



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE No. 2655 OF 2004

BETWEEN:

ETTA BINAULI

PLAINTIFF

AND

HASTINGS ELIAM MAKUNGWA

DEFENDANT

RULING

This matter was set down for taxation of costs when the plaintiff raised a preliminary objection to the taxation proceedings. The plaintiff contends that the bill was prematurely registered because the order pursuant to which the bill was taken was made in interlocutory proceedings before an Honourable Judge that were pending determination of main issue. According to the plaintiff the application for the main issue, whether it was lawful for the defendant to evict the plaintiff from the premises has not yet been commenced by the defendant. According to the plaintiff Order 62 rule 8(1) of the Rules of the Supreme Court states that costs of any proceedings cannot be taxed until conclusion of any matter. However if it appears to the court making the order for costs that costs should be taxed at an earlier stage, it may order accordingly.

The plaintiff also argues that since there was an application pending before the Assistant Registrar, it would be just to wait for the Assistant Registrar's ruling so that taxation is done simultaneously, as this will give each of the parties' chance to set off whatever costs may be met against them. The plaintiff also dispels the defendant's arguments that there was a legal requirement to file a notice of preliminary objections.

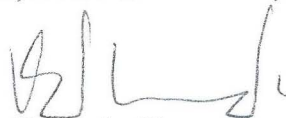
In response to the plaintiff's arguments the counsel for the defendant argues that the plaintiff failed to file a formal notice of a preliminary objection. Further the counsel for the defendant argues that the judge only granted an interim injunction and the issue of whether there was still need for another application to made does not arise. According to the defendant this application for costs is in respect of the judge's ruling and the court should be able to tax the same as the two applications (mandatory injunction and assessment of damages) are totally different. The counsel for the defendant argues that there is a period within which a party who is awarded costs should file a bill for taxation and the defendant cannot wait for assessment.

Upon hearing both parties on the issue, this court proceeds to uphold the preliminary objection as the rules are very clear that costs of any proceedings cannot be taxed until conclusion of any matter. It was irregular for the defendant to file a bill of costs pursuant to a ruling on an interlocutory proceeding.

The preliminary objection having been sustained the costs occasioned by the application is awarded to the plaintiff.

The application having been heard when I was a Registrar any appeal will lie to another Judge of the High Court.

Delivered this 4th day of October, 2018 at Chichiri, Blantyre.



Dorothy nyaKaunda Kamanga

JUDGE

Case information:

Mr. Kalanda,

Ms. Kaukonde,

Ms. Million,

Counsel for the Plaintiff.

Counsel for the Defendant.

Court Clerk.