

IN THE HIGH COURT OF MALAWI AT BLANTYRE
PRINCIPAL REGISTRY



M.S.C.A. CIVIL CAUSE NO. 2 OF 1984

BETWEEN:

ALIMAHOMED PLAINTIFF

- and -

PETER DEFENDANT

Coram: MBALAME, J.

Chizumila of Counsel for Applicant
Msisha of Counsel for the Respondent
Mkumbira, Court Clerk.

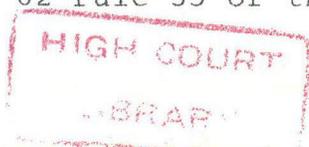


R U L I N G

This is an application by the appellant for an order that the taxation of the appellant's own solicitor costs reviewed by the Taxing Master on 20th June, 1986, be reviewed by this Court and that the costs occasioned by this application be deducted from the sum allowed on taxation.

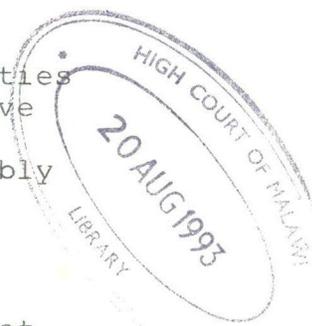
It is perhaps pertinent at this stage to briefly narrate the history of the matter. The appellant was represented by Messrs Savjani and Company in a civil matter which originated in the High Court and was finally concluded in his favour in the Supreme Court of Malawi. Needless to say costs were awarded against the other party and Messrs Savjani got their party/party costs. Messrs Savjani and Company then presented a solicitor and own client bill to the appellant of K6,125.00 which the appellant refused to pay having argued that it was exorbitant in the circumstances. The lawyers then proceeded to have the bill taxed under Order 62/29 of the Rules of the Supreme Court; this time claiming K14,168.00 by way of their costs.

In his ruling of 17th March, 1986, the learned Taxing Master taxed the bill at K6,684.20. The appellant immediately filed a notice of objection to the amount awarded and that objection was heard on 1st May, 1986. In reviewing the bill the Taxing Master increased the costs from K6,684.20 to K8,584.00. It is this ruling which the appellant is asking this Court to review and comes to me under Order 62 rule 35 of the Rules of Supreme Court.



Under this provision I am empowered to exercise all such powers and discretion as were vested in the taxing master in relation to the subject matter of this application. Indeed unless I otherwise direct, I cannot receive further evidence on the hearing of this application and I can not entertain any ground of objection which was not raised on the review by the taxing master.

In his ruling of 20th June, 1986, the taxing master decided that the sum of K2,500.00 awarded on item 5 was grossly inadequate considering the complexities of the appeal case and enhanced it to K3,500.00. I have carefully gone through the appeal record and Counsel's working notes submitted by Mr. Msisha. I should probably also add that having sat in the Court of appeal I am privileged to have some ideas regarding the complexity of the case.

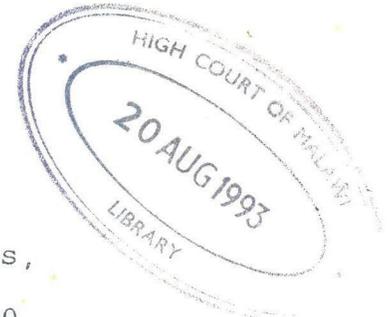


I have carefully listened to and considered what both Counsel have had to say by way of their able arguments. I do not seek to repeat each and every aspect of the submissions as I will be dealing with some of the points I consider relevant or persuasive in my final decision.

It was the learned taxing master's opinion that the first bill sent by Messrs Savjani and Company to the appellant had no relevance to the taxation at all. With respect, much as I may agree that it was not the only or principal guiding factor in the taxation, it however could assist in arriving at some of the discretionary awards on the items in question. In my judgment it cannot be thrown out just like that having come out from the lawyers who thought, all being well, that was a fair compensation of the work they had done for their client.

In revising the awards upwards the learned taxing master did not give any reason as to why he felt it necessary to differ from his previous assessment. Surely if the only reason for revising the figures upwards was because he felt the appeal was a complex one involving difficult issues of law and fact, this must have been apparent and clear when he first taxed the bill as was the case. In his first ruling of 17th March, 1986, he had this to say:

" I now turn to items 5, 6 and 13. The bill itself gives a detailed account of what Counsel did. I have also had the benefit of seeing the notes Counsel made in preparing for the appeal. The notes are voluminous and there can be no doubt whatsoever that Counsel's task was indeed arduous. Certainly, the case involved complex issues of fact and law calling for careful and extensive research and preparation."



He then proceeded to say:-

"Although the appeal was a complex one, I find that the amounts claimed are too high. From item 5 being instruction fees, I tax off K1,500 and allow K2,500. I allow K1,800 on item 6 taxing off K2,200. Refreshers are clearly excessive. I tax off K3,600 and allow K2,00.00".

From the foregoing it will be seen that the complexity of the case and the length of time it took were thoroughly taken into consideration the first time the bill was taxed. I have, as already indicated above, very carefully re-examined the material which was placed before the learned taxing master on both occasions and I do not see anything warranting the increase.

It is further contended by Counsel for the appellant that even the sums awarded in the first instance on items 5,6,7 were excessive. I bear in mind that I do not have to change the amounts just for the sake of doing so. I have to use my discretion which must be based on facts and what I think is reasonable necessary work done by Counsel on behalf of the client. I have given the matter a very careful review in respect of those items and it is my view that the amounts awarded in the initial taxation were fair except for item 6. I therefor, in review, reduce the figure of K3,500.00 to that of K2,500.00 on item 5; and the figure of K2,200.00 to K1,500.00m on item 6. On refreshers, item 7, I would leave the figure at K2,000.00. In the end result the whole bill is taxed in the sum of K6,384.20, costs to the appellant.

MADE in Chambers this 1st day of December, 1986.


R.P. Mbalame
JUDGE