



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 342 OF 2016

BETWEEN

THE ADMINISTRATOR OF THE ESTATE OF ISAAC KANJE.....PLAINTIFF

AND

TED SPARKS JUMBE.....DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA

Mr. Chipembere, of Counsel for the Plaintiff

Mr. Kamkwasi, of Counsel for the Defendant

Mrs. Mkandawire, Official Interpreter/Court Reporter

ORDER ON ASSESSMENT OF COSTS

The defendant was granted costs in this matter through a ruling on the 10th of October 2016 by Justice Kenyatta Nyirenda upon discharging an injunction that had been granted to the plaintiff. The defendant filed his bundle on taxation on the 4th of January 2017. The parties appeared before this court on the 21st of March 2018. I reserved my ruling on the matter which I must now consider.

I thought I should begin by mentioning that this court is aware that this process must ensure that only costs which are necessary and proper for the administration of justice are allowable. In the case of **Fullerton v. Matsqui**, 74 B.C.L.R. (2d) 311, Justice Cumming adopted these words:

"The fundamental principle of costs as between party and party is that they are given by the court as an indemnity to the person entitled to them. Party-and-party costs are in effect damages awarded to the successful litigant as compensation for the expense to which he has been put by reason of the litigation."

Party and party costs do not include all the costs that a litigant may have incurred, but only those costs, charges and expenses that appear to have been necessary or proper for the attainment of justice or for defending the rights of a party. Order 62 Rule 12 of the Rules of the Supreme Court provides as follows:

On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these rules the term "the standard basis" in relation to the taxation of costs shall be construed accordingly.

With this at the back of my mind, I shall proceed to look at the items as presented in the bill of costs by Counsel for the plaintiff in relation to the submissions by Counsel for the defendants.

HOURLY RATE

The issue of the hourly rate was not in contention. The defendant had indicated in his bill of costs that the fee earner is Counsel of 20 years standing at the bar and had proposed K15,000.00. In view of the current trends and the experience of Counsel for the defendant, I see no reason to depart from the agreed rate.

ITEM 2

On this item Counsel for the defendant is proposing 8 hours being total time taken to attend to clients and take instructions. He adds time taken to attend upon and correspond with other parties including the plaintiff. On the other hand, Counsel for the plaintiff is of the view that taking instruction would not take that long and proposes an hour instead each for attending to clients and attending to other parties as well. He contends that the matter herein was not complicated and in fact one hour would have been enough to zero in all the matters during the initial meeting with his client. Essentially, he is of the view that 2 hours is sufficient for this item. In my opinion, 6 hours is reasonable for the preparatory work in as far as meeting the client taking instructions and corresponding with other parties including the plaintiff.

ITEM 3A

On this part, Counsel for the defendant seeks an hour for preparation of a notice of appointment of legal practitioners, two hours for notice of objection and five hours for affidavit in opposition to both applications for interlocutory injunction order and expedited originating summons. Counsel for the plaintiff is proposing 10 minutes, 15 minutes and 1½ hours respectively for the preparation of the said documents. Basically, he is proposing 1 hour 55 minutes for this item. I had an opportunity to look at the documents in question and I am of the view that 3 hours is fair.

ITEMS 3B

On the documents perused, Counsel for the defendant seeks an hour for the certificate of urgency, 5 hours for expedited Originating Summons together with an affidavit in support, 5 hours for an ex parte summons for an order of interlocutory injunction together with an affidavit in support, 5 hours for the skeletal arguments in support of ex parte summons for an order of interlocutory injunction, 2 hours for inter parte summons for an order for an interlocutory injunction, 3 hours for an affidavit in reply together with exhibits and 5 hours for a ruling by justice Kenyatta Nyirenda.

On the other hand, Counsel for the plaintiff proposes 15 minutes for the certificate of urgency since it contains one paragraph, 1½ hours for expedited Originating Summons together with an affidavit in support, 1 hour for the ex parte summons for an order of interlocutory injunction together with an affidavit in support, 1 hour for the skeletal arguments in support of ex parte summons for an order of interlocutory injunction, 5 minutes for inter parte summons for an order for an interlocutory injunction since the affidavit had already been used and also that the order itself is one page, 30 minutes for the

affidavit in reply together with exhibits and 15 minutes for the ruling by justice Kenyatta Nyirenda considering that it indeed not contain more than 5 pages.

In my view, the reasonable amount of time taken for each of the documents regarding their length would be 30 minutes for the certificate of urgency, 2 hours for expedited Originating Summons together with an affidavit in support, 2 hours for an ex parte summons for an order of interlocutory injunction together with an affidavit in support, 2 hours for the skeletal arguments in support of ex parte summons for an order of interlocutory injunction, 1 hour for inter parte summons for an order for an interlocutory injunction, 30 minutes for an affidavit in reply together with exhibits and 1 hour for a ruling by justice Kenyatta Nyirenda. Essentially, I will allow 9 hours for this part.

ITEM 3C

On the case authorities cited, Counsel for the defendant seeks 3 hours for each of the 34 cases that he listed on the bill of costs. The first contention by Counsel for the plaintiff is that there are 34 cases listed but only 4 if not 5 are attached to the bill of costs. He further argues that cases listed from 28 to 31 the one with most pages has 7 pages. He also pointed out that the one on number 31 has three pages including the headnote. He argues that cases from 28 to 31 would not take 3 hours each. He proposes that they would take 20 minutes at most. Counsel for the plaintiff also submits that the longer case is the American Cynamide case. Considering that some cases are very short, he proposes 20 minutes for each and every case in order to strike a balance. In my considered opinion, 1 hour for each would reasonably strike a balance for each of the documents. I will grant 34 hours for this part

ITEM 3D

On Books and Statutes read, Counsel for the defendant seeks 3 hours each for reading of Order 29, Rule 1 of the Rules of the Supreme Court and Order 62 of the Rules of the Supreme Court. Counsel for the plaintiff argues that 3 hours each for the reading of the said rules is on the higher side for Counsel of 20 years of standing at the bar and has done thousands of cases. He proposes 30 minutes just reading as a reminder. I will agree with Counsel for the defendant and allow 30 minutes for each. I grant an hour for this part.

ITEM 3E

On this item, Counsel for the defendant is claiming 2 hours for filing of Notice of appointment of Legal Practitioner and Notice of Objection, 2 hours for attending court for filing of Affidavit in

opposition to both application for interlocutory injunction order and expedited originating summons, 3 hours attending court for the hearing of inter parte summons, 5 hours for attending court for the hearing of inter partes summons and 5 hours for attending court for the ruling on the 10th of October 2016.

Counsel for the plaintiff on the other hand states that it's a process that takes about 10 minutes to file Notice of appointment of Legal Practitioner and Notice of Objection. He contends that Counsel's practice is at Chichiri which is 5 minutes away from the Court. He therefore suggests 10 minutes for filing of the notices. He further suggests another 20 minutes for filing of Affidavit in Opposition to both the application for interlocutory injunction order and expedited originating summons. On the hearing of the inter-parte summons, Counsel argues that the hearing did not take long. He opines that it took about 30 minutes and that they only argued tangentially. On hearing of the inter-parte summons Counsel suggests 40 minutes. On the hearing of the ruling, Counsel for the plaintiff avers that the hearing did not take place as the practice by the Judge is that parties get a call from the Secretary to collect the ruling, order or judgment from the secretary. He therefore suggests 15 for travelling to meet the secretary.

What I considered reasonable under this part is 30 minutes for filing of Notice of appointment of Legal Practitioner and Notice of Objection, 30 minutes for attending court for filing of Affidavit in opposition to both application for interlocutory injunction order and expedited originating summons, 2 hours attending court for the hearing of inter parte summons, 2 hours for attending court for the hearing of inter-partes summons and 30 minutes for attending court for the ruling on the 10th of October 2016. In total I allow 6 hours for this part.

ITEM 3F

On this item, Counsel for the defendant claims 50% of part 3 for preparation for trial. He avers that he reviewed the defendant's case with due diligence. Further, he contends that he reviewed the affidavit in support of the application and other prospective witnesses and also paid due regard to the law in perusing all relevant documents. He also claims 80% for general care and conduct. He claims he perused a lot of case authorities and other literature.

Counsel for the plaintiff however moves the court to disregard the entire item arguing that there was no hearing to prepare for. On General care and conduct, he contends that this matter was not complicated and 50 % for general care and conduct is enough.

In my opinion, there was anticipation of a trial. Counsel for the defendant had to make preparations for the same. I will allow 50% of Part 3 for preparation. On general care and conduct, I believe 60 % of Part 3 would be fair.

DISBURSEMENTS

On disbursements, Counsel for the defendants outlines his proposals as follows:

a. Stationery	K30,000.00
b. Printing and photocopying	K30,000.00
c. Telephone	K20,000.00
d. Travelling	K50,000.00

Counsel for the plaintiff however argues that the stationery need was not more than a ream of papers and K10,000.00 would be enough. He further contends that K10,000.00 is enough for printing and photocopying as it is an in house thing. On telephone charges, Counsel for the plaintiff contends that Counsel for the defendant had already had meetings with his clients and K50,000.00 is on the higher side. He therefore proposes K5,000.00. On travelling expenses, Counsel for the plaintiff avers that Counsel for the defendant was travelling from Chichiri to the Court and at most for his vehicle he would need two litres. He further states that since 6 trips were made to the court K12,000.00 is enough for travelling expenses.

I hold the view that the following would be reasonable in the circumstances: K10,000.00 for stationery, K10,000.00 for Printing and photocopying, K15,000.00 for Telephone and K15,000.00 Travelling K15,000.00.

TAXATION

The defendant claims about 8 hours for the entire taxation episode and 50% for general care and conduct. Counsel for the plaintiff however is of the view that preparing the bill of costs would take 3 hours, the notice of appointment to tax costs would take 10 minutes as it is a document with three lines and attending proceedings. He nevertheless did not dispute the 50% for general care and conduct. I will allow 5 hours for this part and 50 % general care and conduct.

Part 2	6 Hours	K90,000.00
Part 3A	4 Hours	K60,000.00
Part 3B	9 Hours	K135,000.00
Part 3C	34 Hours	K510,000.00
Part 3D	1 Hour	K15,000.00
Part 3E	6 Hours	K90,000.00
Subtotal for Part 3		K810,000.00
Part 3F	50% of Part 3	K405,000.00
General Care and Conduct	60% of Part 3	K486,000.00
Part 4 Disbursements		K60,000.00
Part 5 Taxation		K112,500.00
Professional Fees		K1,963,500.00
Plus 16.5% VAT		K323,977.50
TOTAL		K2,287,477.50

Costs are assessed at **K2,287,477.50**.

MADE IN CHAMBERS THIS 10th OF APRIL, 2018 AT PRINCIPAL REGISTRY

WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR