



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1401 OF 2001

BETWEEN:

DOWNNS STAINER THEKA.....PLAINTIFF

VS

NATIONAL BANK OF MALAWI.....DEFENDANT

Coram : **Hon. Justice Potani**
 Mr. Kamkwasi, for the Plaintiff
 Mr. R. Mhone for the Defendant
 Mrs Gangata, Official Interpreter

RULING

The defendant herein applies to the court for extension of time to file a bill of taxation of costs. The application is taken by a summons made under Order 62 rule 29 (3) of the Rules of the Supreme Court and is supported by the affidavit of Raphael Joseph Mhone, of counsel. The application is vigorously resisted by the plaintiff and in that regard there is the affidavit of his lawyer Joseph K. Kamkwasi.

The relevant facts as can be discerned from the case record are not in contention. Judgment in this case was entered and delivered in favour of the defendant on February 16, 2005. On March 22, 2006, close to a year later, the defendant filed a bill of taxation of costs. Subsequently, on November 28, 2007, the Registrar dismissed the taxation on the ground that it was an abuse of the process of the Court after noting that the defendant had filed or presented two different bills of costs. Another bill of taxation of costs by defendant found itself before the Court but it also met ill-fate as it was struck out by the Deputy Registrar on November 23, 2010, on the ground

that it had been filed out of time without the leave of the Court. Apparently, it is that order of the Deputy Registrar which has prompted the present application.

Before I proceed to consider the application on the merits, I wish to make some observation on the forum the defendant's application has made. Under Order 3/5/6 an application for extension of time should be made to the tribunal having jurisdiction in the matter to which the application relates. Taxation of bill of costs is a matter that ordinarily falls under the jurisdiction of the Registrar. Strictly speaking therefore this application should have been brought before a Registrar. Be that as it may, I would still deal with the matter as the jurisdiction the Registrar exercises is that of a Judge in Chambers.


It is clear from the facts that the events leading the application before the Court are somehow intriguing. The facts show that the very first bill of costs filed by the defendant on March 22, 2006, was filed out of time. According to counsel for the plaintiff on the date appointed for the taxation of that bill, the hearing did not proceed as the judicial officer to attend to it was not available. Counsel for the plaintiff, however, apparently did not have issue with the late filing of the bill. The only issue he had with the bill which he pointed out to counsel for the defendant was that it was based on an hourly rate K7,000.00 when the applicable hourly rate at the time of the proceedings the bill relates to was K300.00. As the hearing did not take place, counsel for the defendant sought to correct the anomaly and filed another bill based on the K300.00 hourly rate without withdrawing the earlier erroneous bill and when the taxation came before the Registrar on November 28, 2007, he dismissed the taxation for being an abuse of the Court process in that the defendant filed and presented two different bills.

At this juncture, I would wish to state that the plaintiff should be taken to have waived the late filing of the bill of taxation without the leave of the court that is why the hearing of November 28, 2007, proceeded before the Court. That said, it is the Court's considered view and finding that indeed as argued by counsel for the plaintiff, the proper recourse for the defendant was to appeal against the

Registrar's Order dismissing the taxation. It was wrong for the defendant to file the subsequent bill which came before the Deputy Registrar on November 23, 2010. It was also wrong on the part of the plaintiff to apply to have it struck out for having been filed out of time without the leave of the Court as the plaintiff had earlier waived such an irregularity.

In the end result, the defendant's application is incompetent. The right recourse is to appeal against the ruling to the Registrar of November 28, 2007, if at all. The application is dismissed with costs to the plaintiff.

Made in Chambers this day of March 25, 2011 at Blantyre in the Republic of Malawi.



H.S.B. Potani
JUDGE