendant or her counsel's failure to respond.
8. A further issue to be considered is that he Defendant or her counsel has been dilatory in meeting timetable orders set by the Court. In particular she failed to comply with timetable orders issued by the Chief Justice on 9 April 2009 as to the

filing and service of an Affidavit of Documents and statements of witnesses. The Plaintiff was put to the expense of filing a further application to enforce the timetable direction to obtain an order to force the Defendant to comply with the timetable. The Defendant did not file Submissions until the morning of the second day of the hearing, again in contravention of the timetable order. Mr Vakalalabure said that his office had been closed for a period and he had limited resources. The Plaintiff nevertheless was put to such expense because of the tardiness of the Defendant or her counsel.

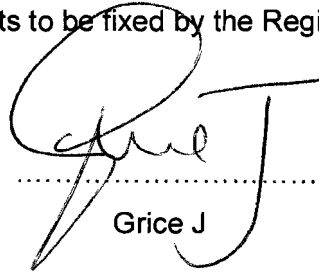
9. A detailed breakdown of solicitor client costs was produced by Mr Little. The solicitors hourly rate was \$200.00 together with an hourly rate of \$25.00 for secretarial work. I was informed from the bar that the range of solicitor hourly rates in the Cook Islands at present is \$150.00 to \$350.00 per hour. Senior lawyers routinely charge \$250.00 per hour. In Mr Little's case a charge of \$200.00 per hour is well within reasonable costs for a solicitor of his experience. Given his conservative rate, he is entitled to charge the secretarial attendance at \$25.00 per hour. The rate still works out at less than \$225.00 per hour when worked across the time spent by the solicitor. Mr Vakalalabure took issue with the charge of \$25.00 per hour for secretarial attendance as an unusual method of charging. It may be unusual but it is reasonable and I allow the secretarial attendance's as itemised.
10. Mr Little's offer to settle this matter at \$15,000.00 was made in clear and unambiguous terms. The judgment was for more than double the offer. Following the receipt of that letter by Miss Chillwell most of the preparation and certainly the conduct of this case was carried out. The offer was made in writing and expressed to the "without prejudice save as to costs". The offer was a "Calderbank" offer which now puts Mr Ioaba in a strong position to seek full solicitor-client costs.

11. Mr loaba is entitled to full solicitor client and expert costs because of the timely Calderbank offer. That is sufficient for the award of solicitor client and expert costs in full. An additional factor which would have increased any costs award even if there had been no Calderbank offer was the defendant's breaches of the timetable directions.

12. I award costs as follows:

a	Solicitor-client costs and disbursements as claimed	\$18,297.95
b	Expert witness fee (Colin Wyngrove)	\$7,719.00
	<b>Total</b>	<b>\$26,016.95</b>

together with Court costs and disbursements to be fixed by the Registrar



Grice J