

## **Kavuma v Hunt**

Chancery Division

07 December 2018

### **Case Analysis**

#### **Where Reported**

[2018] 12 WLUK 119;

#### **Case Digest**

**Subject:** Civil procedure

**Keywords:** Default costs certificates; Delay; Jurisdiction; Litigants in person; Points of dispute; Relief from sanctions; Setting aside

**Summary:** The court refused to set aside a default costs certificate which had been granted following a failure to serve points of dispute. The application had not been made promptly and, notwithstanding the applicants' personal circumstances and their status as litigants in person, no good reason had been provided for the default.

**Abstract:** The applicants applied to set aside a default costs certificate obtained by the respondent trustee in bankruptcy.

The applicants were a husband and wife and their son. The husband had been declared bankrupt in 2013. In April 2017 the respondent obtained various declarations in respect of the husband's interest in a residential property in London, a declaration that the husband and wife's transfer of the property's first floor flat to the son had been at an undervalue, and an order for sale of the property. The applicants unsuccessfully sought permission to appeal against the order. On 15 December the respondent served on the applicants a notice of commencement for the assessment of the costs of the proceedings. The notice included a bill of costs for £293,000 and provided that the applicants serve points of dispute by 8 January 2018. Around that time, another son of the first and second applicant was dangerously ill in a Scottish hospital with leukaemia and the applicants were granted an extension of time for serving points of dispute to 2 March. The applicants failed to serve points of dispute and on 6 April the respondent obtained a default costs certificate for the full amount claimed. In May the respondent obtained interim charging orders against the applicants and a writ of

possession in respect of the property. On 1 June the son died from leukaemia. In July the charging orders were made final. On 8 August the applicants obtained a stay of the enforcement of the final charging orders which was granted on the basis that points of dispute were finally served and an application was made to set aside the default costs certificate under CPR r.47.12 by 22 August. On 16 August the applicants applied to stay the possession order, which was dismissed by the court as totally without merit, and on 22 August unsuccessfully applied to set aside the final charging order. The instant application was eventually made on 26 October, supported by the first applicant's witness statement which included points of dispute.

**Held:** Application refused.

**Did the court have jurisdiction to set aside the default costs certificate?** Yes. The court rejected the respondent's argument that it had no jurisdiction to hear the application because under CPR r.47.4 such an application, being an application in detailed assessment proceedings, had to be made at the appropriate office, which in the instant case was the Senior Court Costs Office. The application had been made under CPR r.47.12(1) which provided that the court would set aside a default costs certificate if the receiving party was not entitled to it. For present purposes, "the court" meant the High Court and a deputy judge sitting in the High Court therefore had jurisdiction to entertain the application.

**Should the court set aside the default costs certificate?** No. In deciding whether to set aside the certificate, CPR PD 47 para.11.2 emphasised the requirement for the court to consider whether the party seeking the order had made the application promptly. In the instant case, the application had not been made promptly. The court also had regard to CPR r.3.9 and the three-stage relief from sanctions test in *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 W.L.R. 3926, [2014] 7 WLUK 202, *Denton* followed. The failure to serve points of dispute was a serious and significant breach. The applicants had relied on their personal circumstances, particularly the son's illness and death, as providing a good reason for the failure to comply. However, notwithstanding those personal difficulties, the applicants had obtained a two-month extension for serving points of dispute but had then failed to comply with it. It was also difficult to see, even giving

due credit to them acting as litigants in person for significant parts of the litigation, why no application supported by points of dispute had been made within a few weeks of the 8 August order. That order had highlighted that the appropriate application was under CPR r.47.12 and that the stay was granted on specific terms, namely that such an application be brought and points of dispute filed. Rather than comply with the order, the applicants had made applications to stay the possession order and to set aside the final charging orders and no points of dispute had been prepared. The applicants had provided no explanation for not producing points of dispute earlier. While there was a good reason for the delay until July or August, none existed beyond that date. In considering all the circumstances of the case, the court also had regard to the fact that there had been previous delays and other procedural failings by the applicants in the course of the proceedings. A case for setting aside the default costs certificate had not been made out.

**Judge:** Mark Cawson QC

**Counsel:** For the first and second applicant: Stephen Innes (Direct Access). For the third applicant: No appearance or representation. For the respondent: Morwenna Macro.

### **Related Cases**

#### **Kavuma v Hunt**

**[2017] 9 WLUK 97; CHD; 07 September 2017**

#### **Kavuma v Hunt**

**[2018] 12 WLUK 119; CHD; 07 December 2018**

### **Significant Cases Cited**

#### **Denton v TH White Ltd**

[2014] EWCA Civ 906; [2014] 1 W.L.R. 3926; [2015] 1 All E.R. 880; [2014] 7 WLUK 202; [2014] C.P. Rep. 40; [2014] B.L.R. 547; 154 Con. L.R. 1; [2014] 4 Costs L.R. 752; [2014] C.I.L.L. 3568; (2014) 164(7614) N.L.J. 17; CA (Civ Div); 04 July 2014

### **All Cases Cited**

#### **Denton v TH White Ltd**

[2014] EWCA Civ 906; [2014] 1 W.L.R. 3926; [2015] 1 All E.R. 880; [2014] 7 WLUK 202; [2014] C.P. Rep. 40; [2014] B.L.R. 547; 154 Con. L.R. 1; [2014] 4 Costs L.R. 752; [2014] C.I.L.L. 3568; (2014) 164(7614) N.L.J. 17; CA (Civ Div); 04 July 2014

**Significant  
Legislation Cited**

CPR r.3.9

CPR r.47.4

CPR r.47.12

CPR r.47.12(1)

**Legislation Cited**

CPR r.3.9

CPR r.47.4

CPR r.47.12

CPR r.47.12(1)

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