

CS



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 294 OF 2015

BETWEEN:

RICHARD KUNTAMBILA.....CLAIMANT

AND

STANDARD BANK LIMITED DEFENDANT

CORAM

Mrs T. Soko : Assistant Registrar

Mr Kuntambila : claimant (unrepresented)

Mr Misanjo : Counsel for the defendant

Mrs Mkandawire : Court Clerk

ORDER ON ASSESSMENT OF COSTS

This is an order on assessment of costs following a Judgment by Justice Tembo dated 6th December 2017. A notice of taxation of costs was issued on 18th April 2018 and hearing took place on the 26th April 2018. Counsel for the defendant filed a bill of costs and prayed to this Court that costs be taxed at K9, 743.025. The matter is now herein for determination.

It is a trite law that a party to the proceedings cannot recover costs except under the Court order. It is the discretion of the Court to determine whether costs are payable by one party to another, the amount of those costs and when they are payable. **See Order 31 r. 1(2) and r. 3(1) of the Courts (High Court) (Civil Procedure) Rules (HCPR)**

I remind myself that it is the duty of the Court to allow costs which are proportionate to the matters in issue. **See Order 31. r. 4(2) of the HCPR.**

I will now proceed to tax the costs.

Hourly Rate

Counsel prayed that the Court should use the rate of K30, 000.00 as an hourly rate and he based his argument on the previous two taxations of costs that took place in which the Court used the rate of K20, 000.00. Counsel also stated that the matter was complex that there was a lot of input. **In Barrow Investments Ltd vs Mpico Malls Limited Commercial Case Number 6 of 2013,** the Court in finding the hourly rate to be applied in that case considered two factors namely the importance of a case to the parties and the magnitude of the case. In the matter at hand, this is a matter that was important to the defendant since it involved loans and property. It is a matter that needed intensive research and strong arguments. However, I find K30, 000.00 to be on a higher side. As such an hourly rate of K25, 000.00 in my mind would be proper to apply in this case.

Part A

Part A of the Bill of costs include Court attendance, documentation, documents perused, other documents, correspondence and books/ authorities read. The Bill of costs shows that Counsel attended 5 hearings. Counsel also attended to his client on two occasions and visited the library on two occasions to research for the law relating the issue of statutory notice. The total hours that Counsel is claiming for meeting the clients and visiting the library are twelve. Mr Kuntambila stated that attending to a client can take an hour if the meeting has to be productive. He also stated that Counsel could have made online research which in my mind is difficult considering that some authorities and books cannot be found online. Counsel attending the library on two occasions is justifiable. On documentation, I have checked the affidavits of Blazius Kwakwala and the supplementary affidavit, the affidavit of Richard Kandoje and the supplementary affidavit. Reasonably, four hours is on the higher side on the preparation of the affidavits of Kandoje and two hours is also on a higher side on the preparation of the affidavits of Blazius Kwakwalala. In my view three hours on

the former and one and half hours on the latter would be sufficient. Further, Counsel stated that he spent twelve hours preparing skeletal arguments in opposition and another twelve hours preparing submissions. In my view eight hours on both is sufficient to prepare skeletal arguments and submissions. On documents perused 1 hour is sufficient to read and consider plaintiff's submissions. On books and authorities read, the Court is of the view that forty five minutes spent for each authority is fair and therefore would be reasonable. After considering arguments from both parties and after making my own calculations as a taxing master, a sum of K2, 004,160.00 would suffice on part A.

Part B

On General Care and Conduct, Counsel prayed for 80% of part A whilst the clamant prayed for 20%. Looking at the nature of the matter at hand and considering both prayers the Court gives 70% of Part A since the case involved a lot of work. I therefore tax the costs to K1, 402, 912. The Court however, seems to be unaware of the justification behind K2, 000,000.00 for instruction fees. In my view K1, 000,000.00 would be sufficient.

Part C

Counsel prayed for 10.5 hours on travelling and waiting. However, on the hearing of cases parties, are given specific time to appear before a Judicial officer and if parties wait then it is for a short period. In my view, five hours would be fair on traveling and waiting. The total amount adds up to K125, 000.00

PART D

Preparing a Bill of costs is a big task but cannot take 10 hours as Counsel is claiming in the Bill of costs. In my view 4 hours is sufficient to prepare a bill of cost. The sum adds to K100, 00.00. 60% of care and conduct is also fair looking at the nature of the case herein. I therefore give the defendant K60, 000.00 for General Care and Conduct.

On disbursements the Court is satisfied with the amount of K91, 000.00

SUB TOTAL K 4,692,072.00

VAT 16.5% K 774191.88

DISBURSMENTS K91,000

GRAND TOTAL PAYABLE K5,557,263.88

Pronounced in chambers on this 31st day of May 2018.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a horizontal line extending to the left.

T. SOKO

Assistant Registrar