

SUPREME COURT OF QUEENSLAND

CITATION: *Hart v Ng* (No 2) [2026] QSC 227

PARTIES: **JANE HART ALSO KNOWN AS JANE HART-HUEZO**
(applicant)
v
TINEKE JANE NG ALSO KNOWN AS TINEKE
IKPOZA
(respondent)

FILE NO/S: BS 2014/26

DIVISION: Trial

PROCEEDING: Originating Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 28 September 2026

DELIVERED AT: Brisbane

HEARING DATE: Parties' submissions on costs received 18 September 2026

JUDGE: Freeburn J

ORDERS: **One half of the applicant's costs be paid from the proceeds of sale before apportionment of the shares in the proceeds of sale and the other half of the applicant's costs be paid from the respondent's share of the proceeds of sale (but before distribution).**

CATCHWORDS: PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – GENERAL RULE: COSTS FOLLOW EVENT – GENERAL PRINCIPLES AND EXERCISE OF DISCRETION – where the applicant was wholly successful on her application for the appointment of trustees for sale of the property – where the applicant and respondent hold respective shares of 75 per cent and 25 per cent in the property – where the applicant was represented by solicitors and counsel – where the respondent was self-represented – where the applicant seeks her costs of the application be paid on the standard basis out of the respondent's share of the proceeds of sale – where the respondent seeks four alternative costs orders – whether the court should exercise its discretion to deviate from the ordinary rule that costs be paid out of the proceeds of sale
McPaul v Massignani (No 2) [2023] QSC 118, cited

COUNSEL: L E Gamble
(Counsel for the applicant)
T J Izpoka

(self-represented respondent)

SOLICITORS: DW Legal (applicant)

- [1] On 11 September 2026, I ordered the appointment of trustees for sale of the property the subject of this proceeding, together with directions in relation to that sale.¹ I said I would hear the parties on costs. The parties have subsequently filed and served submissions on costs.
- [2] The applicant, Ms Hart, was successful in obtaining the relief she sought, that is, the appointment of trustees for sale. Ms Hart seeks an order that the respondent, Ms Ikpoza, pay Ms Hart's costs on the standard basis out of Ms Ikpoza's share of the proceeds of sale.
- [3] On the other hand, Ms Ikpoza submits that the appropriate orders as to costs are as follows:
 - (a) the costs of both parties to the proceeding, assessed on the standard basis if not agreed, be paid from the proceeds of sale *before* distribution of the balance between the co-owners; or
 - (b) alternatively, if the court considers that Ms Hart alone should recover her costs by reason of her success in obtaining an order for sale, Ms Hart's costs, assessed on the standard basis, if not agreed, be paid from the proceeds of sale *before* distribution of the balance, with Ms Ikpoza otherwise bearing her own costs; or
 - (c) alternatively, there be no order as to costs, with each party bearing their own costs; or
 - (d) further alternatively, if the court considers that Ms Ikpoza should personally pay any part of Ms Hart's costs, those costs be appropriately apportioned or limited having regard to the discrete issues determined in the proceeding.
- [4] I should observe that Ms Hart and Ms Ikpoza are mother and daughter. Ms Hart was represented by solicitors and counsel. Ms Ikpoza was self-represented. Thus, Ms Ikpoza did not incur any legal costs. That means that there is likely to be little practical difference between options (a) and (b) above.
- [5] The party that incurred legal costs was Ms Hart. And, because she is the three-quarter owner of the property, if the legal costs are paid from the proceeds of sale, she will inevitably bear the lion's share of those legal costs.
- [6] Because of the particular circumstances of this case, the usual order may mean that Ms Hart will bear a substantial proportion of her own legal costs despite having been wholly successful in the proceeding.

¹ The reasons are published as: *Hart v Ng* [2026] QSC 209.

Principles

- [7] The ordinary rule in an application of this kind is that the costs (of all parties) are paid out of the proceeds of sale. The rationale for that rule is that the costs are incidental to co-ownership.²
- [8] The court can deviate from that ordinary rule where unreasonable conduct has led to an unnecessary incurring of costs,³ or where the application was opposed on grounds which were not cogent or persuasive.⁴ It is possible that the overall principle is that the ordinary rule should apply unless there has been unreasonable conduct and that an absence of cogent or persuasive grounds is merely a subset of unreasonable conduct.⁵
- [9] Ultimately, of course, there is a judicial discretion to be exercised.

Principles Applied

- [10] It is true that all of the grounds raised by Ms Ikpoza for declining a sale were rejected. But I would not characterise the grounds of opposition as unreasonable. In fact, Ms Ikpoza relied on agreements willingly entered into by both parties that appeared designed to give Ms Ikpoza a right to occupy House 1 indefinitely. The agreements led to me describing the contractual arrangements as something of a mess.
- [11] Contrary to Ms Hart's submissions, I do not accept that the fact that the property market has weakened since the proceeding was commenced is a particularly relevant consideration. Neither party ought to be penalised for movements in the market.
- [12] On the other hand, in March 2025, Ms Hart offered to arrange a private sale of the property on terms that would provide Ms Ikpoza with an additional \$100,000 above her 25% legal entitlement to the proceeds of sale. That offer was more favourable to Ms Ikpoza than the outcome ultimately obtained. It was an offer that Ms Ikpoza ought to have accepted. Acceptance would have avoided this proceeding.
- [13] A departure from the usual rule is required, not least because the only party who has incurred legal costs is Ms Hart.⁶ If her legal costs are met from the proceeds of sale, then she will bear a substantial proportion of her own legal costs despite having been wholly successful in the proceeding.
- [14] The appropriate order, and one that reflects the different considerations pulling in different directions, including the rationale for the ordinary rule, is that one half of Ms Hart's legal costs be met from the proceeds of sale before distribution, and the other half of Ms Hart's legal costs be met from Ms Ikpoza's share of the proceeds.

² See *McPaul v Massignani (No 2)* [2023] QSC 118 at [12]. That case refers to a number of NSW authorities, namely *Kardos v Sarbutt (No 2)* [2006] NSWCA 206 at [28]-[31]; *McKay v McKay (Costs)* [2008] NSWSC 256 at [7]; *Spathis v Nanos (No 2)* [2008] NSWSC 470 at [2]-[3].

³ *Stibbard-Leaver v Leaver* [2021] NSWSC 65 at [5].

⁴ *Spathis v Nanos (No 2)* [2008] NSWSC 470 at [13].

⁵ Given that the grounds for opposing a sale are limited and, given that the ordinary rule must have some usual application, it does not make sense to regard any unsuccessful resistance to a sale order as lacking cogency and persuasion and therefore excluding the ordinary rule.

⁶ Of course Ms Ikpoza may have incurred out-of-pocket expenses but the legal costs of Ms Hart are likely to be the most significant.