

# SUPREME COURT OF QUEENSLAND

CITATION: *State of Qld v Brooks & McCabe* [2006] QCA 523

PARTIES: **STATE OF QUEENSLAND**  
(applicant/cross-respondent/appellant/cross-respondent)  
v  
**DALE RICHARD BROOKS**  
(respondent/cross-applicant/respondent/cross-appellant)  
**LEE PATRICIA McCABE**  
(cross-applicant)

FILE NO/S: Appeal No 446 of 2006  
SC No 1763 of 2005

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal - Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: Judgment delivered 3 November 2006  
Further Order delivered 8 December 2006

DELIVERED AT: Brisbane

HEARING DATE: 12 September 2006; 18 September 2006

JUDGES: Jerrard and Keane JJA and Jones J  
Separate reasons for judgment of each member of the Court,  
each concurring as to the order made

FURTHER ORDER: **In addition to the orders pronounced on 3 November 2006, Mr Brooks to pay the State's costs of and incidental to the hearing of 12 September 2006**

CATCHWORDS: PROCEDURE - COSTS - GENERAL RULE - COSTS FOLLOW THE EVENT - appeal arising out of proceedings under the *Criminal Proceeds Confiscation Act 2002* (Qld) - initial Court of Appeal hearing adjourned due to illness of judge - appeal resumed before differently constituted Court of Appeal - initial day's hearing vacated and costs of that hearing reserved - neither party responsible for circumstances which led to vacation of initial day's hearing - whether costs of initial day's hearing should follow the event

COUNSEL: R J Douglas SC, with J B Rolls, for the appellant/cross-respondent  
N M Cooke QC, with S Di Carlo, for the respondent/cross-appellant

SOLICITORS: Director of Public Prosecutions (Queensland) for the appellant/cross-respondent

Paul Carter and Associates for the respondent/cross-appellant

- [1] **JERRARD JA:** In this application I have read the reasons for judgment and order proposed by Keane JA, and I respectfully agree with those.
- [2] **KEANE JA:** On 3 November 2006, the Court gave judgment for the appellant. One of the Court's orders was "Mr Brooks to pay the State's costs of the appeal to be assessed". The Court also ordered that Mr Brooks' cross-appeal be dismissed with costs.
- [3] The Court which determined the appeal comprised Jerrard and Keane JJA and Jones J. Previously, the hearing of the appeal had commenced before a Court comprising Jerrard and Keane JJA and Cullinane J. Because of illness, Cullinane J was unable to continue, and the hearing, which began on 12 September 2006, was adjourned. Before the hearing continued on a later date before the newly constituted Court, it was ordered that the hearing which had previously commenced be vacated and the costs of that hearing reserved. The State now seeks an order in relation to those reserved costs.
- [4] The State contends that, because it was ultimately successful in its appeal, it should recover the reserved costs on the footing that costs should follow the event. On behalf of Mr Brooks, it is contended that, because the first hearing had to be abandoned because of the indisposition of one of the members of the Court, each party should bear its own costs of the vacated hearing.
- [5] It is true that neither party was responsible for the circumstances which led to the vacation of the first hearing. But that is no reason to deny the successful party costs necessarily incurred by it in relation to the determination of the appeal in its favour. There is no principle of law that a successful party should recover only those costs which it has incurred by reason of the default of the other party.

**Conclusion and order**

- [6] In addition to the orders pronounced on 3 November 2006, Mr Brooks should pay the State's costs of and incidental to the hearing of 12 September 2006.
- [7] **JONES J:** I agree with the order proposed by Keane JA.