

[2023 Gib LR 695]

R. (OFFICER 1 and OFFICER 2) v. H.M. CORONER**(ROYAL GIBRALTAR POLICE and CHICON as
interested parties)**

SUPREME COURT (Dudley, C.J.): October 17th, 2023

2023/GSC/040

Coroners—inqest—judicial review—police officers unsuccessfully challenged verdict of unlawful killing—judicial review resisted by Royal Gibraltar Police and deceased’s widow as interested parties—both entitled to 50% of their costs

The claimants applied for judicial review.

At the relevant time the applicants were Royal Gibraltar Police officers. They had been involved in a high speed pursuit, at sea, of a suspect vessel. The pursuit occurred at night, the suspect vessel, which displayed no lights, had manoeuvred dangerously and the RGP vessel had collided with it, resulting in the deaths of two persons on board the suspect vessel. Following an inquest before H.M. Coroner, an inquest jury found that the two men had been unlawfully killed.

The claimants’ judicial review challenge failed (that decision is reported at 2023 Gib LR 300). The Coroner had adopted a neutral stance and not participated in the judicial review, but the claimants’ challenge had been resisted by the interested parties: the Royal Gibraltar Police and the widow of one of the deceased. The interested parties sought their costs. At the permission stage, the RGP had contended that two of the claimants’ grounds for review were not arguable but accepted that the third ground was arguable. The RGP did not seek its costs in respect of the filing of the acknowledgment of service and time spent preparing for the directions hearing, but sought all its other costs.

The claimants opposed the application for costs, submitting that (a) although the RGP purported to resist the claim, its participation had been more by way of assisting the court, and in so far as the court considered that the RGP’s participation was by way of assistance, no costs order should follow; (b) it was highly unusual for a police force to choose to participate in judicial review proceedings brought by its own officers against a coroner’s verdict of unlawful killing, it would have been in the RGP’s interest to overturn the verdict of unlawful killing, and the RGP

should bear its own costs; (c) the RGP had no legitimate interest in arguing a case against the claimants in favour of upholding the verdict of unlawful killing; and (d) no award of costs should be made in favour of the second interested party because she had failed to show that she had incurred any.

The second interested party claimed that there was a “contentious fee agreement” between the families of the deceased and Verralls LLP in the sum of £35,000. Mr. Finch produced a document, signed by the second interested party, reflecting her agreement to pay legal fees of £35,000. €15,000 was said to have been paid on account.

Held, ordering costs as follows:

Given that the challenge was brought by former officers, it was not surprising that the RGP’s tone was not confrontational, but it nonetheless remained adversarial, being an approach which resisted the claim and was directed at upholding the jury’s verdict. Given the broader duties owed by the RGP to the public there could be no reasonable expectation on the part of the former officers that the RGP would support their position merely because they were former officers. In circumstances where the death of two individuals had occurred following a high speed pursuit at sea undertaken by police officers, the RGP’s legitimate interest in participating in the inquest was evident and substantial. Having formed the view that the outcome of the inquest was fair, the RGP was equally entitled to resist the claimants’ challenge. Moreover it was evident that the RGP and the second interested party had very distinct interests and it was inconceivable that they could have been represented by the same legal team. However, this was not a case in which it would be appropriate to order two sets of costs. Although the interested parties had different interests, the claim was brought on narrow points of law in respect of which the interested parties advanced relatively similar submissions. Each of the interested parties was entitled to recover 50% of their costs as from the directions hearing. The court accepted in the circumstances that the second interested party did have a liability to pay the legal fees incurred on her behalf (paras. 10–15).

Cases cited:

- (1) *Bolton Metrop. District Council v. Environment Secy.*, [1995] 1 W.L.R. 1176; [1996] 1 All E.R. 184, referred to.
- (2) *Defence Ministry v. H.M. Coroner for Wiltshire & Swindon*, [2006] EWHC 309 (Admin), considered.

C. Bonfante (instructed by Hassans) for the claimants;

N. Costa with *J. Rodriguez* (instructed by Isolais LLP) for the first interested party;

C. Finch (instructed by Verralls LLP) for the second interested party.

1 **DUDLEY, C.J.:** This is the judgment on costs arising from an application for judicial review against His Majesty’s Coroner for Gibraltar in respect of an inquest touching upon the deaths of the late Mohammed

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Abdeslam Ahmed and Mustafa Dris Mohammed, in which the conclusion as to the deaths reached by the inquest jury was one of “unlawful killing.”

2 The challenge brought by Officers 1 and 2 in the judicial review proceedings failed. The defendant, H.M. Coroner, adopted a neutral stance and did not participate in the proceedings. The claim was resisted by both interested parties, namely the Royal Gibraltar Police (“the RGP”) and Ms. Chicon, the widow of one of the deceased, purportedly representing the families of both deceased. Both interested parties seek their costs.

3 It is trite that the costs of and incidental to legal proceedings are a matter of judicial discretion, which discretion is governed by CPR Part 44. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party (CPR 44.2(2)(a)). However, in judicial review cases where the claimant is unsuccessful at the substantive stage, the court does not generally order an unsuccessful claimant to pay two sets of costs although it may do so where the defendant and the interested party have different interests which require separate representation (*Bolton Metrop. District Council v. Environment Secy.* (1)).

4 The claimants oppose the application for costs advanced by both interested parties, albeit on different grounds.

5 At the permission stage, the position adopted by the RGP was that whilst contending that the first two grounds were not arguable, given that it accepted that the third ground advanced by the claimants was arguable, permission in respect of the first two grounds was not opposed. As I understand it, the reason for this was that the RGP did not wish to prevent the claimants from challenging the outcome of the inquest and, as Mr. Costa puts it, “problematise” matters at the permission stage. In those circumstances, the RGP does not seek its costs in respect of the filing of the acknowledgment of service and time spent in preparing for the directions hearing of February 28th, 2022, but seeks all its other costs.

6 For the claimants it is submitted that for the court to exercise its discretion and award costs to two interested parties, it must consider the nature of the parties’ participation in the proceedings and what interest, if any, each party was advancing. It is submitted that although the RGP purported to resist the claim, by its skeletons generally and the submissions advanced at the hearing, these appeared to be more by way of assistance and *quasi amicus curiae*. Reliance is placed upon certain passages in the RGP’s skeleton submissions, for example, at para. 1.13 it stated:

“the purpose of filing this skeleton argument is solely and exclusively to endeavour to assist this Honourable Court in interpreting the law and correctly applying the law to the facts of this case.”

And again, at its conclusion: “the RGP trusts that its skeleton argument will assist this Honourable Court when determining the Claim.”

7 It is argued that in so far as the court considers that the RGP's participation was by way of assistance, no costs order should follow as tendering any such assistance does not amount to a sufficient legitimate interest entitling it to recover costs.

8 Albeit more trenchantly in the skeleton submissions than in oral submissions, it is further submitted for the claimants that it is highly unusual for a police force to choose to participate in judicial review proceedings brought by its own serving police officers against a coroner's verdict of unlawful killing. It is said that the obvious expectation is that a police force would support its own officers, and therefore any interest that a police officer would have would be aligned with that of its officers and that it would have been in the RGP's interest to displace the verdict of unlawful killing that had been reached against members of its own force. That whilst the RGP was entitled to participate, it should bear its own costs. In the alternative, it is said that if the court considers that the RGP resisted the claim, it had no legitimate interest in arguing a case against the claimants in favour of upholding the jury's verdict of unlawful killing, made against its own officers.

9 In support of the proposition that an interested party in judicial review proceedings who does not have a legitimate interest in arguing for any particular outcome is not entitled to recover its costs, reliance is placed upon *Defence Ministry v. H.M. Coroner for Wiltshire & Swindon* (2), where the court refused the Chief Constable of the Wiltshire Constabulary's application for costs after concluding that the court was ([2006] EWHC 309 (Admin), at para. 59): "far from certain that the Chief Constable had a legitimate interest in arguing for any particular verdict . . ."

10 Given that the challenge was brought by former officers it is not surprising that Mr. Costa, on behalf of the RGP, chose to adopt a tone which was not confrontational. It nonetheless remained adversarial, being an approach which resisted the claim and was clearly directed at upholding the jury's verdict.

11 Turning to whether the RGP's interest was sufficient so as to entitle it to recover its costs, *Defence Ministry v. H.M. Coroner for Wiltshire & Swindon* requires somewhat more detailed consideration. That was a case in which the Ministry of Defence applied for judicial review of an inquest verdict that a serviceman had been unlawfully killed during a chemical warfare experiment conducted at Porton Down in 1953. There had been three possible bases for the jury's verdict of unlawful act manslaughter in which the Ministry of Defence and the deceased's family reached a compromise and proposed to the court that the inquisition should be varied to state that the unlawful killing was only by reason of gross negligence manslaughter relating to the conduct and planning of the experiment. The full reasons as to why the court held that the Chief Constable was to bear

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his own costs is set out at in the judgment of Richards, L.J. as follows (*ibid.*, at paras. 59–60):

“59. We refuse the application by the Chief Constable for costs. We are far from certain that the Chief Constable had a legitimate interest in arguing for any particular verdict in this case, and whilst he was certainly here properly to assist the court and as we have been told to protect the interests of individuals who might have to give evidence in criminal proceedings, that would not be a basis upon which any award of costs should be made in his favour.

60. Insofar as he was here adopting, and properly adopting, an adversarial role in resisting the MoD’s claim, his role was very much subsidiary to that of the family, and, in our judgment, it is not an appropriate case in which to order a second set of costs. In any event, we do not think that the compromise to which the court has given effect can be said to involve any positive success for the Chief Constable in the arguments that he was advancing by way of resisting the claim.”

It is evident that the factual matrix in that case is materially different from the present case.

12 Given the broader duties owed by the RGP to the public there could be no reasonable expectation on the part of the former officers that the RGP would support their position merely by dint of the fact that they were former officers. And, in my judgment, in circumstances in which the death of two individuals had come about following a high speed chase at sea undertaken by police officers, the RGP’s legitimate interest in participating in the inquest was evident and substantial. Thereafter, having formed the view that the outcome of the inquest was one which was fair, it was equally entitled to resist the challenge brought by the claimants. Moreover, in my judgment it is evident that the RGP and Ms. Chicon had very distinct interests and it is inconceivable to envisage Ms. Chicon and the RGP being represented by the same legal team.

13 That said, in my judgment this is not a case in which it would be appropriate to order two sets of costs. Although RGP and Ms. Chicon had different interests, this was a claim brought on narrow points of law in which the interested parties advanced, at least as regards the third and more substantive ground, relatively similar submissions. And generally, whilst the submissions on behalf of the RGP were more substantive, Mr. Finch advanced the submission in respect of the absence of jurisdiction and powers of arrest by the claimants when in Spanish waters, which was material to the dismissal of grounds 1 and 2. In the circumstances, I am of the view that each of the interested parties is in principle entitled to recover 50% of their costs as from the directions hearing of February 28th, 2022.

14 The submission advanced on behalf of the claimants is that no award of costs should be made in favour of Ms. Chicon because it would appear that she has not incurred any. That no retainer letter has been provided confirming that she would be liable for legal fees and that by email dated April 18th, 2023, her lawyers confirmed that the families of the deceased “do not have money to pay for their representation” and therefore this has been provided “on spec.” It is submitted that, in those circumstances, it would be wholly inappropriate to grant costs as this would offend the indemnity principle.

15 For Ms. Chicon it is said that there was a “contentious fee agreement” between the families of the deceased and Verralls in the sum of £35,000. That the families did not have the funds to pay before the hearings took place, but on the basis that they were expecting to receive substantial compensation in respect of the deaths, they agreed to pay when in funds. In the event, Mr. Finch produced a document signed by Ms. Chicon which reflects her agreement to pay legal fees in a gross sum of £35,000 and he informed the court that in fact €15,000 had been paid on account. Advanced as they are by an officer of the court for present purposes, I accept that Ms. Chicon has a liability towards the legal fees incurred on her behalf and therefore that she is entitled to recover her costs to the extent I have identified before.

Orders accordingly.
