



REPUBLIC OF MALAWI
 IN THE HIGH COURT OF MALAWI
 PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 209 OF 2012

BETWEEN:

FRANCIS VEKETA.....CLAIMANT

AND

MR. J. E. NKHOMA.....1ST DEFENDANT

PRIME INSURANCE COMPANY LIMITED..... 2ND DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. Khondiwa- of Counsel for the Claimant

Mr. Amos- Court Clerk and Official Interpreter

ORDER ON TAXATION OF COSTS

INTRODUCTION

On 3rd May, 2012, the claimant commenced these proceedings by writ of summons claiming damages for pain and suffering, loss of amenities of life, disfigurement, loss of earnings and/or earning capacity, K6,000.00 special damages for Police Report and Medical Report, K20,000.00 special damages for transport to and from hospital for treatment and costs of this action. The claim arises out of an accident that occurred on 2nd September, 2011 at Limbe Bridge in which the 1st defendant who was driving motor vehicle registration number NU4775 Toyota Hiace Minibus from the direction of Dalton Court heading towards Limbe Market hit the claimant who was crossing the road. The 1st defendant was sued as the driver of the said motor vehicle and the 2nd defendant was sued by virtue of being the insurer of the said motor vehicle. The issue of liability was settled in favour of the claimant through a consent judgment executed by the parties on 28th March, 2014.

Subsequently, the matter proceeded for hearing on assessment of damages and the claimant was awarded a total sum of MK2,886,000.00 in all heads of damages claimed and proved on 29th October, 2014. The matter came before this court for assessment of costs on 25th November, 2021. This is the court's order on assessment of costs.

BACKGROUND

The claimant (hereinafter referred to as the receiving party) through Counsel filed a notice of appointment to assess costs and a bill of costs which Counsel Khondiwa representing the receiving party adopted in court. In the said bill of costs, the receiving party is claiming K20,947,212.50 as costs of this action. The Defendants (hereinafter referred to as the paying party) did not pitch up for the hearing on assessment of damages. The receiving party submitted that they had served the defendant Prime Insurance Company Limited and Russell, Smith & Associates being Counsel on the record for the defendants. Counsel further indicated that Russell, Smith & Associates wrote to them indicating that they ceased acting for the defendants. There being no excuse from the defendant the court proceeded to hear the claimant on assessment 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. In the case of **Smith v Buller** [1875] LR 19 Eq 473, Sir Richard Malins V.C. stated that it is of great importance to litigants who are unsuccessful that they should not be oppressed into having to pay an excessive amount of costs.

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 Consent Judgment 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.

PROPORTIONALITY OF COSTS

Order 31 rule 5 of the CPR 2017 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. In this case, the receiving party moves the court to tax the costs herein at the sum of K20,947,212.50 against the MK2,886,000.00 that was recovered. The court in this matter shall proceed mindful of the same.

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 Chikondi Khondiwa of 11 years standing at the bar. However, the record indicates that most of the working this matter was done between 2012 before the Legal Practitioners Hourly Expense Rate for Purposes of Taxing Party and Party Costs 2018 was gazetted on the 16th of November 2018. During this period, the hourly rate was largely dependent on the court's discretion and mostly K15,000.00 was applied for lawyers of reasonably comparable skills and experience rendering a similar service. Nonetheless, with the passage of time, I believe K30,000.00 would be reasonable even for the work done then.

CONSIDERATION OF THE ITEMS OF THE BILL

A. INSTRUCTION FEES

The receiving party is claiming K1,000,000.00 for taking instructions, preparing case docket and considering the merits of the case. The record indicates that Counsel performed the barrister and solicitor duties to ensure the case is properly presented. However, there is no evidence that the instruction fee was paid by the client. I shall exercise doubt by reducing the same and allow **K500,000.00** as instruction fees.

B. ATTENDANCES UPON THE CLIENT

The receiving party is proposing 4 hours for holding conferences with client in respect of the claim on 23rd November 2011, 5th January 2012 and 31st January 2012. It is not clear what the meetings were for. The time

sheet attached does not even shed some light on the same. All the same, the court is of the view that 1 hour each is reasonable. I shall allow **4 hours** for this part.

C. LETTERS PREPARED

The receiving party claims to have prepared 14 letters in the course of prosecuting this matter. They claim 45 minutes for each. Observably, the said letters are not attached to the bill and neither do they form part of the record. Essentially, the court did not have an advantage of assessing their length and their complexity. I would therefore exercise doubt in favour of the paying party by allowing 30 minutes for each. In total, the court allows **7 hours** for this part.

D. DOCUMENTS PERUSED

The receiving party prays for 3.67 hours for perusal of documents in this matter. Having considered the proposals by the parties, the length and complexity of the documents listed documents, I believe the time proposed is fair save for the 1 hour proposed for the defendant's submission on assessment of damages and the 45 minutes for the order on assessment of damages. I am of the view that 30 minutes for each would be reasonable. In total, the court allows **2.75 hours**.

E. DOCUMENTS PREPARED

The receiving party prays for 43.75 hours for preparation of documents in this matter. Most of the documents are part of the record. I had time to go through them and I am of the view that the time proposed by the receiving party is exaggerated and manifestly unreasonable. Having considered the length and complexity of the documents listed documents, I am of the view that **30 hours** is fair and reasonable.

F. AUTHORITIES PERUSED AND CONSIDERED

The receiving party claims 19.50 hours for authorities perused and considered. The authorities comprise 5 orders from the Rules of the Supreme Court 1999, 3 books and 9 cases. I believe the principles enunciated in some of the books that have been listed have been applied time again so much so that revisiting the books is merely for refreshing and that cannot take as much time as reading the books or the statutes for the first time. The same applies to the cases that have been listed. Unfortunately, they were not even attached to the Assessment Bundle. For the court to appreciate their length and complexity. I shall allow 1 hour each for the 9 cases, 1 hour each for the 3 books and 30mins each for the 5 orders purported to have been read. In total, the court allows **14.5 hours**.

G. COURT ATTENDANCES

The receiving party is proposing 42 hours for court attendances on divers occasions to file court documents, collected rulings and attending assessment of damages. nonetheless, I believe the issue of filing of court documents is more of a messenger's task than a lawyer's task. It ought to be covered under disbursements other than attracting the legal practitioner's hourly rate. I shall disregard the same. The court shall allow 3 hours for attending court for hearing on assessment of damages.

H. REFRESHER FEES

The receiving party is also claiming K1,860,075.00 refresher fees being $\frac{3}{4}$ of the fees in part 4. This matter was settled through a consent judgment. It did not go for trial on liability. It came before the court for hearing on assessment of damages. The record indicates that the same was concluded on the same day. The matter never had occasion of spilling over any sitting. In the circumstances, I find it farfetched to claim refresher fees in the circumstances of this case. I shall tax off the refresher fees.

I. GENERAL CARE AND CONDUCT

The receiving party proposes 80% of Part A as General Care and Conduct. It is submitted that the case required to be handled with care and skill because of the nature of the claim and the area of the law applicable. In my opinion, this being a personal injury matter did not present any addition to the already existing jurisprudence in personal injury matters. There was nothing novel or complicated. It falls squarely under ordinary cases. In the case of **Kavwenje v Chilambe** 1996 MLR 113 it was stated that for ordinary cases Care and Conduct should be between 50% and 60%. In this case, I am of the opinion that **50% of Part A** is reasonable.

J. DISBURSEMENTS

On this part, the receiving party claims that they incurred K297,000.00 for other outlays being K97,000.00 court fees, K100,000.00 for stationery, K20,000.00 for photocopying and K80,000.00 for fuel to and from court. This court has no issues with the amount claimed on court fees since its evident from the court record that the same was indeed expended. However, for the other items, the court takes note that they are not supported by any documents. 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. In any case, the file did not strike me as a matter that could need so much in stationery or photocopying mindful that some documents were sent to other parties. Apart from that, it is not even indicated where the firm for the receiving party is situated for the court to decide on the fuel needed to travel to court. In the final analysis, I

am of the view that K80,000.00 for stationery, K10,000.00 for photocopying and K50,000.00 for fuel to and from court would be reasonable in this matter. In total, the court allows **K237,000.00**.

K. TAXATION

Counsel for the receiving party proposes 10 hours for preparing the bill of costs, unspecified time for attending taxation proceedings and 50% Care and Conduct for the taxation proceedings. I perused the document referred to herein and I am of the view that 6 hours is reasonable. On attending hearing on assessment of costs, the court considers that the bill was not challenged. Counsel merely adopted the bill and the court adjourned for ruling. The proceedings started at 11:18am and finished at 11:21am which is less than 30 minutes. I will allow 1 hour just to factor in the waiting at the court premises since the hearing was scheduled for 10:30am. On the part of General Care and Conduct, there is nothing out of the ordinary in preparing a bill of costs even though it can be a tedious task. I believe 50% is just and fair. In total this part shall be taxed at **K315,000.00**.

SUMMARY

I therefore tax the bill as follows:

ITEM	COSTS
PART A: Instruction Fee	K500,000.00
Attendances upon client	K120,000.00
Letters Prepared	K210,000.00
Documents Perused	K82,500.00
Documents Prepared	K900,000.00
Authorities Perused and Considered	K435,000.00
Court Attendances	K90,000.00
Total for Part A	K2,337,500.00
General Care and Conduct 50% of Part A	K1,168,750.00
Taxation	K315,000.00
Total Professional Fees	K3,821,250.00
VAT	K630,506.25
Disbursements	K237,000.00
TOTAL	K4,688,756.25

The costs are taxed at **K4,688,756.25**.

MADE IN CHAMBERS THIS 6TH OF DECEMBER, 2021


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR