



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 267 OF 2017**

**BETWEEN**

**PATRICK MATTHEWS ..... CLAIMANT**

**AND**

**LAWRENCE MPUMILA ..... 1<sup>ST</sup> DEFENDANT**

**PRIME INSURANCE COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**CORAM : HER HONOUR E. BODOLE, ASSISTANT REGISTRAR**

Kusiwa, of Counsel for the Claimant

Mussa, of Counsel for the Defendants

Ms. Kazembe, Court Clerk

**ORDER ON ASSESSMENT OF COSTS**

**Introduction**

The claimant brought proceedings against the defendants premised in negligence on 2<sup>nd</sup> May, 2017. After the defendant had served their defence, the claimant filed an application for summary judgment which was scheduled to be heard on 26<sup>th</sup> July, 2017. Before the day of hearing, the defendant conceded liability and a Consent Order dated 21<sup>st</sup> July, 2017 was duly executed. On 18<sup>th</sup> May, 2018 the court assessed

the damages for the claimant in the sum of K4,500,000.00 and costs of the action. The matter has now come for assessment of costs.

### Brief Facts

Counsel for the claimant filed Party and Party Bill of Costs amounting to K8,065,399.06. Counsel for the defendants disputed this. Counsel for both sides also made oral arguments and cited cases to support their arguments.

The matter was handled for the claimant by Counsel Kusiwa and Counsel Kalanda of 4 years and 14 years' experience at the bar respectively. Counsel for the claimant is claiming K35,000.00 as the hourly rate and 60% - 65% General Care and Conduct. Counsel for the defendant disputed the hourly rate and that of General Care and Conduct and argued that there is no basis for that. He also disputed the huge number of cases and books that Counsel for the claimant said he had perused and considered and the time spent to do that. Counsel for the defendants also disputed the amount spent in interviewing the claimant and witnesses, and the time spent at court filing documents. He argued that there was no need for Counsel for the claimant to read so much literature on the case and spend a lot of time on the case as it is not a complicated one.

### Applicable Law

The court has discretion as to the amount of whether costs are payable by one party to the other, the amount of costs, and when the costs are to be paid – **Order 31 rule 3 (1) (a) (c) of CPR**. The court has discretion in taxation proceedings. The court's discretion is not bound by any law or decision of the court. These just provide guidance as to how the proceedings should be conducted. In **Grace Louis v Shaibu Chibwana** Personal Injury Cause No. 616 of 2017 the claimant was claiming K30,000.00 as the hourly rate and 60% General Care and Conduct. The court stated that

*“ ...the K30,000.00 hourly rate, the 60% General Care and Conduct are not binding on this court but rather provide guidance as to what the court should do in an appropriate case”.*



When assessing costs, courts take into consideration that costs must be proportionately and reasonably incurred or must be proportionate and reasonable in amount – *Order 35 rule 5 (1) (a) of the CPR*.

Courts also take into account some general factors – *Order 31 rule 5 of CPR*. These, amongst others, are:

- (a) conduct of the parties and efforts to resolve the matter;
- (b) the amount of money involved or awarded as damages;
- (c) the particular complexity of the matter or the difficulty and novelty of the issues involved; and
- (d) time spent on the matter.

### Analysis

The case before this court is a personal injuries case which is not a difficult matter for two Counsels who have many years at the bar. The matter was based on negligence the principles of which are well developed and not novel at all. In addition, the facts and the documents were not complex. It was, therefore, not necessary for Counsel to peruse and consider all the Statutes, case authorities and books and spend so much time on them. The amount of time spent in preparing for trial i.e. interviewing the claimant and witnesses is on the higher side.

The case was settled soon before trial took place, then assessment of damages followed. The defendants did not waste time in continued litigation on liability as they admitted liability at an earliest stage.

The costs being claimed by the claimant are too high. They are not proportionate to the monetary value of the award of damages which were awarded by the court.

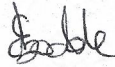
As regards the K35,000.00 hourly rate and the 60% - 65% General Care and Conduct, this court is of the view that there is no legal basis for that. They cannot be claimed as of right as that would fetter the court's discretion. They are to provide guidance as to what the court may do in an appropriate case.

Award of Costs

This court is of the view that a sum of K1,700,000.00 payable to the claimant as costs is reasonable in the circumstances of this case.

It is so ordered.

Made in court this 14<sup>th</sup> day of October, 2019 at Blantyre.



**EDNA BODOLE (MRS)**

**ASSISTANT REGISTRAR**