Taxation — practice for taxation of bill of costs.

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 508 OF 1989

BETWEEN:

HAPPY NGOSI t/a
MZUMBAZUMBA ENTERPRISES ..... PLAINTIFF

and

H AMOSI TRANSPORT COMPANY LTD. ..... DEFENDANT

Coram: MWAUNGULU, REGISTRAR
Chizumila, Counsel for the Plaintiff
Chisanga, Counsel for the Defendant

O R D E R

This matter comes as a review of taxation of a bill of costs that I taxed on the 12th of May 1992. These objections are reminiscent of problems that legal practitioners are facing in adapting to the new practice. The practice is not new. It goes as far back as before 1985. The Rules of the Supreme Court, unless affected by the Rules of this Court, are part of our law. From these are excepted rules that are services for specific statutes which are not statutes of general application before 1902. The new practice for taxation of bills contained in the Practice Direction (Supreme Court Taxing Office) No. 1 1986 has not been profusely followed till sometime in 1990 when I alerted the legal practitioners. The transition has been spasmodic and painful; yet in the new practice is reflected a simplicity which we should wholeheartedly embrace. This review is significant because it brings to light some problems that have been faced.

The important feature of the new practice is that allowances are discretional and based on an expense rate. Paragraph 3 of the Masters Practice Notes 1906 provides as follows:

> "The new Appendix 2 Part II is designed further to simply the process of drawing, reading and taxing a bill of costs and thereby to reduce both time and expense. The principal provision is that items which are properly part of a solicitor's normal overhead costs, and as such provided for in his expense rate, are wholly to be excluded. Each chargeable item will be the subject of a discretionary allowance which should be shown in

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> two parts, the first representing the direct costs of the work properly itemised and the second the appropriate allowance for care and conduct."

Paragraph 5 requires that a bill contain a brief narrative of the issues and relevant circumstances. This narrative should be followed by a statement of the status of the fee-earners concerned and the expense rate claimed. Another distinct introduction is allowance for care and conduct. This is an all encompassing allowance that reflects not exclusively the matters under paragraph 1(2) of Part 1 of the new Appendix:

> "It is also intended to reflect those imponderable factors, for example general supervision of staff, for which no direct charge can be substantiated, and the element of commercial profit" (paragraph 4 of the Masters Practice Notes 1986)."

There is now a claim for travelling and waiting time.

Under the new practice, therefore, bills are taxed in the following manner. The party entitled to costs stipulates the time that he has spent on the various items specified in part II of the schedule at the appropriate expense rate. The assessment depends on "arithmetical computation" and partly on judgments of value. The taxing master will also award for care and conduct. This should be expressed as a certain percentage of the actual claims. The court will also award for travelling and waiting time.

The Masters Practice Notes 1986 are simple and elaborate. Yet the bills that come before me elude this. Let me now consider the objections.

The first is that the plaintiff has not lodged requisite papers and vouchers as required by Order 62, Rule 29(7)(d). It is submitted that the whole bill should be refused. The Master Practice Notes 1986 are prayed in aid. The appropriate paragraph should be reproduced. Paragraph 20:

> "Where bills are lodged for taxation they should be supported by the relevant papers arranged as specified in Rule 29 (7)(d). Failure to observe this requirement substantially increased the taxation process and only result in the bill being refused or the allowance for taxation reduced or disallowed."

The practice Notes leaves the discretion to the taxing master either to refuse the bill or reduce or disallow the allowance for taxation. The paying party only referred to the draconian option. He did not raise the less heinous. I

have in practice suspended the draconian option bill after the 1st of April, 1993 in view of the pervasive non-compliance by legal practitioners with the whole practice direction. I think in this particular case I have to reduce the allowance for taxation on account of this omission.

The second objection touches the expense rate. Much as I would have loved to comment on this objection, I have settled at the moment at an expense rate of K168 per hour. Although reliance can be had on an accurate expense rate proferred by the Law Society, one was proferred with which I had gross reservations, the final arbiter on the appropriate rate is the taxing master who has to rely on his knowledge of local costs of running a legal firm. The rates can only be averages or estimates. As I have said before, the Law Society could still provide more accurate and reliable estimates. Until then K168.00 per hour should be taken as the expense rate. This covers objection 3 as well.

Objection 4 is as follows:

> The notes of attendance with client were not lodged together with the Bill as required by 0.62 rule 29(7)(d)(viii). Had notes been lodged, the Taxing Master could have been in a position to assess how long it took to interview the client. The hours it took to interview the client have not been indicated. Further the hourly expense rate is not specified or proved."

Admittedly, attendance notes should have been lodged. It must, however, be remembered that attendance notes cannot be a sure guide of the time spent with a client. The times have to be recorded and probably signed by the client because the client will have to pay the solicitor-client costs. Some assistance is had from attendance notes, much in every way. Once there is a record of the time, minimal assistance can be had from attendance notes, they are only notes. Unfortunately in this case the times were not recorded. As I have said before, because the change in taxation of bills came unnoticed very few, if any, recorded times. The omission, however, only makes the taxation tedious and protracted. Lack of proper times spent on actual work makes the taxation arbitrary. That arbitrariness becomes inevitable when it is accepted that the solicitor in fact transacted the business only that he was not foreboding in recording the times spent on the business. The solution cannot be not to pay the solicitor at all. I think the court must do all it can, bearing in mind that the award is arbitrary, and aim at reasonableness for both the taxing and paying party. What is said here applies to objection 5. In the claim the basis of objection 5, the time spent is not indicated. the number of people

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interviewed is not shown. I will award two hours for attending to clients and three hours for witnesses. This means I tax off K664 on client and K696.00 on witnesses.

Objection 6 is as follows:

> "The cases that were looked up are not listed. How could the Taxing Master determine whether counsel looked up the relevant law. Moreover the time spent on documents and reading the law is not specified. What cases did counsel consider? Further, the expense rate is not specified."

What this allowance caters for can be obtained from sub-item itself.

> "Documents: preparation and consideration of pleadings and affidavits, cases and instructions to and advice from counsel, any law involved and any other relevant documents including collating and service."

This is a very involving sub-item. In the present case it includes time spent by the plaintiff to prepare the statement of claim, reply and defence to a counterclaim. Its remuneration for preparation of affidavits and reading of cases and relevant law. The paying party laments that the cases are not listed. He wonders how I know whether the relevant cases or laws were read at all. I do not think listing them means that they are relevant or that they were read. I think that listing the cases is prudent. The court may heed to this to determine the time spent on the sub-item. This falls short of suggesting that there must be a list. I think the rules and practice require that the time spent on reading or looking up the cases must be stipulated. The practice note is not as dogmatic as the paying party sounds to be:

> "Properly kept and detailed time records are helpful in support of the bill provided they explain the nature of the work as well as recording the time involved. The absence of such record may result in the disallowance or diminition of the charges claimed. They cannot be accepted as condusive evidence that the time recorded either has been spent or if spent, is reasonably chargeable."

At an expense rate of K168.00 per hour the award on this item would be five hours. Five hours cannot reasonably be said to be sufficient to cover preparation of all pleadings, affidavits and looking up all the relevant cases and law. If anything I overtaxed the sub-item. It is stet.

I have already considered the aspect raised in objection number 7. I tax it to K336.00. I tax off K164.00.

In objection number 8 it is said the negotiations took one hour. This was not seriously disputed. At the expense rate of K168.00 I tax off K832.00.

Objection number 9 relates to care and conduct on item 4, preparation:

> "This is a running down case which raises no complex issues. The general care and conduct of the matter cannot be equalled to cases where there are complex issues to be resolved. The fact that only 4 documents were collated shows how simple the case was. Therefore, the K2,000 allowed for general care and conduct is unreasonably high. Further the general care and conduct is supposed to be expressed as a % of the total part of A of the bill computed by reference to the hourly expense and time reasonably spent. No such percentage is indicated. There is therefore no basis for allowing K2,000."

I award at 55%.

The final objection is as follows:

> "The drawing of a bill of costs is not a fee-earners work. The total of K500 allowed on this item is not chargeable."

The whole allowance is disallowed. Paragraph 19 of the Masters Practice Notes 1986 states that in general the drawing of a bill of costs is not fee earners work and, save in exceptional circumstances, no charge should be sought for such work. It has not been said to me why the bill was drawn by a legal practitioner. There are no exceptional circumstances for me to award these charges.

Both parties can appeal to a Judge in chambers.

Made in Chambers this 21st day of January 1994 at Blantyre.

D F Mwaungulu
REGISTRAR OF THE HIGH COURT