



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
LAND CAUSE NO. 167 OF 2016

BETWEEN

NAMPHENDE ESTATES LIMITED.....CLAIMANT

AND

GEORGE MPOMBWE.....1st DEFENDANT

L.P. MANGULAMA.....2nd DEFENDANT

FADWICK MATOLA.....3rd DEFENDANT

GOODSON MAKOWA.....4th DEFENDANT

JOHN JUWAWO.....5th DEFENDANT

MRS GALIMOTO.....6th DEFENDANT

MRS MOSE.....7th DEFENDANT

MEDSON MSONKHO.....8th DEFENDANT

AND OTHER UNKNOWN PERSONS.....9th DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA

Mr. Kazembe, of Counsel for the defendants

Mr. Chitsulo, Official Interpreter/Court Reporter

ORDER ON ASSESSMENT OF COSTS

This matter was commenced by expedited Originating Summons issued on the 13th of October 2016. It was an application for an ex-parte summons for an order staying execution of a judgment and extending the period within which to apply to set aside the judgment or the execution of any order requiring the defendant to vacate the premises. Through a judgment by Justice M. A. Tembo the defendants successfully defended the action and were granted costs in this action. The hearing on assessment of costs was set for the 14th of August 2018. The claimant did not avail himself for the hearing albeit being served. The court heard Counsel for the defendants on assessment of costs and reserved the ruling on the matter which I must now consider. Suffice to say for now that the defendants are claiming K20,918,032.00 as costs.

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 this case, I went through the bill of costs as presented by Counsel for the Defendant. I had some areas of concern with the bill. The first is the hourly rate for the fee earner. Counsel proposes K32,000.00 per hour. It is stated that he is Counsel of 16 years standing at the bar. 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. 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. However, it ought to be stressed that the same should not be punitive to the other party. I shall allow K15,000.00 per hour in this case.

The other issue that I had with the bill is on item number 111(iii) where the defendants are claiming to have spent 240 hours assessing the plaintiff's premises. If we go by an average of 8 working hours a day, the claim suggests that they carried out this activity for about 60 working days. 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 by trimming the number of hours to 60.

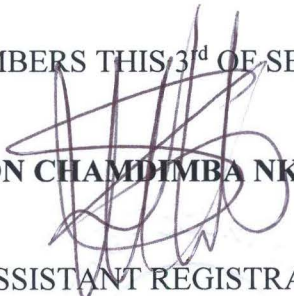
Lastly, Counsel for the defendants is claiming 80% of Part A for Conduct and Care. It is argued that Counsel exercised special skill and consistent great care and attention to detail at each particular stage within the ambit of the relevant law. Much as I agree that would have been the case owing to the outcome of the case that is in their favour, I still believe 80% is too much for a case of this nature. I shall allow 60% of Part A.

I therefore tax the bill as follows:

PART	AMOUNT
PART A (118 hrs)	K1,770,000.00
GENERAL CARE AND CONDUCT-60% of Part A	K1,062,000.00
TOTAL	K2,832,000.00
16.5% SURTAX	K467,280.00
DISBURSEMENTS	K250,000.00
TOTAL	K3,549,280.00

The costs are taxed at **K3, 549,280.00**.

MADE IN CHAMBERS THIS 3rd OF SEPTEMBER, 2018


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR