



Neutral Citation Number: [2026] EWCA Civ 25

Case No: CA-2025-002605

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT
Mr Justice Robin Knowles CBE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/01/2026

Before:

LORD JUSTICE MALES
LADY JUSTICE ANDREWS
and
LORD JUSTICE LEWIS

Between:

THE FEDERAL REPUBLIC OF NIGERIA

Appellant

- and -

(1) VR GLOBAL PARTNERS LP
(2) RICHARD DEITZ
(3) VR ADVISORY SERVICES LTD
- and -

Respondents

**PROCESS & INDUSTRIAL DEVELOPMENTS
LIMITED**

Defendant

Tom Ford (instructed by **Mishcon de Reya LLP**) for the **Appellant**
Alex Barden KC (instructed by **Jenner & Block LLP**) for the **Respondents**
The **Defendant** took no part in the appeal

Hearing date: 14 January 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 23 January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE MALES:

1. The issue on this appeal is whether Mr Justice Robin Knowles ('the judge') was wrong to stay an application by the Federal Republic of Nigeria for a third party costs order until after the conclusion of proceedings for the detailed assessment of Nigeria's costs. The issue arises in what has been heavy and high profile litigation arising out of arbitration awards made in favour of Process & Industrial Developments Limited ('P&ID') against Nigeria for a total of some US \$6.6 billion together with interest.
2. On 21st December 2023, after a trial lasting 29 days, the judge ordered that the arbitration awards be set aside for serious irregularity pursuant to section 68 of the Arbitration Act 1996. By this time the amount of the awards had increased to some US \$11 billion as a result of interest.
3. In the course of his judgment the judge said that P&ID had obtained the awards through fraud and by 'practising the most severe abuses of the arbitral process' (*Federal Republic of Nigeria v Process & Industrial Developments Limited* [2023] EWHC 2638, [2024] 1 Lloyd's Rep 1, para 516). He ordered P&ID to pay Nigeria's costs of and occasioned by the proceedings, to be assessed on the standard basis if not agreed. He ordered an interim payment in the sum of £20 million to be made on account of these costs.
4. Nigeria has commenced proceedings for the assessment of its costs, claiming a total sum of about £44.2 million (not including interest), of which £20 million plus interest has now been paid pursuant to the judge's order for a payment on account. But P&ID does not carry on any business of its own from which it could pay any sums found to be due. The directors of P&ID have admitted that 'no arrangement was in place for P&ID to be put into sufficient funds to meet any adverse costs order'. Accordingly Nigeria has issued an application for a third party costs order against the respondents, companies within the VR Capital group and its founder Mr Richard Deitz, which funded the litigation on behalf of P&ID.
5. A question arose as to the order in which these matters should be dealt with. There were three possibilities. One was that the third party costs order application should be determined before the court and the parties embarked on a costly and time-consuming detailed assessment. That would enable Nigeria to know whether there was a solvent party from whom any costs found due could be recovered before committing any resources to the detailed assessment process. Neither party argued for this course. Another was that the detailed assessment should be completed before the court dealt with the application for the third party costs order. That would enable the parties and the court to know how much if any money is at stake before embarking on that application. This was the respondents' favoured course. The third possibility was that both matters should proceed in tandem, with the detailed assessment proceeding before a costs judge and the application for a third party costs order continuing before the judge in the Commercial Court. This was the course for which Nigeria contended.
6. The judge decided in favour of the second of these possibilities. He stayed the application for a third party costs order and related applications until after completion of the detailed assessment process. In this appeal Nigeria contends that he gave no adequate reasons for his decision and that, in any event, his decision was perverse, so the stay should be lifted and both applications should proceed in tandem.

7. I have concluded that the judge was entitled to make this case management order and that the appeal should be dismissed. Before explaining why, I need to explain a little of the background and something of what will be involved in the detailed assessment and the application for a third party costs order.

Background

8. P&ID is a special purpose company incorporated in the British Virgin Islands. Its only business has been the pursuit of the claim against Nigeria. It has no other assets. It is now indirectly owned in part by VR Capital, a large US-based investment fund. The first and third respondents are companies in the VR Capital group. The second respondent, Mr Richard Deitz, is the founder and President of the group. VR Capital invested in P&ID in 2017, at a time when P&ID had already obtained arbitration awards against Nigeria for US \$6.6 billion which it was seeking to enforce. It did so on terms which entitled it to a share of any proceeds ultimately received by P&ID. It is the VR Capital group which provided the funds which enabled P&ID to pursue the proceedings to enforce the awards and to resist Nigeria's application to set them aside.
9. As already explained, P&ID's enforcement efforts were unsuccessful, culminating in the judge's order dated 21st December 2023 which set the awards aside for serious irregularity. The judge ordered P&ID to pay Nigeria's costs of the proceedings and to pay £20 million on account of those costs by 5th January 2024. It is significant that the costs order was for assessment on the standard basis and not the indemnity basis for which Nigeria had contended. This means that proportionality will be an important consideration for the costs judge.
10. P&ID did not make the payment on account as ordered. It wrote to the court saying that it did not have the funds to do so. Shortly after 5th January 2024 it was effectively disabled from making the payment as a result of an interim third party debt order obtained by a creditor of Nigeria called Zhongshan. It is unnecessary to describe the proceedings which then ensued, which included a stay of the £20 million interim payment order to the extent of £10 million, an unsuccessful appeal by P&ID to the Supreme Court concerned with the currency in which costs ought to be ordered, and the lifting of the interim third party debt order once Nigeria had settled its dispute with Zhongshan. It is sufficient to say that Nigeria has now been paid a total of about £23.7 million on account of the costs of the proceedings, a figure which includes interest. The payment has been made from funds provided by the respondents.

The detailed assessment

11. On 1st November 2024 Nigeria served its bill of costs in the detailed assessment proceedings. It runs to more than 3,000 pages and took Nigeria's lawyers many months to prepare. As already mentioned, the costs claimed by Nigeria amount to some £44.2 million not including interest. If interest is added, the total is now over £50 million. These figures do not include the costs of the detailed assessment process itself, which Nigeria says are likely to run into millions of pounds. The bill of costs contains over 95,000 individual items.
12. P&ID has challenged the costs claimed by Nigeria. We were told that its Points of Dispute run to over 1,200 pages, that Nigeria's Points of Response run to over 2,000 pages, that it is expected that the assessment will require at least 50 days of hearings

before a costs judge, and that the assessment is unlikely to be concluded for at least another year to 18 months and potentially much longer. I will say a little more about this in due course. Currently a hearing of preliminary issues has been fixed for seven days from 27th April to 6th May 2026, and the first assessment hearing has been fixed for 15 days from 13th July to 31st July 2026, with further hearings yet to be fixed. Counsel were unable to tell us much about the nature of the preliminary issues, but were not optimistic that they would render many days of further assessment hearings unnecessary.

13. It is apparent, therefore, that any uncertainty as to whether the respondents will be found liable for Nigeria's costs has not deterred it from committing substantial resources to the detailed assessment process.
14. The respondents' position is that the costs claimed by Nigeria are (as it is put in their skeleton argument for this appeal) 'vastly in excess of what could ever be reasonable and proportionate', that it is unlikely that P&ID will be required to pay more than the £20 million plus interest which it has already paid, and that any further sum which it may be required to pay is likely to be modest.

The application for a third party costs order

15. On 29th August 2024 Nigeria issued an application for a third party costs order against VR Global and Mr Deitz under section 51 of the Senior Courts Act 1981 and CPR 46.2. Subsequently VR Advisory was added as a party to that application.
16. Whether Mr Deitz should be joined as a party has yet to be determined. We were told that his joinder will be resisted. The respondents say that the joinder of Mr Deitz is unnecessary in circumstances where there is no suggestion that the corporate respondents would be unable or unwilling to pay any sum for which they may be found liable and where they have already paid the costs of £20 million plus interest which Nigeria has so far received. They say that this is symptomatic of the aggressive and 'scorched earth' policy which Nigeria has adopted to the recovery of its costs.
17. Whether or not the respondents are right about this, which is not for us to determine, the attempt to join Mr Deitz will undoubtedly add a significant layer of complication and expense to the application for a third party costs order. It seems likely to raise issues as to the capacity in which Mr Deitz was acting, the knowledge which he had or did not have as to the conduct of P&ID in the arbitration which the judge found to be abusive in his substantive judgment, and whether the attempt to join him to the proceedings is (as the respondents say) an abusive attempt to exert pressure to force the respondents to settle (compare, for the kind of issues which are likely to arise, *Goknur v Organic Village Ltd* [2020] EWHC 2542 (QB), [2020] Costs LR 1973, para 38, citing *Housemaker Services Ltd v Cole* [2017] EWHC 924 (Ch), [2017] 3 Costs LR 417).
18. On 6th December 2024 the judge stayed the application for a third party costs order pending P&ID's appeal to the Supreme Court on the currency issue. After the Supreme Court had dismissed P&ID's appeal, the judge wrote to the parties indicating a provisional view that detailed assessment should precede resolution of the third party costs order application, but giving the parties an opportunity to address

submissions on this question at a short hearing. An email sent on his behalf on 3rd August 2025 said that:

‘The Supreme’s Court decision and the further payment made after that decision are significant developments. There are no sums currently payable (on account or assessed), but this position may or may not change with the assessment of costs. If sums are assessed due but then not promptly paid, the questions of examination of Mr du Toit (including set aside) and of third party liability for costs (including joinder) will become immediately relevant. Questions of proportionality will be further informed. There is also now Nigeria’s application for third party disclosure.

In these circumstances the judge is minded to conclude that the overriding objective supports the following sequence:

(a) completion of the assessment of costs, and of evidence on the disclosure application; and

(b) If any sum agreed or assessed is not paid within the period agreed or ordered by the Costs Judge then the parties should approach Listing for a one day hearing before Robin Knowles J, CBE on the questions of examination of Mr du Toit, third party disclosure and liability for costs (this one day hearing will be at the earliest date reasonably possible).

It is hoped that this will not be necessary, but in the event that any party considers it necessary to address the Judge orally on the approach summarised above, a short (one hour) hearing will be arranged through Listing before the Judge in the week of 18th August (if convenient to all parties) or early next term (at 09.00 am if necessary)...’

19. Nigeria took up the offer of a short hearing, which took place on 2nd October 2025. The outcome was the judge’s order staying the third party costs application until the detailed assessment process had been completed which is the subject of this appeal.
20. The same order stayed an application by Nigeria for disclosure of documents relevant to the third party costs application. The documents sought relate to an arbitration which had taken place in the British Virgin Islands between the VR group company which had invested in P&ID and Lismore Capital Ltd, a company owned by a former director of P&ID and one of its two founders.
21. Nigeria’s estimate is that two days of court time would be needed to determine the third party costs order application. That estimate seems to me to be not only premature in circumstances where the scope of the documentary disclosure which will be required has yet to be decided and witness evidence has yet to be served, but extremely optimistic. At all events, if the application to join Mr Deitz is pursued and is successful, and on the basis that the claim is currently for over £20 million, it is hard to see how a hearing with cross-examination of witnesses could be avoided.

The judgment

22. The judge gave a brief oral ruling after submissions which lasted about an hour. In view of its brevity, and because Mr Tom Ford for Nigeria submits that the judge failed to give proper reasons for his decision, I will set the ruling out in full:

‘1. All sums required to be paid on account of costs have now been paid. A detailed assessment lies ahead. That will provide the answer not only to the question of what the total costs amount to assessed on the standard basis, but also to the question whether any more is to be paid by FRN in respect of costs than has already been paid.

2. In relation to the subjects of examination as to means, provision of documents, and third party liability for costs, this court is faced overall with a case management decision. That is so whether this is described in terms of stay or adjournment or a listing decision. It is desirable to deal with this case management decision now.

3. The scale of the exercise for detailed assessment that is apparently proposed between the parties is breathtaking. It is that scale that has led to discussion of the length of time that will elapse before the detailed assessment is concluded, with references going well beyond next year.

4. As the matter strikes me, part of the heart of the problem is the envisaged scale of that exercise. I absolutely respect the fact that this is for the Costs Judge, but I do feel that I am entitled to express the hope that the length of time being discussed for argument in the detailed assessment will be borne down on by the Costs Judge so as to ensure that there is no element of disproportionality in the amount of court time used.

5. It is the use of court time and resources that bears with me on the subjects that are for my decision. Amongst the considerations under the overriding objective, it is (if I summarise) the position for other users of the court that weighs particularly heavily. Of course I take all aspects of the overriding objective into account.

6. The proceedings have involved matters of great seriousness and they have properly received a major allocation of Court time and resources. I have dealt with these proceedings at and since the main trial and have striven to ensure that proper allocation. This has involved considering both the proceedings as a whole and their course, as well as each individual stage or step in the proceedings.

7. On this occasion I have reached the view overall, with the benefit of the arguments on each side, that the right course is to

allow the costs assessment to complete first. It is particularly desirable in these proceedings to see what if any sum is ultimately payable and its size. By a focus on proportionality in the court time used on the costs assessment I anticipate that every effort will be made to enable that detailed assessment to complete at an earlier point than is currently being discussed.

8. I do take well to heart Mr Willan KC's point that if sums are found payable as a result of the detailed assessment, then those sums should be paid as soon as, in his submission, they are found to be payable. I propose to say this: that although I am not taking a course that will allow that degree of immediacy, I will (and if for any reason it is not me, I would anticipate that the Court will) be looking to ensure that if sums are found payable then the very shortest period elapses before that payment is honoured, and that includes the decisions about who should make the payment.

9. I am grateful for the instructions conveyed by Mr Bacon KC from the current third parties and Mr Deitz on the subject of not taking objections in relation to the detailed assessment, and this will be recorded in this court's order in suitable terms.

10. I do reflect further on the view I expressed in August about evidence on the disclosure application. With the benefit of the written submissions that I have received from Mr Bacon KC, I understand more that the completion of that evidence would be an undertaking potentially of some scale, certainly in terms of the background work, and I am persuaded by Mr Bacon KC that it should await the conclusion of the detailed assessment. But here too, in the event that the detailed assessment sees sums payable, I will be moving the pace very rapidly after that point, and so it is open to the parties to get ahead of the curve if they choose.'

23. It will be noted that the problem of the respondents' non-participation in the detailed assessment, which could have arisen if the assessment preceded the application for a third party costs order, has been removed by the respondents' undertaking referred to at para 9 of the judge's ruling.

Submissions

24. Mr Ford advances two grounds of appeal. The first, as I have said, is that the judge did not grapple with Nigeria's submissions and failed to give proper reasons for his decision to stay Nigeria's applications. In this regard he cites well known cases such as *Flannery v Halifax Estate Agencies Ltd* [2000] 1 WLR 377, 381 and *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413, [2019] 4 WLR 112, para 46, which deal with a judge's duty to give reasons for his decision; points out that this duty applies even in the context of short interim applications (see the valuable summary in *GLAS SAS v European Topsoho Sarl* [2025] EWCA Civ 933, [2025] 1 WLR 5343, paras 27 to 32 of the approach which a judge hearing such

applications should adopt); and submits that the judge's ruling is cursory and fell far short of what is required. The second ground of appeal is that the judge's decision is perverse, or at any rate plainly wrong.

25. Mr Ford submits that the general principle is that a judgment creditor should be permitted to have an application for a third party costs order determined unless there is a powerful reason to the contrary. He says that in the present case there is no such powerful reason: it is overwhelmingly likely that further sums will be due to Nigeria as a result of the detailed assessment; that delaying the application for a third party costs order in circumstances where P&ID has no possibility of paying whatever is due without funding from the respondents is unjust; and that the judge failed to deal with these arguments in his ruling. He submits that if (speculating) the judge's reasoning was that P&ID might pay voluntarily (i.e. might be put in funds by the respondents) without the need for a third party costs order, that was impermissible speculation in circumstances where the respondents had refused to commit to putting P&ID in funds; and that Nigeria is prejudiced because it will have to engage in the assessment process with no certainty as to eventual recovery and because the course adopted by the judge will cause delay in any eventual recovery. Finally, Mr Ford submits that the judge erred by placing too much weight on his view as to the allocation of court resources.

Discussion

26. I am unpersuaded by these submissions. The judge's ruling was brief, and might usefully have been more fully expressed, but in my judgment it was sufficient. As Lady Justice Falk put it in the *GLAS* case at para 32(a):

‘A judgment or ruling given in an application list such as the Friday Commercial Court list, or at a case management hearing where there may be a multiplicity of issues to address in a limited time, is unlikely to be, and need not be, a polished product like a reserved judgment.’

27. In the present case the fundamental premise of Nigeria's submissions is that it is ‘overwhelmingly likely’ that the outcome of the detailed assessment will be that substantial further sums are due to it. But it is evident that the judge did not accept that premise. He began his ruling by referring to ‘the question *whether any more is to be paid* by FRN in respect of costs than has already been paid’, clearly treating this as a live issue. At para 7 he said that it was particularly desirable ‘to see *what if any* sum is ultimately payable *and its size*’. He made the same point in the next paragraph, saying twice that ‘*if* sums are found payable’, they should be paid promptly, and also in his final paragraph, where he referred to what should happen ‘*in the event that* the detailed assessment sees sums payable’, an event which he clearly regarded as far from a foregone conclusion.
28. These comments must be viewed against the background of previous correspondence with the judge in which the respondents' solicitors had made the point that it would be contrary to the overriding objective to waste significant court resources and costs by allowing Nigeria's multiple applications to proceed in circumstances where it was not clear whether any further sums would become due, to which the judge had responded by the email of 3rd August 2025 which I have already set out.

29. The judge was extremely familiar with this case, having presided over the trial and dealt with all subsequent case management issues. It is clear that he did not regard it as overwhelmingly likely that Nigeria would be entitled to anything like the £24.2 million plus interest which it claims over and above the £20 million plus interest which had already been paid. On the contrary, it is clear that he regarded it as an open question whether anything more would be payable and, if so how much. That was a view which, in my judgment, he was entitled to form. That is why he said, in a sentence which represents the essence of his reasoning, that ‘It is particularly desirable in these proceedings to see what if any sum is ultimately payable and its size’ (para 7).
30. Even for a case of this magnitude and importance, which I do not under estimate, costs of over £44 million represent a staggering amount. It may be that Nigeria will be able to persuade a costs judge that these costs were reasonable and proportionate. But it may not. It is not for us to predict what the ultimate outcome will be. Nevertheless, on the material before this court, there appears to be considerable scope for dispute about major aspects of the bill which could potentially have a very significant impact on the final figure. For example, the fee charged by Nigeria’s leading counsel for the trial of the section 68 application was extraordinarily high, the hourly rates charged by its solicitors were well in excess of the applicable guideline rates, and we were told that the bill includes some £5.25 million incurred in litigation overseas and for public relations, the recoverability of which is at least open to question.
31. The judge was therefore entitled to conclude, and in my judgment clearly did conclude, that there is at any rate a real prospect that nothing further would be payable to Nigeria or that any further sum due would be relatively modest and much less than the £24.2 million plus interest which Nigeria is claiming. Once this is appreciated, Mr Ford’s criticisms of the judge’s ruling largely fall away.
32. The starting point is that there is no presumption against a stay of an application for a third party costs order which can only be rebutted by a powerful reason. The three cases relied on by Mr Ford do not suggest otherwise.
33. In *Athena Capital Fund v Secretariat of State for the Holy See* [2022] EWCA Civ 1051, [2022] 1 WLR 4570, para 59 I pointed out that ‘the usual function of the court is to decide cases and not to decline to do so’, referring to the importance of access to justice and the need for a powerful reason to depart from the usual course. But that was in the context of an application for a stay to await the outcome of proceedings overseas which would potentially be determinative of the English action, so that the stay might well prove to be permanent. In any event I made clear that ‘the single test remains whether in the particular circumstances it is in the interests of justice for a case management stay to be granted’. There is no question of the stay imposed by the judge in the present case impeding Nigeria’s access to justice. If it has a viable claim for a third party costs order once the detailed assessment has concluded, it will be able to pursue it.
34. The issue in *Old Park Capital Maestro Fund Ltd v Old Park Capital Ltd* [2024] EWHC 1482 (Ch) was concerned with an application to join a third party for costs purposes, not with the way in which the application should then proceed. The decision was that there was no principle that an application for joinder could only be made after the costs liability had been finally determined by assessment. It does not follow

from this that there is any presumption that the determination whether the third party is liable must proceed before or in tandem with the assessment.

35. *Magomedov v TPG Holdings* [2025] EWHC 1996 (Comm) was concerned with an application for disclosure of details of the claimants' litigation funding arrangements, with a view to a possible application for a third party costs order. Mr Justice Bryan held that there was no principle that a third party could only be joined after costs liabilities had been finally determined or when a determined costs liability had gone unpaid. The decision therefore goes no further than the *Old Park Capital Maestro* case.
36. The true principle is simply that the question whether a stay of the application for a third party costs order should be imposed to await the outcome of a detailed assessment must be decided in accordance with the interests of justice, applying the overriding objective in the particular circumstances of the case. That includes dealing with cases justly and at proportionate cost (CPR 1.1) and furthering the overriding objective by active case management (CPR 1.4). The court's case management powers expressly include deciding the order in which issues are to be resolved (CPR 1.4(2)(d) and CPR 3.1(2)(k)). When exercising these powers in the interest of justice, a judge has a wide discretion. In my judgment it is sufficiently clear that these were the powers which the judge was exercising and that he was doing so in order to ensure that the case was dealt with justly and proportionately.
37. As I have suggested, once it is appreciated that there is a real question whether anything further will be payable by P&ID, the judge's reasoning is sufficiently clear. He was not speculating that the respondents might pay a substantial sum voluntarily, but was doubtful whether such a sum would be payable at all. In those circumstances he was concerned not to waste time and expense on what might be a totally pointless application for a third party costs order if it turned out that nothing further was payable to Nigeria, particularly as the application would be (as he described it at para 10) 'an undertaking potentially of some scale'. Equally, if it were to turn out that only a modest further sum was payable, that would necessarily have a significant impact on the way in which the application should be case managed, for example as to the scope of disclosure which would be appropriate. In particular, the judge had regard to the position of other court users, whose cases might have a more pressing claim for the court's time than an application for a third party costs order if in the event no further costs were payable. That was a legitimate consideration to which the judge was required by the overriding objective to have regard (CPR 1.1(2)(e)).
38. The judge was also alive to the prejudice which Nigeria might suffer as a result of his decision, consisting of delay in obtaining payment of whatever may be found to be due. In this regard the relevant delay was not the time which would be required to complete the detailed assessment, since this would be necessary anyway in the absence of agreement on the quantum of the costs. Until the costs were either assessed or agreed (which in practice meant agreement by the respondents), nothing further would be payable by anybody. Rather, the relevant delay was the additional time after completion of the assessment which would be needed to determine the application for a third party costs order. The judge took this into account, and said that he would do his best to mitigate the position by moving that application on swiftly once the assessment was completed, but clearly considered that any prejudice to Nigeria was outweighed by the other factors to which he referred. Again, that was in my judgment

a view which he was entitled to form. There was no suggestion that the respondents would not be good for whatever they might ultimately be held liable to pay and in the meanwhile interest was accruing at 8 per cent.

39. Mr Ford submits that Nigeria is also prejudiced by the stay of the application for a third party costs order because, in any negotiations which may take place, the respondents will be able to hold over Nigeria's head the possibility that they may not be held liable to pay the costs, leaving Nigeria with only a worthless claim against P&ID. I do not think that speculation about possible settlement negotiations is a relevant consideration. The court's objective must be to do what is right in the interests of justice on the assumption that the case will proceed.
40. But in any event, the point cuts both ways. On the one hand, it may be to the respondents' advantage in any settlement negotiations that the application for a third party costs order has not yet been determined, leaving an element of uncertainty as to its eventual outcome. On the other hand, while the assessment process is incomplete, Nigeria has the tactical benefit of being able to hold over the respondents a claim for £24.2 million plus interest which may turn out to be worth very much less or indeed nothing at all. But even if these considerations are relevant, they carry very little weight. In reality both parties have access to high quality legal advice and will be well able to form a realistic view of the likely outcome.
41. Finally Mr Ford submits that it is relevant that the respondents have refused to commit to paying whatever sum is found due on the detailed assessment. I do not agree. In any case where an application is made for a third party costs order, the third parties will not have accepted liability to pay the costs in question. If they had done so, the application (which the respondents are entitled to resist) would be unnecessary. This is merely a forensic point.

Conclusion

42. As I said at the outset, the judge's reasoning was brief and could usefully have been more fully expressed. If it had been, it may be that this appeal would have been unnecessary. But I would not criticise the judge unduly and would point out that his ruling was given after relatively brief oral argument, while this court has had the benefit of submissions lasting most of a day. Litigation in the Commercial Court could not be conducted efficiently if that kind of time was devoted to every application of this nature. The judge was right to give an *extempore* ruling in such an application and it is apparent that he did so under some time pressure, whereas we have had the luxury of being able to reserve judgment for a short time.
43. The judge's ruling was sufficient to enable the parties and this court to understand the reasons for his decision once the background is understood. Another judge might have reached a different conclusion, but the judge's conclusion was within the wide ambit of his discretion in making a case management decision of this nature. I would therefore dismiss the appeal.

The assessment process

44. Before leaving this appeal, I wish to comment on the process which should be followed in order to ensure that the detailed assessment is conducted in accordance

with the overriding objective.

45. I am dismayed to be told that the assessment process will require at least 50 days of court time and will involve the expenditure of millions of pounds. That would mean a series of hearings potentially lasting in total almost twice as long as the trial of the substantive challenge to the award. Even if this is time and expense which these well-resourced parties are willing to devote to the exercise, it seems to me that it would be the worst kind of satellite litigation, which will prejudice the many other court users who need to have their costs assessed with reasonable promptness, and that it should not be countenanced.
46. The judge expressed 'the hope that the length of time being discussed for argument in the detailed assessment will be borne down on by the Costs Judge so as to ensure that there is no element of disproportionality in the amount of court time used' (para 4). I would go further. If the preliminary issues which are due to be determined at the hearing fixed for April and May of this year do not resolve matters, the costs judge must adopt a firm approach, limiting the parties to a reasonable allocation of further court time. If necessary, a sampling approach should be adopted. For example, each party could select a number of items from the bill and any reduction applied to those items could be applied to the bill as a whole. That seems to me to be as likely to produce a fair and reasonable result as detailed scrutiny in oral argument of every item in the bill in addition to the thousands of pages of written submissions which have already been served. As I have already said, both parties have access to high quality legal advice and will be well able to form a view of the likely outcome. It is time for them to adopt a realistic approach.

LADY JUSTICE ANDREWS:

47. I agree. I wish to expressly associate myself with the views expressed by Lord Justice Males in paragraphs 44 to 46. The level of costs claimed is eye-watering even by Commercial Court standards. It is possible that the resolution of the preliminary issues will significantly truncate the time required to carry out the remainder of the costs assessment, but the history of this litigation does not give rise to grounds for any optimism on that score. The sampling approach seems to me to be a very good idea.

LORD JUSTICE LEWIS:

48. I agree that this appeal should be dismissed for the reasons given by Lord Justice Males.