APPROVED
NO REDACTION NEEDED

THE COURT OF APPEAL

CIVIL

Appeal Number: 2022/217

Ní Raifeartaigh J. **Neutral Citation Number [2023] IECA 90**
Allen J.
Butler J.

BETWEEN

THOMAS LOOMES

PRACTISING UNDER THE STYLE AND TITLE OF

THOMAS LOOMES AND COMPANY

PLAINTIFF/RESPONDENT

AND

MAJELLA RIPPINGTON, SHAUN RIPPINGTON

AND

EDEL BANAHAN

DEFENDANTS/APPELLANTS

EX TEMPORE JUDGMENT of Mr. Justice Allen delivered on the 31st day of March, 2023

1. This is an appeal by the first defendant *("Ms. Rippington")* against the judgment and order of the High Court (Meenan J.) made on 5th May, 2022 measuring the costs of legal

professional services provided by the plaintiff *("Mr. Loomes")* to the defendants in the sum of €55,641.79 and giving judgment against the first and second defendants in that sum, as well as the costs of the proceedings.

2. In late March, 2011 Ms. Rippington consulted Mr. Loomes about a form of will dated 8th March, 2011 apparently made by her sister, Celine Murphy, who had died on 15th March, 2011. Thereafter Mr. Loomes acted for Ms. Rippington until 1st August, 2012 when Ms. Rippington filed and served a notice discharge. Ms. Rippington was dissatisfied with the service which had been provided by Mr. Loomes. Mr. Loomes, for his part, thought that Ms. Rippington had been a difficult and demanding client.

3. In 2013 Mr. Loomes had a bill of costs drawn and served on Ms. Rippington for a total of €61,144.60, made up of a professional fee of €45,237.23 plus VAT, and €5,502.81 for outlay. With credit for €8,040 which had been paid on account, the sum claimed was €53,104.60.

4. By summary summons issued on 28th January, 2014 Mr. Loomes instituted High Court proceedings seeking judgment in that sum. The special indorsement of claim did not give the date of the bill of costs but indicated that Mr. Loomes had given the defendants the option of taxing the costs which, it was said, they had failed, neglected, and refused to do.

5. Mr. Loomes' motion for liberty to enter final judgment was referred to the court list by the Master and by order of the High Court (Murphy J.) made on 19th October, 2015 the action was remitted to plenary hearing. Following the delivery of a statement of claim on 15th December, 2015 and a defence and counterclaim on behalf of Ms. Rippington and the second defendant on 30th May, 2016 the action was heard by the High Court (Meenan J). on 14th January, 2020.

6. On 6th March, 2020 Meenan J. gave a written judgment ([2020] IEHC 237) in which he concluded that Mr. Loomes was entitled in principle to be paid for his legal professional

services and that the amount recoverable might be determined either by way of an adjudication of costs or might be measured by the court. He said that he would hear the parties in relation to that.

7. In the course of his judgment on 6th March, 2020, Meenan J. identified the action in which Mr. Loomes had acted for Ms. Rippington – by which the defendants in these proceedings had sought to condemn the will of Ms. Murphy – as but one of a number of proceedings initiated by Ms. Rippington and the other defendants against numerous individuals which were almost invariably unsuccessful at first instance and appealed with a similar result. These proceedings, he noted, were in addition to various unsuccessful complaints to the Law Society and ultimately, an *Isaac Wunder* order was made against Ms. Rippington was by Simons J. on 24th May, 2019. Meenan J. roundly rejected the bald allegation by Ms. Rippington that the services which had been provided by Mr. Loomes were *"not up to standard"* and condemned as an abuse of process her wholly unsupported allegation of professional negligence.

8. Following the delivery of the judgment of the High Court on 6th March, 2020 there was a hiatus in the action for two years. On the hearing of the appeal neither party could confidently account for it but the Courts Service Online shows that it was adjourned from 6th March, 2020 until 27th March, 2020 when it was adjourned generally. If the parties could not remember it can confidently be inferred that it was adjourned generally by reason of what came to be the first COVID-19 lockdown. The case was restored to the list for 5th May, 2022 on the application *ex parte* of counsel for Mr. Loomes on 30th March, 2022 and shortly thereafter Ms. Rippington was given notice by letter of the listing.

9. The case came back into the list for further hearing on 5th May, 2022. Counsel for Mr. Loomes asked that the costs – that is to say the value of the work done by Mr. Loomes and which was the subject of the bill of costs – would be measured. Ms. Rippington opposed

that application and asked that the costs be sent for adjudication. She went on, however, to suggest that:-

> *"If this matter goes to the cost adjudicator … The costs have to be taxed and if those remain, if so, it remains an opportunity not only to reduce the bill but to open a path back to the court … for potentially a fraud."*

10. The judge recalled that he had given his judgment on 6th March, 2020 and asked Ms. Rippington whether she had obtained an expert report disputing the costs. Ms. Rippington said that she had not because, she said, she had been relying on the matter going to plenary hearing and she handed in the order of Murphy J. of 19th October, 2015. Meenan J. then said that:-

> *"Well, I'm dealing with a specific matter … arising out of my judgment in which I said that the court had jurisdiction to measure costs or in the alternative to send it off to the costs adjudicator. It has now been indicated to me that the plaintiff wishes to have the court rule on these costs, to measure the costs and that's exactly what I propose to do."*

11. Ms. Rippington then suggested that the proceedings had been stalled for eight years and that it was she who had called on the proceedings because, she said, she was living under dreadful harassment and intimidation from her solicitor outside of court. The judge then said:-

> *"All right. Very good. Well listen Mrs. Rippington, I don't want to unnecessarily prolong matters, but the issue before the court is a very net issue and I'll repeat again, and it's the last time that I'm going to repeat it, and that is that in a written judgment two years ago I found that you were – that there were professional fees due and owing, to the plaintiff solicitor in this matter, notwithstanding the fact that you opposed the application. And it therefore falls for the amount of those*

professional fees to be measured. The court has jurisdiction, I'm satisfied, to measure those costs, or in the alternative to send them to a legal costs accountant or, sorry, the costs adjudicator. So, I am going to measure those costs."

12. There followed an exchange between Ms. Rippington and the judge in which Ms. Rippington first suggested that there were damages which would offset any monies owing to Mr. Loomes and then that :-

"It's not a cast [recte. the case] that I would ask this to go to the costs adjudicator if I didn't think there was improper costs put on us. ... Also, that the – for me to get fairness in this matter and for me to get proper, what I'm told, with no disrespect to you, judge, but to get expert thorough going through these bills of costs."

13. Ms. Rippington then suggested that there was a doubt that Mr. Loomes had been paid money from her sister's estate – *"we have to have the record checked"* – and that *"the bill was doubled to 60,000 to put back, we believe, a sum of money in and around 30,000, that was taken from our sister's estate in 2011 and we believe."* Counsel for Mr. Loomes protested that there was no evidence to justify that allegation.

14. Ms. Rippington said that she had a difficulty with the bill of costs which, she said, had to be opened up. She said that she had got a legal costs accountant in Dunboyne who was of the belief that the costs did not come anywhere near the amount claimed and that an adjudicator would go through the costs. Ms. Rippington does not appear to have had with her a copy of the letter to which she was referring but she did say – and the transcript shows that it was not contested – that she had produced it at the earlier hearing.

15. Counsel for Mr. Loomes indicated that Mr. Loomes was in court and, if the court wished, could give evidence to go through the bill of costs, to which the judge replied that he was not going to do that.

16. The judge then gave his ruling. He recalled that is his written judgment he had found that Mr. Loomes was entitled to succeed against the defendants to recover an amount for legal professional services, the actual amount of which might be determined by an order for adjudication or might be measured by the court. He said that it was perfectly understandable for Mr. Loomes to have asked that the costs be measured rather than have the matter referred to the costs adjudicator given the history of the matter and the various proceedings, all of which had been dealt with and in which Ms. Rippington had been entirely unsuccessful. The judge noted that a bill of costs had been prepared by Connolly Lowe and that notwithstanding the service of the bill on the defendants, in excess of two years previously, they had not instructed a legal costs accountant to consider the various amounts claimed under the various headings. The judge acknowledged that he had been informed by Ms. Rippington that she had consulted a legal costs accountant but said that all that he had was what Ms. Rippington said the legal costs accountant had told her. He said that the bill of costs had been drawn by Connolly Lowe Legal Costs Accountants who are an entirely reputable professionally qualified legal costs accountants and in those circumstances that he was perfectly satisfied to measure the professional costs owed by the defendants to the plaintiff in the sum of €55,641.79, which – he said – was the total set out in the bill of costs. He gave judgment in the sum of €55,641.79 and the costs of the proceedings, to be adjudicated – he added, rather optimistically – in default of agreement.

17. I pause here to note that the amount for which judgment was given is obviously wrong. The claim, as I have said, was for €53,104.60. The figure of €55,641.79 is the sum claimed in respect of Mr. Loomes' fees – €45,237.23, plus VAT at 23%, €10,404.56, total €55,641.23. On the hearing of the appeal, when this obvious error was pointed out by the court, it was acknowledged by counsel but the High Court judge was not corrected at the time.

18. On 24th August, 2022 Ms. Rippington filed a notice of appeal against the judgment and order of Meenan J. which set out 39 grounds over eight pages. Following the first directions hearing on 4th November, 2022 the notice of appeal was replaced by an amended notice of appeal dated 8th December, 2022 which set out two grounds:-

> *"1. Judge errored in law in failing to observe the rules of natural justice, fair procedures and due process in granting the said award of costs to the plaintiff.*
>
> *2. The judge gave endorsements to the plaintiff's costs accountants Connolly Lowe in the absence of any evidence supporting his endorsement. The judge acted as an expert in the area of cost accounting. The court failed to provide impartiality in the hearing. Justice and equity was denied to the defendant."*

19. In *Scanlan v. Gilligan* [2021] IEHC 825 – a judgment on a series of motions by the defendants to dismiss an action as frivolous and vexatious and an abuse of process – Butler J. identified the particular challenge to a court in dealing with actions brought by litigants in person, in that case in attempting to unravel a dense and prolix statement of claim. At paras. 7 and 8 she said:-

> *"7. There is frequently an unwillingness on the part of these litigants to accept any adverse ruling and a tendency to ascribe such rulings to a lack of bona fides on the part of the judge or the opposing party or its lawyers. Apart from the legal expertise that a professional lawyer provides when representing a client, the fact that the lawyer is at one remove from the issues at the heart of the litigation enables them to take an objective view both of the litigation as a whole and of individual steps in that litigation, a perspective which the litigant-in-person can struggle to achieve.*
>
> *8. This is not to say that cases brought by litigants-in-person are invariably bad cases. Frequently, at the core of the litigation there may be a point of real substance although it is often obscured by excessive pleading and by an insistence on pursuing*

all points, however unmeritorious, to the detriment of the real issue. The court's task is to ensure that if there is a point of merit in the case, it is not overlooked or disregarded because of the verbiage by which it is sometimes surrounded. The task is unenviable not least because of the tendency of the litigant-in-person to take the view that unless the judge accepts all of their applications and arguments, they have not received justice. Needless to say, all of this absorbs a disproportionate amount of court time which is a cause of real concern as the time taken to deal with these applications is often completely disproportionate to the importance of the case. That time is then not available to enable other litigants to have their cases heard."

20. In this case, the challenge with which the High Court was confronted was not the prolixity of Ms. Rippington's argument but the fact that firstly, she appears to have been confused by the difference between a plenary hearing of her action – which she had had – and the adjudication of the bill of costs; secondly, that she tried to introduce a question as to whether Mr. Loomes had been paid money by Ms. Murphy's estate; and thirdly, and most of all, by the suggestion that an adjudication of the amount of her liability to Mr. Loomes might allow her to re-open the question which had been decided against her.

21. In her succinct written submission, Ms. Rippington makes essentially two arguments. First, she says, the judge did not have the expertise to measure the bill and secondly, that the measurement did not take into account the nature of the work, the complexity of the work, and the importance and value of the work.

22. Ms. Rippington referred to an affidavit said to have been sworn by her in these proceedings on 26th June, 2014. She included in her book of appeal a copy of an affidavit which appeared to have sworn but was unstamped and unfiled, in which she deposed that she had paid Mr. Loomes a total of €8,540.00 in three tranches which, she believed, fully paid Mr. Loomes. The affidavit then suggested that the bill of costs which had been furnished to

her was undated and expressed her concern that her agreement to taxation might prejudice proceedings which she was then contemplating bringing against Mr. Loomes. The affidavit exhibited a letter to her dated 20th June, 2014 from Anthony E. McMahon legal costs accountants – whose offices are in Dunboyne – in which it was said that:-

> *"The work undertaken on this file however, in my respectful opinion, does not warrant a fee near that which has been claimed and I do not believe that either of the Taxing Masters would allow fees at the level claimed. There is little advice given throughout and the work undertaken, in the main, is consideration of correspondence received without ever actively progressing matters."*

23. On the hearing of the appeal, counsel for Mr. Loomes said that the affidavit of 26th June, 2014 was not before the High Court on 5th May, 2022 and that Mr. Loomes had never seen the letter from Anthony E. McMahon. However, as I have said, the transcript of the hearing on 5th May, 2022 shows that Ms. Rippington's assertion that the letter which she had obtained from *"Arthurs in Dunboyne"* was before the court on the previous hearing was not contradicted.

24. As to the judge's assessment of the costs, Ms. Rippington submitted that the case was not simple and straightforward and that the judge did not have the material available to him to make an appropriate assessment. Reference was made to *Landers v. Dixon* [2015] IEHC 155, [2015] 1 I.R. 707. Besides, it was said, the judge did not open the bill to afford Ms. Rippington any opportunity to point out what she contended were serious deficiencies and discrepancies in the bill.

25. Ms. Rippington's written submissions were generally focussed. Unfortunately, they strayed beyond the amended grounds of appeal by suggesting that Mr. Loomes was not entitled to any award of costs and in seeking to revive the allegation long ago comprehensively rejected of negligence on the part of Mr. Loomes. As in her submissions to

the High Court, this was to court the danger that sight of the baby might be lost in the muddied bathwater.

26. In the written legal submissions filed on behalf of Mr. Loomes, this appeal is characterised as just another chapter in a long line of litigation pursued by Ms. Rippington since the death of her sister on 15th March, 2011. As I will come to, I do not believe that that is so.

27. Mr. Loomes would make much of the fact that Ms. Rippington did not appeal the judgment of 6th March, 2020. This is strictly speaking true insofar as the amended grounds of appeal do not challenge the findings and conclusions of the judgment of 6th March, 2020 but there was no order made on foot of the judgment of 6th March, 2020 which left over the question as to the assessment of the amount of Ms. Rippington's liability. The suggestion that Ms. Rippington chose not to appeal the 2020 judgment within the prescribed time was acknowledged in the course of the oral hearing to have been mistaken. It is, however, clear from her notice of appeal that the appeal is confined to the hearing, findings, and conclusion the assessment of quantum.

28. Under the heading *"Jurisdiction of the High Court to measure legal professional service fees"* Mr. Loomes' written submission starts with the proposition that the High Court has jurisdiction to award damages to a successful plaintiff and suggests that this court is being asked to review the assessment of damages. Mr. Loomes also relies on *Landers v. Dixon* in support of the proposition that an appellate court must not look to the actual sum measured for costs but may examine the manner in which it was measured to ensure that the figure was not plucked out of the air. In this case, it was submitted, the sum was measured within the framework of O. 99, r. 7(2) of the Rules of the Superior Courts. Citing the judgment of Simons J. in *Rippington v. Ireland* [2019] IEHC 664, it is submitted that this was a straightforward case, that the parties had the opportunity to address the court on quantum,

and that the judge had adequate material before him to make an informed decision. Much was made of the fact that there was no *"opposing expert evidence before the court which puts into dispute the accuracy of the bill of costs."*

29. It is common case that the High Court had an inherent jurisdiction to refer a bill of costs for taxation. Neither party has appealed against the finding that the High Court had jurisdiction to measure the costs claimed by Mr. Loomes but when I read the papers, I was unconvinced that such jurisdiction is to be found in O. 99 of the Rules of the Superior Courts. Order 99 is concerned with the allocation of the costs of and incidental to proceedings before the Superior Courts, which are in the discretion of the court. The costs the subject of Mr. Loomes' claim did not appear to me to have been – as between Mr. Loomes and Ms. Rippington – costs of or incidental to proceedings. As I have said, the appeal raises no issue as to the jurisdiction of the High Court to have measured the bill but in answer to the court, counsel for Mr. Loomes accepted that it was not to be found in O. 99 but rather in the jurisdiction of the court to adjudicate on a claim for legal professional fees in the same way as a claim for any other professional services.

30. It seems to me that this appeal raises a fundamental issue as to the fairness of the hearing on 5th May, 2022.

31. For the reasons given in his written judgment two years earlier on 6th March, 2020, the High Court judge had concluded that Mr. Loomes was entitled in principle to be paid but left over the question whether the bill of costs should be adjudicated or measured by the court. It is the fact that two years had elapsed between the judgment and the matter coming back into the list but there was no evidence as to what, if anything, had happened in that time. It was accepted that nothing at all had happened and that the application to the High Court on 30th March, 2022 was the first step taken to move the claim along. Mr. Loomes' written submission shows that an application was made to the court on 30th April, 2022 *"to measure*

the professional legal service fees awarded to [Mr. Loomes]". It is not clear what Ms. Rippington was told was the purpose of the listing on 5th May, 2022 but if it was what Mr. Loomes' written submission says it was, this did not reflect the judgment of the High Court which identified the outstanding issue as being whether the fees should be measured by the court or the bill sent for adjudication.

32. As the judge correctly identified, the only issue before the court on 5th May, 2022 was whether Mr. Loomes' bill of costs should be adjudicated or measured. The transcript shows that Ms. Rippington contested the amount of the claim. The judgment of 6th March, 2020 correctly anticipated that she might. It seems to me that she was entitled to challenge the bill, or at the very least to invoke the inherent jurisdiction of the court to make an order for adjudication. Having read the transcript, I am afraid that it indicates that the judge decided at a very early stage of the proceedings that he would measure the costs and that he did so by reference to the time which had elapsed since his earlier judgment and without enquiry as to what, if anything, had happened in the interim.

33. I am firmly of the view that Ms. Rippington, having asked that the bill should be sent for adjudication, did not help her cause by her wild allegation that Mr. Loomes might have been paid money from her late sister's estate and even more so by her suggestion that the adjudication of the bill might somehow or other open the path back to the court *"for potentially a fraud."*

34. The fact was, however, that Ms. Rippington had consulted a legal costs accountant who had expressed the view that the claim would not withstand taxation. In my view, Ms. Rippington's claim that the bill was too high was quite different to her unsupported allegation of professional negligence. Contrary to the view expressed by the judge and contrary to the submission on behalf of Mr. Loomes on the appeal, I do not believe that Ms. Rippington's entitlement to challenge the bill was conditional or contingent on her having or adducing

expert evidence. Moreover, there was no indication in the judgment of 6th March, 2020 that she was required to obtain a detailed report from the legal costs accountant whom she had consulted on the detail of Mr. Loomes' bill of costs. The bill of costs was Mr. Loomes' bill of costs. It had been prepared by Connolly Lowe on his, Mr. Loomes', behalf. It was not, and did not purport to be, an expert or independent assessment of the value of the work done by Mr. Loomes.

35. The judge appears to have approached the issue which he had to decide on 5th May, 2022 – as Mr. Loomes submits it was – as just another chapter in a long line of litigation arising out of Ms. Rippington's sister's will. The question of the amount Mr. Loomes' bill was, I suppose, tied in to the morass of protracted litigation but it was not part of it but a tangent. In her action against Ireland and others – many others – Ms. Rippington had shown herself to be a vexatious litigant. Her defence to Mr. Loomes' claim to be entitled in principle to be paid for his work had been roundly rejected by the High Court judge. But the value of the work done was, in my view, quite a different matter.

36. I think that there is substance, also, in Ms. Rippington's argument that the judge did not really engage with the bill of costs. The bill runs to 112 pages and itemises the work done from the time of the initial consultation until the service of notice of discharge. It is undated and appears in some respects to be incomplete. The bill solemnly applies the then applicable schedule II charges – such as €8.53 for instructions for counsel for case to advise and so forth – before, at item 205, proposing a general instructions fee of €45,000. There follows immediately, at item 206 a charge for €1,000 plus VAT for postages – which seems to be a lot – and at item 212 a charge of €275 for the stamp duty on a summons to tax and at item 213 a charge of €15.24 for attending taxation, completing bill, vouching, completing affidavit of tots and certificate of taxation, which at the oral hearing it was acknowledged had not been done. In the scale of things these last items are small but demonstrably the bill

included outlay which had not been incurred and charges for work which was not done. It is clear from the transcript that the judge looked only at the last page of the bill, which he misread. There may also be an issue as to whether the total paid by Ms. Rippington on account was – as set out in her affidavit of 26th June, 2014 – €8,540 or – as shown in manuscript on the copy of the bill of costs – €8,040.

37. I am persuaded that the High Court judge erred in failing to clearly identify the core issue before him which was to decide whether Mr. Loomes' claim for costs should be assessed by the court as a claim for professional services or the bill of costs sent for adjudication; and in his approach to the measurement of the claim and the Ms. Rippington's appeal must be allowed. I think that it is fair to say that the judge may have been blindsided by Ms. Rippington's other submissions.

38. As to whether the action should be remitted to the High Court or the bill sent for adjudication, I think that it is useful to recall the observation of Hogan J. in *Landers v. Dixon* that while the High Court has been prepared to measure costs is a number of relatively straightforward judicial review and Article 40 applications, no judge of the High Court would see himself or herself as possessing expertise in costs equivalent to that of – now – a legal costs adjudicator. The bill of costs in this case identifies 215 items of work over 112 pages. The work of determining what work was done and the value of the work will necessarily take time and expertise. That work, in my view, will be better and more efficiently done by a legal costs adjudicator than by a judge of the High Court.

39. I would allow the appeal and substitute an order that the bill of costs delivered by the respondent to the appellant be adjudicated.

[Ní Raifeartaigh and Butler JJ. agreed]