

REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 736 OF 2014

BETWEEN:
MASAUKO PHIRI

PLAINTIFF

-AND-

REUNION INSURANCE COMPANY LIMITED

DEFENDANT

CORAM: ANNELINE KANTHAMBI
Mr. S. Mumba.
Mr. M. Mmeta.
Mrs. J. Chilimampungu.

ASSISTANT REGISTRAR
for the Receiving Party
for the Paying Party
Court Clerk

ORDER ON SUMMONS TO DISMISS ACTION

The matter came for taxation of costs. However, before taxation proceedings could commence, counsel for the paying party raised an objection. This objection appeared as the first point of dispute. According to the objection, the receiving party has not attached a time sheet. Counsel stated that they required time sheets to be served and it was not served on them. Counsel for the paying party on the other hand stated that it is not a requirement under the law and challenged counsel to point to the law that provides for it. The matter was adjourned for the court to consider the issues raised.

The Issue for determination was whether or not the service on the other of time sheets is a requirement in taxation proceedings.

The Law

The guiding principle to taxation of bills of costs is found in Order 62 rule 29.

First of all, Order 62 rule 29 sub rule provides as follows:

“proceedings for the taxation of costs shall be begun by producing the requisite document at the appropriate office.”

Sub-rule (6) states that for the purpose of this rule-

- (a) The requisite document shall be ascertained by reference to Appendix 1 of this Order,...*

Going through appendix one of the order, there is no mention of the said “Time sheets.”

Further, Order 62 rule 29 sub-rule 7 states that:

A party begins proceedings for taxation must, at the same time, lodge in the appropriate office-

- (a) A copy of the requisite document produced under paragraph (5), and*
- (b) A statement containing the following particulars:-*
- (i) The name every party, and the capacity in which he is a party to the proceedings, his position on the record of the proceedings which gave rise to the taxation proceedings and, if any costs to which taxation proceedings relate are to be paid out of a fund, the nature of his interest in the fund, and*
 - (ii) The address of any party to the proceedings who acknowledged service in person or who at the conclusion of the proceedings which gave rise to the taxation proceeding was in person and the name or firm and business address, telephone number and office reference of the solicitor of any party who did not acknowledge service or was not so acting in person and also (if the solicitor is the agent of another) the name or firm and business address of his principal;*
- (c) Unless the taxing officer otherwise orders, a bill of costs*
- (i) In which the professional charges and the disbursement are set out in separate columns and each column is cast, and*
 - (ii) Which is endorsed with the name, or firm and business address of the solicitor whose bill it is, and*
 - (iii) Which is signed by the solicitor or, if the costs are due to a firm, by a partner of that firm; and*
- (d) Unless the taxation officer otherwise orders the papers and vouchers specified below in the order mentioned –*
- (i) A bundle comprising all civil legal aid certificates and amendments thereto, notices of discharge or revocation thereof and specific legal aid authority;*
 - (ii) Unless the relevant information is included in the judgment or order or the parties have agreed the times of the hearings, a certificate of times or a copy of the associate’s certificate;*
 - (iii) A bundle comprising fee notes of counsel and accounts for other disbursements;*
 - (iv) One complete set of pleadings arranged in chronological order, with any interlocutory summons and lists of documents annexed to it*
 - (v) Cases to counsel to advise with his advice and opinions, and instructions to counsel to settle documents and briefs to counsel with enclosures, arranged in chronological order;*

- (vi) Reports and opinions of medical and other experts arranged in chronological order;
- (vii) The solicitor's correspondence and attendants note; and
- (viii) Any other relevant papers duly bundled and labeled

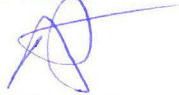
Further Practice Note 62/29/2 states the effects of the above rules that:

'... It is essential that the requirements of r. 29 are strictly followed. Failure to comply will result in a penalty and possibly return the bill to the bottom of the queue. Bills of costs (with supporting papers) submitted by post which do not comply with the rule will be returned for correction.'

Where a document cannot be included because it has been lost a statement to that effect should be made in the appropriate place in the bill. Only one set of supporting papers should be lodged (see Notice (1990) 87 L.S.Gaz.

I quoted the rule governing taxation proceedings extensively so as to show that I was unable to find therein, the rule supporting the assertion for filing of time sheets in taxation proceedings. As my sister colleague opined in the case of **Robin Alufandika v Chris Scrapetis Commercial Cause NUMBER 13 of 2013, (Unreported)**, unless there is another rule that makes the filing of the so-called time sheets mandatory, I also do not think they are a requisite feature in taxation proceedings. As such they can be dispensed with, and their absence cannot render the taxation proceedings a nugatory. As such, the plaintiff's objections are dismissed with costs. The taxation will proceed on a date to be fixed.

Made in chamber this 2nd day of October 2017



A. Kanthambi
Assistant Registrar