



Neutral Citation Number: [2025] EWHC 3274 (KB)

Case No: KB-2022-004565

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/12/2025

Before :

HIS HONOUR JUDGE FREEDMAN
(sitting as an additional Judge of the High Court)

Between :

MICHAEL ANTHONY THOMAS
- and -
SECRETARY OF STATE FOR THE HOME
DEPARTMENT

Claimant

Defendant

Gordon Lee (instructed by Duncan Lewis Solicitors) for the Claimant
Gwion Lewis KC (instructed by Government Legal Department) for the Defendant

JUDGMENT ON COSTS

.....

His Honour Judge Freedman :

1. On 22nd November 2024, I gave judgment in this case after hearing oral submissions from both parties. I found that the Claimant, a Jamaican National, had been unlawfully detained for a period during the early part of 2020.
2. I left over the issue of quantum until I heard further submissions. In the event, quantum was agreed.
3. The order which was agreed on 23rd July 2025 provided as follows:

“UPON the Defendant agreeing to pay the Claimant the sum of £16,000 in full and final settlement of his claim, pending and with the exception of legal costs.

AND UPON the parties being unable to reach agreement as to the payment of the Claimant’s costs.

BY CONSENT, IT IS ORDERED THAT

1.The hearing listed for 28 July is vacated

2.The Defendant shall pay the Claimant the sum of £16,000 in damages within 14 days of the date of service of this order

3.The parties shall file and serve, by 5pm on 20 August 2025, their submissions on costs

4.The court shall consider the submissions without a hearing and shall make directions as to the payment of costs”

4. I now give my decision as to payment of costs, having received very helpful and succinct submissions from Counsel.
5. Prior to the Hearing before me, the Claimant had made 4 Part 36 offers, all of which fell below the settlement figure of £16,000.
6. The principal issue which arises is whether the costs consequences set out in CPR 36.17 are engaged, given that the settlement sum exceeds all the previous Part 36 offers made by the Claimant.
7. The Defendant’s submission is that there must be a *Judgment* before CPR 36.17 comes into play. Mr Lewis KC relies upon the title to CPR 36.17 which expressly states “Costs consequences following *judgment*”. Further, he points out that the body of the rule provides that costs consequences apply “upon *judgment* being entered” and “when a claimant fails to obtain a *judgment* more advantageous than a defendant’s Part 36 offer”.
8. Mr Lewis KC submits that the word ‘judgment’ connotes an independent decision by a Judge following a contested hearing. He argues that it is not intended to refer to a *settlement*, even where that settlement has been approved by a Judge. In short, he says

that Judgment must be entered by the Court on the damages due to a Claimant before CPR 36.17 is of any application.

9. Mr Lee submits that the compromise of a claim contained in a sealed Court order equates to judgment being entered. It is merely a semantic difference.
10. Mr Lee has helpfully referred me to *Vanden Recycling Ltd v Kras Recycling BV* [2017] EWCA Civ 354. In that case, the Court of Appeal agreed that the effect of a consent order made as between the Claimant and the 2nd Defendant was to give judgment in respect of its damages claim, with the result the Claimant no longer had any claim against the 3rd Defendant, being another tortfeasor liable for the same damage.
11. The consent order in that case provided that the 2nd Defendant “is to pay the total sum....in full and final settlement of the Claimant’s claims against the Second Defendant in these proceedings together with interest and costs”.
12. Central to the appeal was the proper construction of the Consent Order. Hamblen LJ interpreted in this way:

“49. If one has regard to what the Consent Order does rather than what it says, it requires Bolton (D2) to pay a specified sum in respect of Vanden’s claims. As far as those claims are concerned it is a final order. If there was judgment for Vanden on its damages claims following a trial a court order for payment in similar terms would be likely to be made. Although the Consent Order does not use the wording of adjudication or judgment, the order it makes is to the same effect as one which would be made following a judgment.

50. Since in substance and in effect the order for payment made by the Consent Order is the same as would be made following a judgment I consider that the Judge was correct to conclude that it is to be treated as a judgment for the purpose of the rule that satisfaction of a judgment bars claims against tortfeasors liable for the same damage.”
13. In my judgment, similar reasoning applies in the instant case. The mere fact that the word *judgment* does not appear in the Consent Order is of no consequence, when considering the effect of the Consent Order. Indeed, an order made by the Court following a Trial could have been drafted in precisely the same terms as the Consent Order.
14. I am fortified in reaching this conclusion by what is said in the White Book commentary to CPR 40: it is pointed out that although the CPR refers to the two terms (‘judgment’ and ‘order’), sometimes in conjunction and sometimes not, “no basis for distinguishing between them can be derived from the rules themselves”.
15. Whatever the Defendant may have intended, the true effect of this Consent Order is to enter judgment in favour of the claimant in the sum of £16,000. It is enforceable in precisely the same way as if the Court had awarded damages to the Claimant at the end of the trial.

16. For the sake of completeness, I should record that it is not argued that it would be *unjust in all the circumstances* for the costs consequences set out at CPR 36;17 to apply. Nor, in my view, would there be a reasonable basis for doing so.
17. Accordingly, I accept Mr Lee's submission that the usual costs consequences should run from 8 November 2021, being 21 days after the first Part 36 offer of £15,000.
18. My order, therefore, will reflect what is proposed by Mr Lee at paragraph 10 of his written submissions save in 2 respects:
 - i) I set the interest rate on costs at 7%
 - ii) The claimant must bear the costs of the application dated 9 May 2025 to adduce a witness statement (for the reasons given by Mr Lewis KC)
19. I assume that Counsel will be able to agree an appropriate Order.