Michaelmas Term
[2025] UKSC 36
On appeal from: [2024] EWCA Civ 790

JUDGMENT

Process & Industrial Developments Limited (Appellant) *v* The Federal Republic of Nigeria (Respondent)

before

Lord Reed, President
Lord Hodge, Deputy President
Lord Stephens
Lord Richards
Lady Simler

JUDGMENT GIVEN ON
22 October 2025

Heard on 8 July 2025

Appellant
Alexander Milner KC
Nicholas Bacon KC
Henry Hoskins
(Instructed by Quinn Emanuel Urquhart & Sullivan LLP (London))

Respondent
Jamie Carpenter KC
Tom Ford
(Instructed by Mishcon de Reya LLP (London))

LORD HODGE AND LADY SIMLER (with whom Lord Reed, Lord Stephens and Lord Richards agree):

1. This appeal concerns a costs order relating to The Federal Republic of Nigeria's ("Nigeria") successful application to set aside two arbitration awards made in favour of Process & Industrial Developments Ltd ("P&ID"). In pursuit of its application to set aside those awards, Nigeria incurred total unassessed costs of £44.217 million (excluding interest) in relation to an eight-week trial in the Commercial Court. The costs were billed by Nigeria's solicitors in sterling in 116 invoices and Nigeria paid in sterling between November 2019 and November 2024. The question is whether Knowles J erred in his decision to award Nigeria's costs in sterling rather than in naira, Nigeria's national currency.

2. The facts which lie behind this appeal, which have no bearing on the question which this court has to decide, are very concerning and raise serious questions about the conduct of international arbitrations. As Knowles J explains in his judgment on the substance of the challenge to the arbitral awards ([2023] EWHC 2638 (Comm)), P&ID obtained arbitral awards of US$6.6 billion plus interest at 7% in 2015 and 2017. Nigeria's total liability at the date of trial before Knowles J exceeded $11 billion. Knowles J set aside those awards under section 68 of the Arbitration Act 1996 ("the section 68 challenge") on the ground of serious irregularity affecting the award, viz. that the awards were obtained by fraud, and the awards and the way in which they were procured were contrary to public policy (section 68(2)(g)). This court is not concerned with the substance of Knowles J's judgment on the merits, but the background provides some explanation of the large sums which Nigeria had to spend on pursuing the section 68 challenge to those improperly obtained awards.

3. The reason why P&ID seeks to have the award of costs against them denominated in naira is that for several years, and particularly since Nigeria ceased to peg its currency to the US dollar in 2023, the naira has fallen markedly against other currencies including sterling. P&ID submits that if Nigeria were to receive an award of costs in sterling it would gain a substantial windfall at its expense because the sterling sums which Nigeria paid to its solicitors were the equivalent of approximately 25 billion naira when they were paid whereas they are now the equivalent of 95 billion naira.

4. The argument which P&ID has advanced at each level of the court hierarchy is that the court should apply a test that the award of costs to a successful party should be made in the currency which most accurately reflects the loss suffered by that party in funding its litigation. P&ID cites in support of this contention a judgment by John Kimbell QC, sitting as a Deputy High Court Judge, in *Cathay Pacific Airlines Ltd v Lufthansa Technik AG* [2019] EWHC 715 (Ch); [2019] 1 WLR 5057 ("*Cathay Pacific*").

5. Knowles J's short ex tempore ruling of 8 December 2023 on the currency of the costs to be awarded was made on the understanding that Nigeria had paid legal fees which were billed in sterling by making payments in sterling and that it did so by converting naira into sterling. He declined to follow the reasoning in *Cathay Pacific*. He held that the court has a discretion as to the currency in which a costs order should be made. As Nigeria had incurred a liability in sterling which it met in sterling, P&ID should pay the costs awarded in sterling.

6. The Court of Appeal (Sir Julian Flaux, Chancellor, and Snowden and Fraser LJJ) in a judgment dated 12 July 2024 ([2024] EWCA Civ 790) held that Knowles J was right to accept Nigeria's straightforward submission that because Nigeria had been invoiced and had incurred its liability to its solicitors in sterling, and had paid those bills in sterling, the court ought to make a costs order in sterling. Snowden LJ gave the leading judgment in which the principal matter that he addressed was a challenge to the jurisdiction of the Court of Appeal, which is not an issue on this appeal. On the substance of the appeal Snowden LJ held that the judge had been correct not to follow the decision in *Cathay Pacific*. In essence the Court of Appeal held (para 58) that an award of costs is not an indemnity which is designed to compensate a receiving party against loss. "Rather, an award of costs is a statutory indemnity against the *liability* that the receiving party has incurred to his own lawyers" (emphasis in the original). There was no foundation for the conclusion that the court had to conduct an inquiry into the currency which most truly reflected the underlying loss of the receiving party (para 63). Secondly, the inquiry into the arrangements which a party has made to obtain funds to pay its lawyers will often be inappropriate and disproportionate (para 64).

7. P&ID renews its arguments before this court. It observes that in *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443 the House of Lords held that the English courts could give judgment in a foreign currency on claims for debt. In *Owners of the Eleftherotria v Owners of the Despina R* [1979] AC 685 ("*The Despina R and the Folias*") the House of Lords extended the courts' ability to give judgment in a foreign currency to claims for damages in tort and breach of contract, establishing the principle in such cases that in assessing damages the court looks to the currency in which the claimant's loss can most appropriately be valued. That approach has since been extended to other claims including in indemnity, and unjust enrichment: *Food Corpn of India v Carras (Hellas) Ltd (The Dione)* [1980] 2 Lloyd's Rep 577; *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1979] 1 WLR 783. See also *Dicey, Morris and Collins on The Conflict of Laws*, 16th ed (2022), para 37-085. P&ID argued that because an award of costs is compensatory in nature, the reasoning in those cases, and in particular the damages cases, applies with equal force.

8. P&ID challenges the distinction which the Court of Appeal (in para 58) drew between on the one hand an indemnity which is designed to compensate against loss and an indemnity against the liability that the receiving party has incurred to its own lawyers. It argues that there is no material difference in this context between the receiving party's

liability to its lawyers and its loss on paying them. The ability of a party to be awarded costs on the basis of its liability when a third party has met that party's legal bills is nothing to the point.

9. Further, P&ID asserts that the Court of Appeal was wrong to be concerned about the risk of disproportionate inquiries into a party's funding arrangements; Lord Wilberforce had considered and rejected similar arguments in *The Despina R and the Folias*, pp 697-699, when considering the currency in which damages should be awarded.

10. We are not persuaded by those arguments for the following reasons.

11. First, an order for costs is not intended to provide compensation for loss in the same way as awards of damages in tort or for breach of contract. In relation to tort, the purpose of damages is to place the successful claimant, so far as money can achieve, in the position he or she would have been in if he or she had not been injured by the wrongful act: *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, 39 per Lord Blackburn. In cases of breach of contract, the award of damages is aimed at putting the claimant in as good a position as he or she would have been in if the contract had been performed: *Robinson v Harman* (1848) 1 Exch 850, 855 per Parke B. An award of costs does not perform either role.

12. Secondly, in contrast to an award of damages by which the court is giving effect to a party's legal right to reparation, an order for costs is a discretionary remedy. In recent times, the power of the court to award costs has had a statutory basis. Section 51 of the Senior Courts Act 1981 ("the 1981 Act") provides so far as relevant:

> "(1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in … (b) the High Court … shall be in the discretion of the court.
>
> …
>
> (3) The court shall have full power to determine by whom and to what extent the costs are to be paid."

13. The Civil Procedure Rules 1998 ("the CPR") rule 44.2(1) repeats the broad discretion which the 1981 Act has given to the courts. It provides:

"The court has discretion as to –

(a) whether costs are payable by one party to another;

(b) the amount of those costs; and

(c) when they are to be paid."

In deciding what order (if any) to make about costs, the court has regard to all the circumstances, including the conduct of the parties and the extent to which a party has been successful (CPR r 44.2(4)). The orders which under rule 44.2(6) the court may make include an order that a party must pay a proportion of another party's costs or a stated amount in respect of those costs or costs relating only to a distinct part of the proceedings or the issues raised. Rule 44.3 sets out the standard basis and the indemnity basis of assessment of costs and rule 44.4 requires that the court have regard to all the circumstances in deciding the amount of costs, including (among others) the conduct of the parties, the amount or value that is involved, and the complexity or novelty of the questions raised.

14. The CPR contains several mechanisms by which the courts are empowered to exercise control over the costs incurred in litigation to ensure the proportionality of parties' expenditure on their dispute. Those mechanisms include those in Part 3 of the CPR (the court's case and cost management powers) such as costs budgets and costs management orders (CPR rr 3.12-18), and cost capping (CPR rr 3.19-3.21).

15. Thus, while, at a high level of generality, the award of costs may be seen as a statutory indemnity because a party cannot recover more in costs than has been paid in fees and disbursements on the litigation (see *Harold v Smith* (1860) 5 H & N 381, 385 per Bramwell B), such an award is not an attempt to restore a party to the position it would have been in if it had not had to litigate to assert its rights. The indemnity principle simply prevents a party from recovering in an award of costs sums for which it has not incurred a liability to its own lawyers.

16. The task of the court making a costs award is to identify the reasonable amount which the party ordered to pay costs should pay, which is not the same as the sums which the receiving party has paid its lawyers and excludes the costs of funding the litigation, such as the cost of borrowing or the sums paid to commercial litigation funders. As Purchas LJ stated in *Hunt v R M Douglas (Roofing) Ltd* (18 November 1987, *The Times*, 23 November 1987) the expression "legal costs" has "a restricted meaning which could almost be described as conventional in a certain pragmatic sense". An award of costs is

no indemnity. It is a statutorily authorised award of a *contribution* toward the costs incurred in litigating in the courts of England and Wales.

17. A costs order is therefore very different from an award of damages. The court when enforcing a party's rights to reparation, whether in tort or for breach of contract, addresses its mind to the proper calculation of the party's loss. That is the right which the party has come to court to vindicate; and once a head of loss is established and calculated, the party has an entitlement to recover the amount so calculated in full as of right. By contrast, nobody has an entitlement to an award of costs as of right. The award of costs is a component of the court process itself. The court has a discretion to award costs as section 51 of the 1981 Act states. The court is not addressing loss.

18. The fact that in this case the sums which have been spent on challenging the arbitral awards are very large does not alter the nature of an award of costs.

19. Thirdly, there is no distinction in principle between a person, who in order to pay a solicitor's invoice expressed in sterling, converts another currency into sterling, and a person who sells gold or valuable paintings to do so. The court in awarding costs will usually have no idea of the arrangements by which the litigant has obtained the funds to meet its liability to its solicitors and does not investigate those arrangements in order to ascertain that party's loss.

20. Fourthly, there are pragmatic reasons why the court should not inquire into how the litigant has funded an action. The overriding objective of enabling the court to deal with cases justly and at a proportionate cost extends to the court's handling of disputes as to costs. If the court had to inquire into how a litigant had funded the sums which it paid to its lawyers, there would be a risk of collateral disputes of fact which might necessitate a separate trial. Notwithstanding the large sums that Nigeria has incurred in successfully challenging the arbitral awards in this case, the court should be very slow to adopt a principle which would encourage disproportionate or expensive satellite litigation.

21. There is a dispute in this case as to how Nigeria funded the sterling payments which it made to its solicitors. P&ID says that Nigeria has converted naira into sterling as and when it had to meet its lawyers' invoices. Nigeria now asserts that it had funds in sterling on which it was able to draw. In light of our conclusions, it is not necessary to determine whether Nigeria should be barred from raising this factual issue for the first time in this court since the question of the appropriate currency is not to be the subject of further litigation. The factual dispute raised is illustrative of the kind of satellite issues that might arise if the courts were to embark on the inquiry suggested by P&ID and it is sufficient to observe that such disputes are foreseeable in other cases.

22. Nigeria also explains that its bill of costs, which is drawn up in sterling, contains 95,429 items which will be assessed within the 116 invoices which it paid over five years and, if the currency applied to the costs order were to be naira, the appropriate exchange rate would have to be applied to the assessed sum relating to each of those invoices which would involve applying 116 different exchange rates.

23. What is seen as proportionate in the ascertainment of a party's loss in a trial which determines the parties' substantive rights is not an indication of what is appropriate or proportionate in the making of an order for costs.

24. While the only reported precedent for an award of costs other than in sterling is *Cathay Pacific*, there is no requirement in the 1981 Act or in the CPR that costs orders may be made only in sterling. There is no dispute between the parties that the court has jurisdiction to make an order for costs in a foreign currency. In our view, John Kimbell QC did not err in *Cathay Pacific* in awarding Lufthansa Technik AG, a German company, costs expressed in euros when its solicitors had charged hourly rates and submitted invoices expressed in euros and Lufthansa had paid those invoices in euros. Nonetheless, in so far as his reasoning for so doing rested on or was supported by a suggested requirement for an inquiry as to the currency which most truly reflects the loss which the receiving party has suffered, we respectfully disagree. There is no need to make such an inquiry which could add significantly to the cost of litigation in the English courts. Knowles J and the Court of Appeal were right to reject that approach.

25. It is consistent with the nature of the court's costs jurisdiction and with legal certainty that there be a general rule that an order for costs should be made in sterling or in the currency in which the solicitor has billed the client and in which the client has paid or there is a liability to pay. That reflects the liability which the party has incurred by litigating in the English courts. There may, nonetheless, be circumstances in which the court chooses not to award costs in the currency in which the receiving party has paid its lawyers. If the court considers that the parties' choice of the currency of payment is abusive or otherwise inappropriate, the court could properly make the costs order in sterling notwithstanding the party's use of that other currency. Such a circumstance might arise, for example, if a party were to use a currency with which neither it nor its lawyers had a real connection, to speculate on making a profit by its appreciation in value.

26. If it were to become common for parties litigating in England and Wales to pay their lawyers and seek the recovery of costs in a currency other than sterling, it might be necessary to develop practice directions to make sure that a party is aware that another party is using a foreign currency to meet its lawyers' invoices, to safeguard the court's methods of cost control, including costs budgeting, and to protect the paying party from significant currency fluctuations.

27. This is not a case where Nigeria's solicitors have submitted invoices in a currency other than sterling. English solicitors and counsel have conducted the litigation on behalf of Nigeria in the courts in London. They have charged fees and disbursements in sterling and Nigeria has paid those bills in sterling. A costs judge will assess their bill of costs in sterling. There is no reason to award costs in this case other than in sterling.

28. For all these reasons, which are essentially the same as those given by the Court of Appeal, we conclude that Knowles J did not err in law in the exercise of his discretion.

29. We add as a postscript that, contrary to P&ID's submission, Nigeria does not enjoy a large windfall from this decision. The depreciation of its currency internationally has resulted in a substantial diminution of the domestic purchasing power of the naira in Nigeria since 2019 and especially since 2023.

30. Since the hearing, the court has received submissions from the parties on costs.

31. We would dismiss the appeal and award Nigeria their costs on the standard basis.