



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 529 OF 2016

BETWEEN

JULIUS MATOLA (Suing on behalf of
the Estate of Hassan Matola, deceased).....PLAINTIFF

AND

NICHOLUS YANNAKIS.....1st DEFENDANT

GENERAL ALLIANCE INSURANCE LIMITED.....2nd DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA

Mr. Jere, of Counsel for the Plaintiff

Ms. Nyemba, of Counsel for the Defendant

Mr. Chitsulo, Official Interpreter/Court Reporter

ORDER ON ASSESSMENT OF COSTS

INTRODUCTION

This matter was commenced by writ of summons which was issued on the 22nd of June 2016. The plaintiff was claiming damages for loss of expectation of life, loss of dependency, funeral expenses and costs of this action. On the 1st of November 2017, the parties executed a consent judgment in favour of the plaintiff for

payment of damages as well as costs of this action. The record indicates that the parties were heard on assessment of damages and the plaintiff was awarded K6,372,304.00. Subsequently, the plaintiff took out a notice of appointment to tax costs. This court heard the parties on the taxation of costs and reserved the ruling on the same which I must now consider.

The receiving party filed their Bill of Costs in which they are claiming K14,088,490.00. The receiving party did not file their objections but they took the court through the bill expressing their dissatisfaction with most of the items that had been proposed by the receiving party. I shall go through the objections later in this ruling. Suffice to say for now that in general terms the paying party was of the view that the bill was unreasonable. It was their submission that costs ought not to be punitive. They indicated that the receiving party is claiming K14,000,000.00 against damages that the 2nd defendant had to pay a maximum of K5,000,000.00. It is their view that it would be unfair for the paying party to pay a further K14,000,000.00 in the circumstances. They further invite the court to consider that the matter was settled by consent. The receiving party maintained their position arguing that the matter was trial ready even though it was settled by consent. They further argue that the issue of costs and damages awarded do not reflect each other.

THE LAW

The law guiding the award of costs is Order 31 of the Courts (High Court) (Civil Procedure) Rules 2017. Under o.31 rule of the same it is provided that in awarding costs the Court shall also have regard among others things 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.

Basically, the principle upon which these costs should be taxed is that the successful party should be allowed costs reasonably incurred in prosecuting or defending the action. 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.

CONSIDERATION OF THE ITEMS OF THE BILL

HOURLY RATE

The receiving party seeks K25,000.00 as the hourly rate. They indicate that the matter was handled by Counsel of 11 years standing at the bar and contended that this is the minimum hourly rate recommended by the Malawi Law Society. Counsel for the defendants however submitted that the recommendations by Malawi Law Society could not be relied upon in the manner the plaintiff sought to. She argued that the resolutions were merely agreed upon and were not gazetted and they were not law under any Act. Counsel for the defendant went on to cite the case of **Barrow Investments Ltd v MPICO Malls Limited Comm. No. 6 of 2013** in which Justice Mtambo found that recommendations have no force of law and could not fetter the discretion of the Registrar. She further stated that the Courts (High Court) (Civil Procedure) Rules 2017 under o.31 gave discretion to the Registrar. She also invited the court to see the decision by Her Honour Soko in the **Leornard Ndindi v Panjwani Issa and Tourism Investment Limited t/a Hotel Victoria** Civil cause No. 971 of 2016 in which she pointed out that the resolutions were not binding and should not be followed. The court in that case proceeded to allow K10,000.00 for Counsel of 10 years standing at the bar handling a personal injury case. Counsel for the defendants therefore proposed an hourly rate of K8,000.00 arguing that the matter herein was not complex as the deceased was injured from an accident. She further submitted that in the Barrow case K10,000.00 was allowed for a complex case involving almost half a billion Kwacha.

The issue on this regard is whether the court ought to follow the resolutions by the Malawi law Society on the hourly rate. I wish to agree with Counsel for the defendant that they cannot be relied upon in manner that the claimant wish to. From the case of Barrow, it is clear that the same do not have the force of law. The same have not been gazetted and they are not binding to this court. Nevertheless, I was of the opinion that the same cannot be completely ignored. They still bear an unprecedented significance in providing a guide to the court on economic realities considering the empirical research that went into the promulgation of the same. I still feel obliged to use them to that extent. The case herein does not involve complex and novel issues. Clearly the K25,000.00 sought by the receiving party is on the higher side. On the other hand, K8,000.00 suggested by the paying party is on the lower side. For lawyers of reasonably comparable skills, experience and reputation rendering a similar service as in the case herein, I will allow the K15,000.00 per hour as sought for by Counsel for the plaintiff.

PART A: PREPARATIONS

3(a) RECEIVING INSTRUCTIONS

The receiving party is proposing 8 hours for attending upon the claimant to receive instructions, reviewing all evidence, including Police and Death Reports and all relevant documentation and recording statements from the claimant and other witnesses. The paying party is of the view that the matter herein was a straight forward issue and could not demand 8 hours just to take instructions. It is pointed out that the claimants did not even attach a time sheet which made it even difficult for them to counter-propose the time that may have been taken. I agree that 8 hours is on the higher side for Counsel just to take instructions and review documents. I shall allow 4 hours.

3(b) WITNESSES

The receiving party proposes 2 hours for attending upon eye witnesses in preparation for mediation. On the other hand, the paying party is of the view that 30 minutes was reasonable in that this was merely a pre-mediation briefing where Counsel had already received the Police and the Medical reports. I shall allow 1 hour.

3(c) DOCUMENTS PERUSED

The receiving party indicated 2 hours for the defence, 2 hours for the Defendant's statement of claim, 15 minutes for the certificate of termination of mediation and 2 hours for the order on assessment of damages. The paying party was of the opinion that all the documents were brief and proposed 30 minutes for the defence, 30 for the Defendant's statement of claim, 2 minutes for the certificate of termination of mediation and 30 minutes for the order on assessment of damages. This court went through the record to satisfy itself on the length of the documents said to have been perused. I believe it is reasonable to allow 30 minutes for the defence, 1hr for the Defendant's statement of claim, 15 minutes for the certificate of termination of mediation and 1hr for the order on assessment of damages.

3(d) DOCUMENTS PREPARED

The parties did not agree on the time allocated for each of the documents prepared. It was contended by the paying party that most of the documents claimed to have been prepared were templates. The proposals by the parties and the court's findings were as follows:

DOCUMENT	RECEIVING PARTY	PAYING PARTY	TIME ALLOWED BY THE COURT
Writ of summons and statement of claim	3Hrs	1Hr	2hrs
Notice of Mediation	15mins	5mins	15mins
Plaintiff's statement of issues	3hrs	30mins	1hr
Preparing certificate of termination of mediation	15mins	10mins	15mins
Summons for Directions	15mins	5mins	15mins
Order for Directions	15mins	10mins	15mins
Plaintiff's witness statement for assessment of damages	3hrs	30mins	1½ hrs
Plaintiff's skeletal arguments for assessment of damages	6hrs	2hrs	3hrs
Bundle of pleadings	4hrs	30mins	1hr
Notice of assessment of damages	15mins	2mins	15mins

3(e) BOOKS AND STATUTES READ

On this part, the receiving party proposes a total of 34 hours for the 8 items listed. The paying party however is counter-proposing that each item should be 30 mins save for the book on McGrivy on Damages which it is contended must be struck off as it was not cited. Essentially, they propose a total of 3.5 hours for the books and statutes read. On the book McGrivy on Damages, I am not sure whether it is correct to say that it must be struck off because it was not cited considering the fact that it may have been read during research but the contents did not agree with what Counsel may have been looking for. Indeed, the problem that may arise is

proof as to whether it was in fact read. All the same, I will exercise the doubt in favour of the paying party and have it struck off. On the rest of the authorities, the court shall allow 2 hours each making a total of 14 hours.

3(f) CASE AUTHORITIES PERUSED

The receiving party has indicated 3 hours against each of the 9 case authorities claimed to have been perused making a total of 27 hours. The paying party, on the other hand, proposes 30 mins for each making a total of 4½hrs. It is argued that Counsel is already familiar with the same considering his experience. I was of the view that an hour for each would be more reasonable. I shall allow 9 hours for this item.

3(g) CONFERENCES

On this item, the paying party was of the view that attending to the client to discuss the defence must be allocated 1 hr considering that the defence was very brief. I found this fair and reasonable. The paying party further argued that attending to the client for pre-mediation conference was a duplication of item 3b. I wish to agree with Counsel for the defendant on this part and disallow the 2hrs claimed under the same.

CONFERENCE	RECEIVING PARTY	PAYING PARTY	TIME ALLOWED BY THE COURT
Attending upon the client in conference on 11 th of June 2016 to discuss defence	2hrs	1hr	1h
Attending upon the client on 10 th August 2016 for pre-mediation conference	2hrs	-	-
Attending upon the client in conference on 20 th of December 2016 to discuss order for directions	1hr	30mins	30mins
Attending upon the client in conference on 12 th of April 2017 to discuss the consent judgment	1hr	30mins	30mins

Attending upon the client in conference on 30 th of September 2015 to obtain a witness statement for assessment of damages conference	6hrs	30mins	2hrs
Attending upon the client in conference on 23 rd July 2018 for a pre-assessment of damages conference	3hrs	30mins	1hr
Attending upon the client in conference on 19 th of September 2018 on assessment of damages	3hrs	30mins	1hr

3(h) TRAVELLING AND WAITING

The receiving party is proposing 3 hours for travelling to the locus in quo and 10 hours for travelling to the High Court Library and Law Society Library to conduct research. The paying party however challenges the necessity for the fee earner having visited the locus in quo. They argue that that costs should be reasonably incurred and that in a matter like the one herein it was not necessary for Counsel to visit the locus in quo. In the alternative they propose 1 hour for the visit to the locus in quo. I was of the opinion that making a finding that it was not necessary for Counsel to visit the locus in quo would be tantamount to detecting how Counsel should conduct his case. This would essentially be going beyond the discretion that the court is supposed to exercise in such proceedings. I shall allow this item. I checked the record and it indicates that the accident occurred at somewhere in Zomba and Counsel's practice is in Blantyre. I believe that 3 hours is reasonable.

On the visit to the High Court library, the paying party is of the view that the same is redundant as the receiving party had also claimed for resources expended. They add that if the same is to be allowed the court ought to take into consideration that the receiving party's practice is in Blantyre and the High Court is also in Blantyre. They therefore counter-propose 1 hour for the same. I shall allow 3 hours.

4. COURT ATTENDANCIES

ATTENDANCIES	RECEIVING PARTY	PAYING PARTY	TIME ALLOWED BY THE COURT
Attending mediation on the 10 th of August 2016, inclusive travelling and waiting	2hrs	1hr	1hr
Attending court on the 24 th of August 2018 for assessment of damages, inclusive travelling and waiting	3hrs	2hrs	2hrs
Attending court on the 19 th of September 2018 for delivery of the order on assessment of damages	2hrs	30mins	1hr

4(iv) REFRESHER FEES

The receiving is also claiming K1,500,000.00 refresher fees. They state that the matter was called on two occasions and Counsel had to refresh on issues which related to pleadings and meeting with the witness. The receiving party is of the view that this is an item based on time spent and 1 hr would be reasonable. I shall allow K500,000.00.

4(v) INSTRUCTION FEES

The receiving party is claiming K1,000,000.00 on the instruction fees. They state that Counsel acted for the claimant generally and performed the rate of barrister and solicitor duties to ensure the claim is properly presented. The paying party is of the view that the same should not be paid. They contend that this item to have been proved by a retainer or an invoice. I shall allow K1,000,000.00.

5. GENERAL CARE AND CONDUCT

The receiving party proposes 75% of part A as general care and Conduct. They argue that the case was very important to the client and as a matter of principle it is necessary that the claimant should receive appropriate compensation for the loss suffered. It is further averred that Counsel worked hard and displayed remarkable skill in presenting the facts and the law. However, the paying party is of the view that the matter was straight

forward and was settled by consent as such 30% would be reasonable. I agree that this was a straight forward case but I am of the view that 50% would be reasonable.

6. OTHER OUTLAYS

The receiving claims K853,000.00 for disbursements. They have particularized the same as follows:

Stationery	K200,000.00
Court fees	K40,000.00
Phones	K100,000.00
Messengers	K50,000.00
Photocopying	K300,000.00
Secretarial	K150,000.00
Fuel	K150,000.00

The paying party contends that the same ought to have been proved by production of receipts. It is also contended that the figures are exaggerated and they drew the attention of the court to items like the Stationery, Phones, messengers and Photocopying. On fuel they further indicated that Counsel's practice is in Blantyre and Counsel could not have expended K150,000.00 on fuel. They further indicated that it is difficult to counter-propose as Counsel should have produced receipts. They therefore suggest that the same be struck off. It is true that the outlays are not supported by any receipts. However, I still believe that there expenses made on the same. I think it is only proper that this court only makes deductions on some items that are evidently exaggerated.

Stationery	K60,000.00
Court fees	K40,000.00
Phones	K20,000.00
Messengers	K50,000.00
Photocopying	K50,000.00
Secretarial	K100,000.00
Fuel	K60,000.00
Total	K380,000.00

7. TAXATION

The paying party proposes 12 hours for preparation of the bill of taxation. The receiving party is of the view that the same suggests that Counsel took more than the whole day working on the bill. They are of the view that 3 hrs is reasonable. On this item, I shall allow 6 hours having seen the bundle on taxation.

On the issue of attending taxation proceedings, the receiving party proposes 3 hours and the paying is of the view that the actual time taken should be used by the court. The record indicates that the hearing on taxation took 50 minutes.

The receiving party also claims 75% Care and Conduct for Taxation. They state that Counsel ensured that the bill contains all the relevant points and supervised the secretary to ensure that the bill was prepared accordingly. The paying party argues that the same is not provided for under the Rules and should be struck off. In the alternative they propose 30%. I shall allow 50%.

SUMMARY

I therefore tax the bill as follows:

PART	AMOUNT
Part A	K847,500.00
Refresher Fee	K500,000.00
Instruction Fee	K1,000,000.00
	K2,347,500.00
General Care and Conduct (Part A)	K1,173,750.00
	K3,521,250.00
Taxation	K157,000.00
	K3,678,250.00
16.5 % Surtax	K606,911.25
Add disbursements	K380,000.00
TOTAL	K4,665,161.25

The costs are taxed at **K4,665,161.25**.

MADE IN CHAMBERS THIS 12th OF NOVEMBER, 2018 AT PRINCIPAL REGISTRY


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR