



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 730 OF 2016

BETWEEN

FRANCIS CHIKOTI.....CLAIMANT

AND

UNITED GENERAL INSURANCE COMPANY LIMITED.....DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA

Mr. Kalua, of Counsel for the Plaintiff

Mr. Machika, of Counsel for the Defendant

Mr. Chitsulo, Official Interpreter/Court Reporter

ORDER ON ASSESSMENT OF COSTS

The claimant commenced this action by way of writ of summons claiming damages for pain and suffering, loss of amenities of life and disfigurement. He was awarded K3,553,000.00 as damages for personal injuries and was further awarded costs for this action. The parties appeared before this court on the 12th of September 2018 for the taxation of costs. This is the court's order on assessment of costs.

Upon hearing the parties, the issue of time and percentages allocated to some of the items on the bill was settled through concessions by both parties. What remained as a bone of contention was the hourly rate and the instruction fee.

The principle upon which these costs should be taxed is that the successful party should have an indemnity against costs reasonably incurred in prosecuting or defending the action. In the case of **Fullerton v. Matsqui**, 74 B.C.L.R. (2d) 311, Justice Cumming adopted these words: Party-and-party costs are in effect damages awarded to the successful litigant as compensation for the expense to which he has been put by reason of the litigation. In my view, therefore, 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. Order 31 rule 3 of the **Courts (High Court) (Civil Procedure) Rules 2017** states that the Court shall also have regard among others things to 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.

In the present matter, on the issue of the hourly rate, the receiving party is proposing K30,000.00 per hour. In fact, during hearing the receiving party intimated that the court should consider adopting K35,000.00 per hour in the circumstances of this case. The paying party, however, is of the view that the same is on the higher side and unreasonable. The court was invited to have recourse to the remarks by Honourable Justice Dr. Mtambo in the case of **Barrows Investments Limited v MPICO Malls Limited** Commercial Case No. 6 of 2013 in which he stated that:

I therefore allow the appeal and direct that the Registrar applies rate of K10,000.00 per hour which I find to be reasonable taking into account the importance of the case to the parties and the magnitude of the claim and having resolved all issues of doubt in favour of the Defendant/Respondent as the paying party.

In response, Counsel for the Claimant stated that the Judge was in fact reacting to the Registrar's notice in that it did not have a legal foundation in law and that it fettered the absolute discretion given to the court under s.30 of the Courts Act. He further asked the court to look at the cost of litigation, the average expenses legal firms incur. He further stated that the court should come up with a figure which is realistic. He went on to invite the court to have a look at the Resolution by the Malawi Law Society which proposed K30,000.00. It

was his contention that the same was not arrived at arbitrarily. The court was also asked to consider that the same was conducted in the 2015 which is now 3 years down the line.

I take note that the fee earner is Counsel of 20 years standing at the bar. The matter herein was a personal injury case in which the claimant was awarded K3,553,000.00 as damages for personal injuries. With that in mind, I have reason to believe the rate has been perched too high. I am of the view that the rate sought for is not in tandem with prevailing rates by lawyers of reasonably comparable skills, experience and reputation rendering a similar service as in the case herein notwithstanding the Resolution by Malawi Law Society. I am fully aware that according to Part 111 of the first schedule to the Legal Practitioners (Scale and Minimum Charges) Rules, Counsel is entitled to a fair and reasonable sum of fees. I shall allow K15,000.00 per hour in this case.

The other issue that remained unresolved by the parties was the amount payable on instruction fees. The receiving party is proposing K4,000,000.00 while the paying party is proposing K500,000.00. The receiving party is asking the court to consider that this flows from the beginning of the case up the end. However, the paying party argues that even though the same flows from the beginning of the case to the very end, their counterparts did not even itemize the time spent with the clients. This court is aware that instruction fees ought to take into account the amount of work done by the Advocate, and where relevant, the subject matter of the suit as well as the prevailing economic conditions. In my opinion, the matter herein having been a personal injury case, did not involve an intense analysis of the law or documents of substantial quantity particularly for Counsel of 20 years experience. I have reason to believe that this is an exaggeration. I shall resolve the doubt I have on this item in favour of the paying party and allow K2,000,000.00.

I therefore tax the bill as follows:

PART	AMOUNT
PART A (96hrs + K2,000,000.00)	K3,440,000.00
PART B GENERAL CARE AND CONDUCT - 60% of Part A	K2,064,000.00
TOTAL	K5,504,000.00
PART C (15 Hrs for court attendencies)	K225,000.00
General Conduct and Care 50%	K112,500.00

Travelling and waiting (5hrs)	K75,000.00
	K412,500.00
Taxation (4hrs)	K60,000.00
General Conduct and Care 10%	K6,000.00
Travelling and waiting	K30,000.00
	K96,000.00
16.5% Surtax on Professional Fees	K992,062.50
DISBURSEMENTS	K279,000.00
TOTAL	K7,283,562.50

The costs are taxed at **K7, 283,562.50**.

MADE IN CHAMBERS THIS 18th OF SEPTEMBER, 2018

WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR