

HIGH COURT
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REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 611 OF 2015

BETWEEN:

- SAIDI SELEMANI.....1ST CLAIMANT
- FRANK SELEMANI.....2ND CLAIMANT
- HAWA BAULENI.....3RD CLAIMANT
- SILLI JAMES.....4TH CLAIMANT
- REDSON ZALIMBA.....5TH CLAIMANT
- ENOCK MSAMIRA.....6TH CLAIMANT
- AUSTIN ISSA.....7TH CLAIMANT
- JAMES CHUNGA.....8TH CLAIMANT
- STEVEN CHUNGA.....9TH CLAIMANT

AND

- HENRY MACHIKA.....1ST DEFENDANT
- NATIONWIDE TRANSPORT.....2ND DEFENDANT
- PRIME INSURANCE COMPANY LIMITED.....3RD DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. Kanyika- of Counsel for the Claimant

Mr. Theu-of Counsel for the Defendant

Ms. Chida- Court Clerk and Official Interpreter

ORDER ON TAXATION OF COSTS

INTRODUCTION

On 10th May 2015, the claimants commenced these proceedings by writ of summons claiming damages for pain and suffering, loss of amenities of life, disfigurement and costs of this action. The action arose from an accident that occurred on the 29th day of May 2015 at Mpilisi along Machinga-Liwonde road in which the 1st defendant who was driving motor vehicle registration number BT906 hit motor vehicle registration number BS7309/SA ERF Truck belonging to the 2nd defendant collided with motor vehicle registration number ZA2161 Toyota Hiace in which the claimants were passengers. The 1st defendant is sued as the driver of motor vehicle registration number BS7309/SA ERF Truck and the 2nd defendant as the owner of the said vehicle and the 3rd defendant is 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 the 13th of June, 2019. Subsequently, the matter proceeded for hearing on assessment of damages and the claimants were awarded a total sum of MK30,100,000.00 in all heads of damages claimed and proved on 27th October, 2020. The matter was referred to this court for assessment of costs which I must now consider.

The claimants (hereinafter referred to as the receiving party) through Counsel filed a notice of appointment to assess costs and a bill of costs which representing the receiving party adopted in court. In the said bill of costs, the receiving party is claiming K51,150,387.50 as costs of this action. The Defendants (hereinafter referred to as the paying party) filed and adopted their objections to the claimants' Party and Party Bill of Costs and proceeded to augment the same with an oral submission in opposition to the bill. I shall refer to the submissions as and when necessary.

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 costs chargeable under a taxation as between party and party are all that are necessary to enable the adverse party to conduct litigation and no more. Any charges merely for conducting mitigation more conveniently may be called luxuries and must be paid by the party incurring 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.

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.

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 K51,150,387.50 against the K30,100,000.00 that was recovered as damages to the claimants. The paying party contends that costs of obtaining K30,100,000.00 is 1.7 times larger than the actual value of the claims. Clearly, this defies the test of proportionality that this court ought to apply. In view of this, this court shall proceed mindful of the need to adhere to o.31 r. 5 of the CPR 2017.

EXAGGERATION

Legal costs must be fair, reasonable and proportionate, having regard to matters such as the complexity and urgency of the matter, quality of the work, instructions given and the experience of the lawyers involved. Legal practitioners have a professional duty to keep expenses of prosecuting a client's instructions within fair and reasonable limits. It is not only a professional or ethical duty to minimise costs of litigation but also a matter of legal obligation on parties. Order 1 rule 5(1) CPR 2017 provides that the overriding objective of the rules of procedure is to deal with cases justly, which includes saving expenses and dealing with a proceeding in ways which are proportionate to the circumstances.

In this case, submits that the time allegedly spent on the various tasks itemized are grossly exaggerated. He points out that in some instances, Counsel purportedly undertook some unreasonable and unnecessary activities thereby incurring some unwarranted expenses contrary to the professional and legal duties. He argues that some work is deliberately duplicated while some work is fabricated to inflate the of costs. This was a detailed assessment. The court had the advantage of receiving the input of both parties in each and every item listed on the bill. With that, the court undertakes to ensure that in its assessment costs that are not more than fair and reasonable in all the circumstances' and that, in particular, are 'proportionately and reasonably incurred' and 'proportionate and reasonable in amount'

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.

THE HOURLY RATE

The receiving party is of the view that the items on the bill be taxed at K40,000.00 per hour. It is indicated that the matter was handled by Counsel Felix E. Mipande of over 14 years standing at the bar. They submit that K40,000.00 is the minimum hourly rate recommended by the Malawi Law Society. The paying party contends that the hourly rate applied by the receiving party is only applicable to work done from the 13th November, 2018 and not prior to the date. Counsel submits that the Legal Practitioners (Hourly Expense Rate for Purposes of Taxing Party and Party Costs) Rules, 2018 which provide for K40,000.00 for Counsel of more than 10 years standing at the bar cannot be applied retrospectively. Counsel points out that prior to that date, rates were at the discretion of the court. He suggests that in a case of this nature the hourly rate of K15,000.00 would be reasonable for work done prior to 13 November, 2018. The receiving party in their rejoinder argue that despite the fact that the hourly rate is at the discretion of the court, the court ought to consider the depreciation and devaluation of the currency. They counter-propose K30,000.00 in the circumstances.

Basically, before the Legal Practitioners Hourly Expense Rate was gazetted the court had discretion to decide the hourly rate taking into account among other things the complexity, difficulty and novelty of the issues involved. Mostly, K10,000.00 to K15,000.00 per hour would suffice in cases that did not require specialized skills or knowledge. However, the cause of action arose in the year 2017. There is no doubt that the value of the costs cannot be same. The payments must have been adversely affected by the ravages of inflation and devaluation. There is a need to boost the hourly rate to bring it at par with economic realities. This could have been the rationale behind the review of the hourly rates leading to the Legal Practitioners Hourly Expense Rate. In the circumstances, considering the passage of time and the experience of Counsel representing the receiving party, I will allow an average of **K30,000.00** per hour.

CONSIDERATION OF THE ITEMS OF THE BILL

A. RECEIVING INSTRUCTIONS

The receiving party is proposing 30 hours for attending upon the Claimants to receive instructions, reviewing all the evidence, including police and medical reports and all relevant documentation and recording statements from the Claimants. The paying party opposes the proposed 30 hours. Counsel argues that the same is equivalent to 4 working days of 8 hours. He points out that the matter herein is basically a personal injury case which is based on Police Abstract Reports and that after the first claimant the case is the same what differs is the nature of the injuries which can be teased out from Medical Reports. He counter-proposes 1 hour for each claimant making a total of 9 hours for receiving instructions. The receiving paying however submits that they had to ensure that each story was captured correctly and they counter-propose 12 hours for receiving

instructions. Considering the nature of the work involved, this court is of the view that the 12 hours is fair for the 9 claimants for taking instructions.

B. DOCUMENTS PERUSED

The receiving party prays for 28 hours for perusal of documents in this matter. The paying party was generally of the view that the time proposed by the receiving party was grossly exaggerated. He contends that some of the documents were not complicated while others were short and others emanated from templates that Lawyers readily have in their possession. Counsel further motivated the court to tax off the documents that had been included as perused whose import was not necessitated by the paying party or any of the parties.

Having considered the submissions by the parties on the nature of the documents and having appreciated the length and complexity of the documents listed documents, this court summed up this part as follows:

DOCUMENTS	TIME PROPOSED BY THE RECEIVING PARTY	TIME PROPOSED BY THE PAYING PARTY	TIME ALLOWED BY THE COURT
Notice of appointment of legal practitioners	1hr	5mins	10mins
3 rd Defendant's Defence	2hrs	30mins	1hr
3 rd Party Notice	1.5hrs	-	-
Notice of appointment of legal practitioners	30mins	5mins	10mins
Consent order	1hr	-	30mins
Notice of appointment of legal practitioners	30mins	10mins	10mins
Letter from Nicholls & Brookes dated 3 rd February, 2016	30mins	10mins	10mins
Consent order to set aside default judgment	1hr	10mins	20mins
1 st and 2 nd Defendants' defence	2hrs	10mins	30mins
Letter from Nicholls & Brookes dated 20 th April, 2016	1hr	10mins	10mins

Consent order on liability	1hr	15mins	20mins
Defendant's statement of issues	2hrs	2hrs	2hrs
Notice of preliminary objection	30mins	15mins	15mins
1 st and 2 nd defendants' witness statement	8hrs	1hr	3hrs
Order on Assessment of Damages	3hrs	30mins	1hr
Certificate of termination of mediation	30mins	10mins	11mins
TOTAL			10hrs

I shall allow **K300,000.00** for this part.

C. DOCUMENTS PREPARED

The receiving party prays for 182 hours 45 minutes for preparation of documents in this matter. The paying party was generally of the view that the time proposed by the receiving party was grossly exaggerated. Counsel argues that some of the documents were not complicated, some were short and while others emanated from templates that Lawyers readily have in their possession. Having considered the submissions by the parties on the nature of the documents and having appreciated the length and complexity of the listed documents, this court summed up this part as follows:

DOCUMENTS PREPARED	TIME PROPOSED BY THE RECEIVING PARTY	TIME PROPOSED BY THE PAYING PARTY	TIME ALLOWED BY THE COURT
Writ of summons and statement of claim	12hrs	4hrs	4hrs
Affidavit by post	30mins	30mins	30mins
Assessment bundle	36hrs	1hr	3hrs
Ex-parte application to amend writ and statement of claim	4hrs	1hr	2hrs

Letter to Nicholls and Brookes dated 9 th December, 2015	30mins	20mins	20mins
Judgment in default of defence	1hr	30mins	30mins
Notice of appointment of assessment of damages	30mins	15mins	15mins
Letter to Nicholls and Brookes dated 18 th January, 2016	30mins	20mins	20mins
Summons to cease acting for a party	2hrs	1hr	1hr
Amended writ and statement of claim	2hrs	30mins	1hr
Letter to Nicholls and Brookes dated 31 st March, 2016	30mins	20mins	20mins
Notice of name of mediator and date of session	1hr	15mins	15mins
Claimant's mediation bundle	4hrs	3hrs	3hrs
Notice of adjournment of mediation	45mins	15mins	15mins
Notice of adjournment of mediation	45mins	15mins	15mins
Notice of adjournment of mediation	45mins	15mins	15mins
Summons for directions	30mins	30mins	30mins
Order for directions	1hr	15mins	20mins
Letter to Naphambo Company dated 28 th June, 2016	30mins	20mins	20mins
Claimant's list of documents	1hr	1hr	1hr

Affidavit of service by post	30mins	30mins	30mins
Bundle of pleadings	2hrs	1hr	1hr
Trial bundle	48hrs		6hrs
Notice of hearing	15mins	15mins	15mins
Notice of appointment of assessment of damages	15mins	15mins	15mins
Letter to Nicholls and Brookes dated 20 th February, 2020	30mins	20mins	20mins
Letter to Nicholls and Brookes dated 10 th June, 2020	45mins	20mins	20mins
Assessment bundle	36hrs	3hrs	4hrs
Affidavit by post	30mins	30mins	30mins
Claimant's submissions on assessment of damages	24hrs	-	3hrs
Notice of adjournment	15mins	15mins	15mins
TOTAL			35hrs

D. BOOKS AND STATUTES READ

The receiving party has listed 8 books and statutes on this part as having been consulted in the conduct of this matter and they claim 34 hours in total. The paying party contends that some of the books that have been included on the list do not even bear any relevance to the subject matter of the case herein. Further to that, the paying party moves the court to disallow the books that have been listed that Counsel of 14 years standing at the bar ought to have mastered the basics that they discuss.

In agreeing with Counsel representing the paying party, the court takes judicial notice that counsel seised with this matter has dealt with a plethora of such cases before this court. It is quite obvious that 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 court will proceed, advisedly, taking into account the experience of counsel and the relevance of the likely information sought in the books purported to have been read. I summarise this part as follows:

BOOK/STATUTE	TIME PROPOSED BY THE RECEIVING PARTY	TIME PROPOSED BY THE PAYING PARTY	TIME ALLOWED BY THE COURT
Bullen & Leake & Jacob's Precedents of Pleadings (12th ed.)	3hrs	-	30mins
Chitty & Jacobs Queen's Bench Forms (21st ed.)	3hrs	-	30mins
Rules of the Supreme Court, Volume 1	5hrs	3hrs	3hrs
Courts (High Court) (Civil Procedure) Rules, 2017	8hrs	3hrs	3hrs
McGregor on Damages	5hrs	-	2hrs
Mc Grivy on Insurance	3hrs	-	-
Donovan Silungwe on Personal Injury Claims in Malawi	4hrs	1hr	2hrs
Road Traffic Act.	3hrs	30mins	1hr
TOTAL			12hrs

E. CASE AUTHORITIES PERUSED

The receiving party has listed 26 cases on this part and they claim a total of 104 hours. Counsel representing the paying party questions the need for relying on foreign cases when there is an avalanche of cases within the jurisdiction on more or less the same principles. Further to that, Counsel argues that the said cases promulgate principles that Counsel should have at his fingertips. He moves the court to disallow the foreign cases. Other than that, Counsel submits that some of the cases are irrelevant while others have principles replicated in other cases. He took time to go through all the cited foreign case authorities demonstrating whether or not they were relevant to the issues presented by the matter herein. He however proposed 30 minutes each for local cases cited on the understanding that they deal with the quantum on damages and it was highly likely that Counsel had had recourse to them.

The receiving party argues that each case cited raises unique issues. He contends that the cases from foreign jurisdictions cannot be disallowed simply because they were cited in local cases. He submits that sometimes Counsel needs to check a principle from its source. He counter-proposes 1 hour for each.

I wish to agree with Counsel in that some cases present a *locus classicus*. Reading such a case as if one is reading it for the first time is extravagance of industry and is not in tandem with reasonably incurred costs. Other than that, this court did check the Foskett v. Humprey case. The receiving party did not attach it to the bundle and it cannot be found. It is only proper that such a case be disallowed since there is no evidence that it was read. All in all, in as far as case from other jurisdictions are concerned, the court shall proceed on the basis of the nature of the case, relevance of a case and the experience of Counsel. As for local cases, the court shall allow 1 hour each.

CASE AUTHORITY	TIME PROPOSED BY THE RECEIVING PARTY	TIME PROPOSED BY THE PAYING PARTY	TIME ALLOWED BY THE COURT
Donoghue (or MC Alister) versus Stevenson [1932] AC 562	4hrs	30mins	30mins
Western Scottish M T Co. versus Allan [1943] 2 ALL ER 742	4hrs	-	30mins
Burgess v. Osman and Jimu (1964 – 66) ALR Mal 475	4hrs	-	30mins
Kadawire v. Ziligone and Another [1997] 2 MLR 139	4hrs	30mins	1hr
Foskett v. Humprey [1984] LT 1	4hrs	-	-
Manley v. Alexander [2005] HCA 79 (14 th December 2005) or www.qmtlaw.com.au	4hrs	-	-
Capero Industrial PLC vs Dickman [1990] ALL ER 668 (CA)	4hrs	1hr	1hr
Admiralty Commissioners versus S. S. Susquehanna [1926] AC 655 at 661	4hrs	-	-

Admiralty Commissioners versus S.S Valeria [1922] AC 242 at 248	4hrs	-	-
Livingstone vs Rawyards Coal Company (1880) 5 AC 25	4hrs	30mins	30mins
Zaina Chipala vs Dwangwa Sugar Corporation Civil cause number 345 of 1998	4hrs	30mins	1hr
West vs Shepherd [1964] AC 326	4hrs	30mins	30mins
The rest of the 14 cases on quantum of damages	1hr each	30mins each	1hr each
TOTAL			19.5hrs

F. CONFERENCES

The receiving party proposes 22 hours for attending to the client on divers dates. The paying party contends that some of the conferences are not necessary. Counsel questions the essence of attending to client to discuss termination of mediation when it is a procedural matter. He further contends that some of the hours are exaggerated and gives an example on attending upon client for assessment of damages. he argues that it was a group briefing and could not take 4 hours. Having considered the submissions by the parties on this part and having appreciated the nature of the attendance purported to have been undertaken, this court summed up this part as follows:

CONFERENCE	TIME PROPOSED BY THE RECEIVING PARTY	TIME PROPOSED BY THE PAYING PARTY	TIME ALLOWED BY THE COURT
Attending upon the client in conference on 8 th September 2015 to discuss defence to action.	4hrs	30mins	1hr
Attending upon the clients on 19 th April, 2016 in preparation for mediation	4hrs	2hrs	2hrs

Attending upon clients on 26 th June, 2016 in preparation for mediation	4hrs	2hrs	2hrs
Attending upon client on 2 nd July, 2016 to discuss certificate of termination of mediation	2hrs	-	1hr
Attending upon the client in conference on 20 th October 2020 for assessment of damages	6hrs	2hrs	2hrs
Attending upon the client on 10 th December 2020 to discuss Order on assessment of damages	2hrs	2hrs	2hrs
Attending upon the client on 10 th December 2020 to discuss Order on assessment of damages	4hrs	2hrs	2hrs
TOTAL			12hrs

G. TRAVELLING AND WAITING

The receiving party is proposing 8 hours for travelling to the locus in quo on 13th July, 2015 and 12 hours for travelling to the High Court Library and Law Society Library to conduct research. The paying party argues that the visit to the locus in quo is a fabrication and was not undertaken. On travelling to the High Court Library, Counsel calls upon the court to consider that, this was within Blantyre. Frankly, it is has proved difficult for this court to verify if these trips were undertaken. I shall exercise the doubt in favour of the paying party by reducing the proposed time taken. The court shall allow 3 hours for travelling to the locus in quo and 4 hours for travelling to the High Court Library and Law Society Library to conduct research. In total, the court allows 7 hours for this part.

H. COURT ATTENDANCES

The receiving party is claiming costs for various attendances. However, the paying party challenges the same on the basis that in some attendances the application was made *ex-parte* while in others like application to enter default judgment there was no need for the parties to attend, the application having been taken under the old rules. Having heard the parties and having gone through the record, the court summarises this part as follows:

COURT ATTENDANCE	TIME PROPOSED BY THE RECEIVING PARTY	TIME PROPOSED BY THE PAYING PARTY	TIME ALLOWED BY THE COURT
Attending Court on 4 th December 2015 for hearing of application to amend writ and statement of claim inclusive of travelling and waiting	3hrs	2hrs	2hrs
Attended Court on 18 th January, 2016 for hearing of application to enter judgment in default of defence inclusive of travelling and waiting	3hrs	-	1hr
Attended Court on 8 th February, 2016 to obtain an order setting aside default judgment inclusive of travelling and waiting	3hrs	-	1hr
Attended mediation on 27 th June, 2016 inclusive of travelling and waiting	2hrs	2hrs	2hrs
Attended court on 20 th December, 2016 for summons for directions	2hrs	1hr	1hr

inclusive of travelling and waiting			
Attended court on 3 rd October, 2017 for hearing on an application for an order to cease acting for the 1 st Plaintiff inclusive of travelling and waiting	2hrs	-	2hrs
Attended Court on 13 th June to obtain an order entering judgment on liability inclusive of travelling and waiting	3hrs	-	1hr
Attending Court on 27 th October 2020 for assessment of damages inclusive of travelling and waiting	5hrs	2hrs	2hrs
Attending Court on 30 th November 2020 for delivery of Order on assessment of damages	2hrs	1hr	1hr
TOTAL			13hrs

I. REFRESHER FEES

A refresher is paid for a subsequent day of the trial which includes the ongoing preparation before and after court each day as well as any conference. The receiving party is also claiming costs refresher fees. They submit that the matter was called for on 2 occasions and Counsel had to refresh on the issues which related the pleadings, and meeting the witnesses. Counsel representing the paying party counter-proposes 2 hours for each of the attendances. This principle is whether there was a great deal of matters which had to be freshly attended to as the case progressed. This case, while not difficult and arduous, had 9 claimants with varying injuries. Perhaps, that is the only consideration that the court should bear in mind. Thus, having gone through the file and the court attendances mentioned above, the court K1,000,000.00 as refresher fees.

J. INSTRUCTION FEES

The receiving party also claims instruction fees. They submit that Counsel acted for the Claimants general and performed the rate of a barrister and solicitor duties to ensure the claim is properly presented. However, Counsel representing the paying party is of the view that the same be disallowed. He contends that the matter did not proceed to trial and that the issue of liability was settled through consent. Other than that, Counsel points out that in our jurisdiction, lawyers combine the roles of a barrister and those of a solicitor. It is true that this matter did not proceed to trial on the issue of liability. However, this matter went through assessment of damages proceedings which I believe is also a trial on its own. In any case, it is provided for under new rules in as far as the law firm had instructions from commencement to trial. I see no reason why it should be disallowed. The question the court ought grapple with is what could be the appropriate figure. Instruction fees are not as susceptible of precise calculation. The overall difficulty with computing instruction fees was summarised by Murphy J. in **Smyth v. Tunney** [1993] 1 I.R. 451 at 473 as follows:

“There are obvious difficulties in attempting to determine an appropriate instruction fee for a solicitor. The problem is that many of the items for which a solicitor is entitled to charge are defined with particularity and costed at derisory figures as I have already said. In relation to the items in respect of which no figure is provided the authorities appear to be wholly at large, with no guidance to be obtained by reference to the time involved or an hourly charge as one finds in some professions or a percentage fee as is adopted in others.

One approach that has been adopted by the court in the exercise of its discretion in allowing instruction fees is to compare the fees allowed in different cases. As an over-riding principle, however, it is important to bear in mind that what should be allowed, is what is “fair and reasonable in the circumstances” of any particular case. The case herein was a personal injury matter involving 9 claimants and the issue of liability was settled through a consent. Thus, having considered the complexity of the matter and the amount of work invested in handling it and for the court to arrive at a reasonable amount as costs for this matter, the court is of the view that K2,500,000.00 for instruction fees is reasonable in this matter.

K. GENERAL CARE AND CONDUCT

The receiving party proposes 75% of Part A as General Care and Conduct. They argue that the case was very important to the client and as a matter of principle it is necessary that the claimants should receive appropriate compensation for the loss suffered. It is further averred that Counsel worked hard and displayed remarkable skill in presenting the facts and the law. However, the paying party is of the view that this being a personal injury matter 30% of Part A of the Claimants’ Bill, being for care and conduct, is reasonable.

In my opinion, this is a personal injury matter. 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.

L. DISBURSEMENTS

The receiving party claims K1,506,000.00 for disbursements. The paying party contends that the costs of disbursements are largely not supported by any documents and are unrealistic. A successful party should, so far as is reasonable, be indemnified from the expense he is put to in an action to attain justice or enforce of defend his rights. He is not however entitled to be indemnified against such costs of expenses, which had been incurred or increased through over caution, negligence or mistake, or by any other unusual expenses. In *Dunne v. O'Neill* [1974] I.R. 180 in deciding whether to allow such disbursements, Gannon J. further stated that the amounts of the disbursements should be assessed on the basis of what a practising solicitor who is reasonably careful and reasonably prudent would consider a proper and reasonable fee to offer to counsel.

I have no doubt that the receiving party did anticipate an indemnification of costs in this case but they omitted to obtain receipts to support the costs they had incurred. It is an established practice that such costs must not only be proved but proved strictly. I am of the view that the doubt raised should be exercised in favour of the paying party as follows:

ITEM	AMOUNT PROPOSED BY THE RECEIVING PARTY	AMOUNT PROPOSED BY THE RECEIVING PARTY	AMOUNT ALLOWED BY THE COURT
Stationery	K200,000.00	K50,000.00	K100,000.00
Filing fees	K50,000.00	K50,000.00	K50,000.00
Phones	K50,000.00	K50,000.00	K50,000.00
Messengers	K200,000.00	K100,000.00	K100,000.00
Photocopying	K200,000.00	K50,000.00	K50,000.00
Secretarial	K500,000.00	K200,000.00	K200,000.00
Fuel	K1,000,000.00	K300,000.00	K300,000.00
TOTAL			K850,000.00

M. TAXATION

The receiving party proposes 36 hours for preparation of the bill of taxation, 6 hours for attending taxation proceedings and 75% of this item as Care and Conduct. The paying party proposes 6 hours for preparation of the bill of taxation. I had occasion to go through the bill that was presented before this court and I hold the view that 6 hours is reasonable. On attending taxation proceedings, the record indicates that the hearing started at 1:30pm to 3:15pm. In the circumstances, the court shall allow 2 hours to provide for waiting as well. Lastly, this court is of the view that 50% of this item as Care and Conduct for Taxation is reasonable. All in all, this part is taxed at 8 hours plus 50% care and conduct which gives **K360,000.00**.

SUMMARY

I therefore tax the bill as follows:

ITEM	COSTS
PART A: Attendances upon client	K360,000.00
Documents perused	K300,000.00
Documents prepared	K1,050,000.00
Books and Statutes	K360,000.00
Case authorities	K585,000.00
Conferences	K360,000.00
Travelling and waiting	K210,000.00
Court Attendances	K390,000.00
Refresher fees	K1,000,000.00
Instruction fees	K2,500,000.00
Total for Part A	K7,115,000.00
PART B: General Care and Conduct 50% of Part A	K3,557,500.00
Taxation	K360,000.00
Total Professional Fees	K11,032,500.00
VAT 16.5%	K1,820,362.50
Disbursements	K850,000.00
TOTAL	K13,702,862.50

The costs are taxed at **K13,702,862.50**.

MADE IN CHAMBERS THIS 3RD OF AUGUST, 2021


WYSON CHAMDIMBANKHATA

ASSISTANT REGISTRAR