



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 569 OF 2000

BETWEEN:

URBAN MKANDAWIRE

PLAINTIFF

AND

COUNCIL OF THE UNIVERSITY OF MALAWI DEFENDANT



CORAM:

Dorothy nyaKaunda Kamanga
Mr. Mkandawire
Dr. Mtambo

Assistant Registrar
Plaintiff, present, unrepresented
counsel for the Defendant

ORDER

INTRODUCTION

This is the defendant's application to review order on taxation taken under Order 62 of the Rules of the Supreme Court. On 14th October 2004 the Registrar reserved his order on the taxation of costs to allow the plaintiff to furnish the court with supporting documents to prove the out of court expenses that he had incurred. On 7th December 2004 the Registrar awarded the plaintiff the sum of K74, 660.00 as costs. On 13th December 2004 the defendant took out a summons to review taxation of cost which was scheduled for hearing on 13th January 2005. For some reason the matter was not heard on that day. This is the order made upon hearing the summons which was set down before the Assistant Registrar on 15th January 2005. The application is opposed by the plaintiff.

THE ISSUE

The court has to determine whether or not the order of taxation granted in favour of the plaintiff on 7th December 2004 should be reviewed.

THE ARGUMENTS

The defendant attached a document to the summons outlining the particulars of items and amounts for review which are stated to be:

“all items in view of the fact that the documentation provided to the court was not served on the Defendant and the Defendant was not given an opportunity to cross check and verify their veracity.”

The counsel for the defendant in his submissions stated that there is no supporting evidence in the form of a bill for K15, 000.00 from Nyirenda and Msisha. The defendant is also of the view that this payment is representing solicitor and client costs which are not automatically transferred to party and party costs. The counsel for the defendant asserts that the party and party costs which are taxed by a legal practitioner will end up being less since at the time the bill was presented for taxation they were at K300.00 per hour. On item no. 2 the defendant questions what documents were these which were being printed. The defendant counsel claims that the documents were presented to court in his absence and so he did not examine the supporting evidence for this claim. The defendant had not queries with the 3rd item. However he disputes the 4th item, because the plaintiff was residing about 3 houses from the office of counsel for the respondent at Railways, so he cannot claim K100.00 per trip to office which was five yards away. On the 5th item the defendant has no objections. The defendant has problems with item number 6 which is a bill from a legal firm called Knights and Knights for the reasons that were raised under item 1. Further the documents from Knights and Knights refer to Civil Cause No. 569 of 2003 which is no the current matter. In addition the defendant argues that the work done by the Knights and Knights has no relationship to the matter that was conducted in Zomba. On item number 4 of the Knights and Knights bill there is mention of drafting and preparing default judgement which the defendant contend that there was no default judgement entered in this matter. The defendant also object to the fees of K4, 500.00 per hour claimed by Knights and Knights because party and party costs are lower than solicitor and own client costs.

On item number 7 the defendant contends that the plaintiff was impressing the court that he was unemployed and without means, the counsel for the defendant fails to see any correlation justifying the browsing on internet for

K12, 000.00 to research the case. It is argued by the defendant that even if that amount was incurred it would be an unreasonable expense. According to the defendant a taxing master is not supposed to award the costs incurred in relation to the matter at hand. The defendant also questions item number 8 due to lack of receipts. It is argued by the defendant that the plaintiff could have reduced costs to Zomba by commuting instead of being accommodated there. The defendant has no queries on item number 9. The defendant is of the view that item 10 is a duplication of item 3. The counsel for the defendant also has problems with the K10,000.00 awarded for miscellaneous expenses.

The plaintiff opposes to the application to have the order on taxation reviewed on the several grounds which are contained in the notice of intention to make a preliminary objection to the hearing of the summons to review order on taxation, sworn by the plaintiff himself on 5th January 2005. It is deposed by the plaintiff as follows:

“

- 2 THAT the defendant has never served me with an application for the review of the order of taxation so that I could have replied to it within 21 days before the hearing of the review of the order of taxation as it is required by Order 62/33 RSC
- 3 THAT the defendant was served with my bill of costs and during the hearing of taxation, the defendant rejected en bloc my bill on the ground that I am not a legal practitioner to draw such bill.
- 4 THAT since in the Supreme Court of Appeal, the defendant had challenged the said bill and the Supreme Court upheld the decision of the High Court that the costs should be taxed by the Registrar if not agreed, I am therefore putting it to court that:
 - a. The Registrar of the High Court has come to a decision on the merits of the question of the bill of costs
 - b. The Supreme Court has also come to a decision on the merits of the question of the bill of costs.
- 5 THAT since the merits of the action (meritum actionis), the exchange of the bill of costs which was instituted by the defendant was examined by the Registrar and the Supreme Court and both courts have come to a decision on the merits of a question of bill of costs, then it can only safely be said that the challenge of the bill of costs is a res judicata”.

The plaintiff's prayer is that the court dismisses the defendant's summons for review of order of taxation of costs.

THE LAW

Order 62 rule 33 provides for review of taxation as follows:

- “(1) Any party to any taxation proceedings who is dissatisfied with any decision of a taxing officer (other than a decision on a provisional taxation or a decision under rule 28) may apply to the taxing officer to review his decision.
- (2) An application under this rule for review of a taxing officer's decision must be made within 21 days after that decision or within such other period as may be fixed by the taxing officer.
- (3) Every applicant for review under this rule must at the time of making his application deliver to the taxing officer his objections in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case, and must at the same time deliver a copy of the objections to any other party who was entitled to receive notice of the appointment for the taxation pursuant to rules 30 and 31.
- (4) Any party to whom a copy of the objections is delivered under this rule may, within 21 days after delivery of the copy to him or such other period as may be fixed by the taxing officer, deliver to the taxing officer answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice of the appointment for the taxation pursuant to rules 30 and 31.”

According to Order 62 rule 33(2) this rule enables a party who is dissatisfied with a taxing officer's decision to reappear before the taxing officer, and request him to review his original decision. It is possible for the Court to review the decisions of a Taxing Master under its inherent jurisdiction to make good the absence of an express right of appeal : see the case of *Re Macro (Ipswich) Ltd* [1996] 1 W.L.R. 145, Ferris J. (unrep.) following Woolf J. in *R. v. Taxing Officer, ex p. Bee-Line Roadways International Ltd* (1982) *The Times*, February 11):

"Having regard to [the] authorities and having regard to the relationship of the functions of the taxing master to those of the High Court as a whole, it is my view that, quite apart from the provisions of

the rules and the clearly laid down procedure which they contain for review by the taxing master followed by a review by a judge, it is possible for the Court to examine the activities of a taxing master even when they do not fall precisely within the rules. The basis of that power does not, however, lie in Order 53 and the remedy of judicial review. The power is an inherent power in the Court to control its own proceedings conducted by officials of the Court such as taxing masters, as delegates of the judges." per Woolf J.

Order 62 rule 33(9) provides for forms of objections and application. Objections are most conveniently set out in columns. They must be signed by the solicitor delivering them. The original objections and opposite parties' answers (if any) together with the master's answers are before the Judge on the application to review.

Under Order 62 rule 34 provides for procedure of review by taxing officer

- "(1) A review under rule 33 shall be carried out by the taxing officer who conducted the taxation, except that, where the taxation was conducted by a principal or a senior executive officer, the review shall be conducted by a taxing master or a registrar, as the case may be.
- (2) On a review under rule 33, a taxing officer may receive further evidence and may exercise all the powers which he might exercise on an original taxation, including the power to award costs of the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.
- (3) On a hearing of a review under rule 33 a party to whom a copy of objections was delivered under paragraph (3) of the rule shall be entitled to be heard in respect of all or any of the objections notwithstanding that he did not deliver written answers to the objections under paragraph (4) of that rule.
- (4) A taxing officer who issues his certificate pursuant to rule 22 (1)(a) or (b) after he has conducted a review under this rule, if requested to do so by the party to the proceedings before him, shall state in the certificate or otherwise in writing by reference to the objections the reasons for his decision on the review, and any special facts or circumstances relevant to it.

- (5) A request under paragraph (4) must be made within 14 days after the review or such other period as may be fixed by the taxing officer.

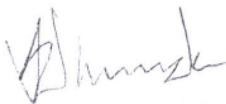
This rule sets out the procedure for conducting a review pursuant to O.62 r.33. It also enables a party to the review proceedings to require the taxing officer to give his reasons in writing.

THE FINDING

After a careful examination of the summons, affidavit evidence and the exhibit as well as the arguments and submissions of both the plaintiff and the defendant and the applicable law the court finds that this court cannot proceed to determine this matter for want of jurisdiction. The law clearly requires that "a review under rule 33 shall be carried out by the taxing officer who conducted the taxation": Order 62 rule 34. This matter should not have been set down before the Assistant Registrar since the order on taxation was made by the Honourable Registrar. The court also agrees with the plaintiff's arguments that the defendant has not filed and served his objections in accordance with the rules: Order 62 rule 33(3). It is therefore ordered that the defendant files with court and serves the plaintiff the nature and grounds of the objection in each case his objections in the format required by the rules within 7 days from the date hereof.

The court finds that under the circumstances it is only be appropriate that this matter be adjourned to a date to be fixed by the Registrar for the hearing of the summons for review of the order of taxation.

Pronounced in Chambers this 17th day of February 2005 at Blantyre.



Dorothy nyaKaunda Kamanga

Assistant Registrar

