



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 249 OF 2021

**BETWEEN:**

SHAZEB KHAN.....1<sup>ST</sup> APPLICANT

SAMIA SHAZEB KHAN.....2<sup>ND</sup> APPLICANT

**AND**

MINISTER OF HOMELAND AND SECURITY.....1<sup>ST</sup> RESPONDENT

DEPARTMENT OF IMMIGRATION.....2<sup>ND</sup> RESPONDENT

THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT

**CORAM: WYSON CHAMDIMBA NKHATA (AR)**

Mr. Agagi- of Counsel for the Applicants

Mr. Chilongo-of Counsel for the Respondents

Mrs. Munthali- Court Clerk and Official Interpreter

**ORDER ON TAXATION OF COSTS**

**INTRODUCTION**

On 25<sup>th</sup> June, 2021, the claimants commenced proceedings against the respondents through an order of injunction restraining the respondents whether by themselves or by their agents and/or servants or otherwise from deporting the 1<sup>st</sup> applicant until the final determination of this matter or further order of the court. On the 2<sup>nd</sup> August, 2021 the court discharged the order of injunction and further ordered the applicant to bear costs of the proceedings. This is the court's order on assessment of costs.

The respondents (hereinafter referred to as the receiving party) through Counsel filed a notice of appointment to assess costs and a bill of costs which Counsel Chilongo representing the receiving party adopted in court. In the said bill of costs, the receiving party is claiming K4,205,805.00 as costs of this action. They appeared before this court for assessment of costs on the 19<sup>th</sup> of November, 2021. The applicants (hereinafter referred to as the paying party) did not file points objections to the claimants' Party and Party Bill of Costs.

#### LAW AND PRINCIPLES ON ASSESSMENT ON COSTS

Basically, the principle upon which costs should be taxed is that the successful party should be allowed costs reasonably incurred in prosecuting or defending the action. The taxing master must hold a balance: On one hand, the successful litigant, who has been awarded the costs so that he is made whole by being able to recover costs necessarily incurred and on another the unsuccessful party so that he does not pay an excessive amount of money. In the case of **Harold Smith** [1860] 5H & N 381, Bramwell B stated that Costs as between party and party are given by the law as an indemnity to the person entitled to them; they are not imposed as a punishment on the party who pays them, or given as a bonus to the party who receives them.

Order 31(5)(3) of the Courts (High Court) (Civil Procedure) Rules 2017 hereinafter CPR 2017 provides that in awarding costs the Court shall also have regard among others things the amount or value of any money or property involved; the importance of the matter to all the parties; the particular complexity of the matter or the difficulty or novelty of the questions raised; the skill, effort, specialized knowledge and responsibility involved and the time spent on the case.

Order 31 rule 5 of the CPR provides that the court should have regard to whether the costs were proportionate and reasonable in amount. It is clear that the law regulating assessment of costs abhors costs disproportionate to the amount recovered that was the subject matter of the proceedings. I believe the proportionality of costs to the value of the result is central to the just and efficient conduct of civil proceedings. The test of what is a proportionate amount of costs to incur therefore involves considerations of the amount recovered.

Order 31(4)(1) provides that where the Court is to assess the amount of costs, whether by summary or detailed assessment, those costs shall be assessed on the standard basis or the indemnity basis, but the Court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount. Further to that order 31(4)(2) provides that where the amount of costs is to be assessed on the standard basis, the Court shall (a) only allow costs which are proportionate to the matters in issue and (b) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

## THE BASIS FOR THE ASSESSMENT

Order 31(4)(4) of the CPR provides that where the Court makes an order about costs without indicating the basis on which the costs are to be assessed or the Court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis, the costs will be assessed on the standard basis. In this case, the order on costs as stipulated in the ruling does not indicate the basis upon which the costs ought to be assessed. It follows therefore that this court ought to assess the costs on standard basis which according to Order 31(4)(2) of the CPR the court ought to allow only those costs which are proportionate to the matters in issue and resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

## CONSIDERATION OF THE ITEMS OF THE BILL

### A. THE HOURLY RATE

The receiving party is of the view that the items on the bill be taxed at K30,000.00 per hour. It is indicated that the matter was handled by Counsel of 10 years standing at the bar. As earlier indicated, the matter was commenced on 25<sup>th</sup> June, 2021. Based on the Legal Practitioners Hourly Expense Rate for Purposes of Taxing Party and Party Costs 2018 was gazetted on the 16<sup>th</sup> of November 2018, the court has no issues with the proposed K30,000.00 hourly rate.

### B. PREPARATORY WORK

The receiving party is proposing 10 hours for attending upon the Client to receive instructions. This court is of the view that 10 hours is on the higher side for Counsel to take instructions and record the evidence. Apparently, their position in this matter was clear from the onset according to the order on sentencing by His Worship Mdeza (as he was then) that the State should verify the legality of the convicted person's legal status in Malawi and consider their deportation after serving the sentence imposed. It exercises my mind to discern what kind of complicated instruction would follow for the 3<sup>rd</sup> respondent having done the verification and the claimants having sought an order of injunction restraining the respondents from deporting the 1<sup>st</sup> applicant. I shall allow **4 hours** for this part.

### C. COURT DOCUMENTS PERUSED

The receiving party prays for 42 hours for perusal of court documents in this matter. The documents comprise court process, statutes and case authorities. On court process, the receiving part proposes 2 hours each for the

perusal of the order of injunction and a notice of the application for continuation of an order of injunction. The documents were annexed to the bill although they were already part of the record. Suffice to say, having considered the length, complexity and importance of the two documents in this matter, I was of the view that 2 hours each was on the higher side even considering the need to apply legal reasoning on the implications of the said documents. I will allow 1 hour each.

On statutes, Counsel proposes 2 hours for perusal of order 10 rule 27 of the CPR 2017. The said rule reads as follows:

The Court may, on application, grant an injunction by an interlocutory order when it appears to the Court (a) there is a serious question to be tried; (b) damages may not be an adequate remedy; and (c) it shall be just to do so, and the order may be made unconditionally or on such terms or conditions as the Court considers just.

In my opinion, the rule simply re-iterates long standing principles of the law which are supported by a plethora of case law. Spending 2 hours on the same is more of a luxury whose costs cannot be said to have been reasonably incurred. I will allow 30 minutes.

Lastly, the receiving party has listed 12 cases on this part and they claim 3 hours for each. Observably, the listed cases were attached to the Assessment Bundle. The cases are of varying lengths and complexity. I shall allow an average of 1 hour each. In total, the court allows 12 hours for perusal of court documents.

#### D. DOCUMENTS PREPARED

The receiving party prays for 8 hours for preparation of documents in this matter. They claim 3 hours for preparation of a sworn statement in opposition to the application for continuation of an order of injunction and 5 hours for preparation of skeleton arguments in opposition to an application for continuation of an order of injunction. I took time to go through the said documents. I am of the opinion that the proposed time is a little on the higher side. I am of the opinion that it would be more reasonable if preparation of a sworn statement in opposition to the application for continuation of an order of injunction took 2 hours and the preparation of skeleton arguments in opposition to an application for continuation of an order of injunction took 3 hours. In total, I allow 5 hours for preparation of documents.

#### E. ATTENDANCES

The receiving party is claiming 3 hours for the court attendance on 25<sup>th</sup> of July, 2021. I have gone through the record to verify the court attendance and the duration. Apparently, the parties met for an application for

continuation of the order on injunction. The parties adopted their skeleton arguments and highlighted a few issues. The court proceeded to give a ruling just in a paragraph. I believe 1 ½ hours is reasonable.

#### A. TRAVELLING AND WAITING

The receiving party is proposing 4 hours for travelling to the locus in quo to the High Court Library on divers occasions to file court documents. They also indicate that they travelled to the Head Office of Immigration Department in Blantyre for a meeting with their client. Blantyre. To begin with, am not sure how the issue of locus in quo comes in considering the nature of the application herein. On the other hand, I believe the issue of filing of court documents is more of a messenger's task than that of a lawyer. I hold the view that where Counsel undertakes to go around court registries filing documents he is basically on a frolic of his own. The same ought not to attract the lawyer's expense rate. It ought to be covered under disbursements. I shall disregard the same. The court shall allow 4 hours for travelling to the Head Office of Immigration Department in Blantyre for a meeting with their client.

#### F. GENERAL CARE AND CONDUCT

The receiving party proposes 70% of Part A as General Care and Conduct. However, the receiving party has not given a reason why the same should be pegged at 70%. They have not shown the level of care and skill applied in handling this case. In my opinion, there was nothing novel or new in such application. The receiving party simply had to present facts in opposition of the continuation of the order of injunction. In this case, I am of the opinion that 60% of Part A is reasonable.

#### G. DISBURSEMENTS

The receiving party claims K225,000.00 for disbursements. They claim K20,000.00 for stationery, K200,000.00 travel expenses and K5,000.00 for photocopying. The court takes note that the said costs for disbursements are not supported by any documents. It must always be borne in mind that according to established practice, such expenses must be strictly proved. The default thereof must compel the court to exercise the doubt in favour of the paying party by reducing the same. The receiving party's offices are situated in Lilongwe and they had to travel to Blantyre for the court appearances and presumably sending messengers for filing of documents. The K200,000.00 is reasonable by all standards however in view of failure to provide evidence for same, I shall reduce it to K180,000.00. On the part of stationery and printing, clearly, K20,000.00 and K5,000.00 respectively is reasonable. However, I shall allow K20,000.00 for both stationery and printing, the claimants having failed to provide supporting documents for the same. In total, the court allows K200,000.00 for disbursements.

SUMMARY

I therefore tax the bill as follows:

ITEM	COSTS
PART A: Attendances upon client	K120,000.00
Documents perused	K360,000.00
Documents prepared	K150,000.00
Attendances	K45,000.00
Total for Part A	K675,000.00
General Care and Conduct 60% of Part A	K405,000.00
Total Professional Fees	K1,080,000.00
VAT	K178,200.00
Disbursements	K200,000.00
<b>TOTAL</b>	<b>K1,458,200.00</b>

The costs are taxed at **K1,458,200.00**.

MADE IN CHAMBERS THIS 6<sup>TH</sup> OF DECEMBER, 2021

  
WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR