



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 492 OF 2018

BETWEEN

AGNESS SIMEON.....CLAIMANT

AND

PRIME INSURANCE COMPANY LIMITED.....DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA

Mr. Makwinja, of Counsel for the Claimant

Mr. Chimtengo, Official Interpreter/Court Reporter

ORDER ON ASSESSMENT OF COSTS

BACKGROUND

The claimant, by writ of summons issued on the 24th of August 2018, commenced proceedings against the defendant seeking damages for pain and suffering, loss of amenities of life, disfigurement and costs of this action following the injuries she sustained in an accident apparently caused by the defendant's insured on or about the 29th of April 2018. Upon default of entering a defence, a Default Judgment was entered on the 1st of October 2018 and it was adjudged that the matter should proceed to assessment of damages. The claimant was awarded K8,503,000.00 as damages. Subsequently, the matter came before this court on the 10th of March 2020 for taxation of costs. This is the court's order on assessment of costs.

On the scheduled day for hearing on assessment of costs, the paying party did not avail themselves and neither did they file their points of dispute to the bill filed by the receiving party. In his address to the court, Counsel representing the receiving party informed the court that the defendants had been duly served with a notice of hearing of the assessment. He proceeded to furnish the court with a return of service. There being no excuse for the paying party's absence, this court proceeded to hear the receiving party in their absence.

Counsel representing the receiving party adopted the bill of costs filed with the court in which they propose K3,599,109.11 as costs of this action. The court adjourned the matter to go through all the items of the bill to satisfy itself on the reasonability of the time and or the amounts allocated for each.

THE LAW AND PRINCIPLES ON ASSESSMENT ON COSTS

This court is aware that this process must ensure that only costs which are necessary and proper for the administration of justice are allowable. 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. 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.

Further to that, order 31 rule 3 of the Courts (High Court) (Civil Procedure) Rules 2017 states that the Court shall also have regard to the conduct of all the parties, 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, the time spent on the case and the place where and the circumstances in which work or any part of it was done.

THE HOURLY RATE

In the present matter, the receiving party submits that the fee earner is one Barnett Yassin Malota Makwinja whose rate is at K20,000.00 per hour and K40,000.00 per hour after the 1st of January 2019. However, what I found missing on this part is an indication of the number of years Counsel has been practicing at the bar. Be

that as it may, I believe it is only proper that the court should tax the costs using the rate of K20,000.00 per hour.

PART A:

a. CONSULTATION

Counsel representing the receiving party is proposing 2 hours for attendances upon the client to take instructions to commence the proceedings and perusing the Police Report and Medical record in respect of the injuries sustained by the claimant. I must express concern in that there was no time sheet attached to assist the court determine the reasonability of time spent under each activity. However, 2 hrs under this part is fair and reasonable.

b. COURT DOCUMENTS PREPARED

On this part, the court took issue with bunching of some documents without particularizing the time taken for each. On this regard the court was compelled to exercise the doubt in favour of the paying party.

DOCUMENTS PREPARED	TIME PROPOSED BY THE RECEIVING PARTY	TIME ALLOWED
Summons together with all necessary accompanying documents for the commencement of the matter.	3hrs	2hrs
Sworn statement in support of service on the defendant	15mins	15mins
Ex-parte application for default judgment together with the sworn statement in support and draft default judgment	1hr	1hr
Claimant's witness statement for use on assessment of damages	1hr 30mins	1hr
Sworn statement verifying witness statement	15mins	15mins
Claimant's skeleton arguments for use in assessment of damages	2hrs	2hrs

Notice of appointment of assessment of damages	15mins	15mins
Sworn statement in support of service on the defendant of Notice of Appointment to Assess Damages	15mins	15mins
TOTAL		6hrs 45mins

c. LETTERS PREPARED

Upon going through the record, this court was of the view that time allocated to each letter was fair and reasonable and there was no need to make alterations.

LETTER PREPARED	TIME PROPOSED BY THE RECEIVING PARTY	TIME ALLOWED
Demand letter to the defendant dated 14 th of June 2018	30mins	30mins
Letter to the defendant enclosing ruling on Assessment of Damages dated 2 nd August 2019	10mins	10mins
Letter to the defendant being a reminder after enclosing ruling on Assessment of Damages dated 10 th September 2019	10mins	10mins
TOTAL		50mins

d. LETTERS PERUSED

Similarly, on this part upon going through the record, this court was of the view that the 10 mins allocated to the letter perused was fair and reasonable and there was no need to make an alteration.

e. LEGAL RESEARCH CONDUCTED

On this part, Counsel claims to have spent 8 hrs conducting legal research. He indicates that he went through orders 5, 6,7 and 12 of the CPR 2017 and further read two cases. However, it is not shown how the 8 hrs was arrived at since Counsel did not particularize the time taken for each. Again, I believe it is only proper for this court to exercise the doubt in favour of the paying party as follows:

RESEARCH	TIME ALLOWED BY THE COURT
Orders 5, 6,7 and 12 of the CPR 2017	3hrs
Livingstone v Rawyard Coal Company (1880) AC 25	1hr
Jacquareen Manuel v Prime Insurance Company Limited Personal Injury Cause No. 551 of 2016	1hr
TOTAL	5hrs

f. COURT ATTENDANCES

Upon going through the record, this court was of the view that time allocated to each attendance is correct and there was no need to make alterations.

ATTENDANCE	PROPOSED TIME BY THE RECEIVING PARTY	TIME ALLOWED BY THE COURT
Attended court on 1 st October 2018 at the hearing of an application for default judgment	15mins	15mins
Attended court on 19 th of June 2019 at the hearing of the Notice of Appointment to Assess damages	30mins	30mins
Attended court on delivery of the Ruling on Assessment of Damages	30mins	10mins
TOTAL		55mins

PART B: GENERAL CARE AND CONDUCT FOR PART A

The receiving party proposes 66.67% of Part A as general care and conduct. It is contended that Counsel exercised great care and skill to ensure that the Claimant succeeded in her claim against the defendant. Be that as it may, I was of the view that this is an ordinary personal injury case with nothing novel about it. Generally, general care and conduct for such cases is pegged at 60% of Part A. I shall apply 60% as general care and conduct.

PART C: TRAVELLING AND WAITING

I have seen the list by the receiving party on this part. In my view, there are three instances where Counsel attended court and these were at the hearing of the application for Default Judgment, hearing on assessment of damages and delivery of a ruling. The rest involve filing of documents. I believe these are tasks that could be undertaken by the Firm's messenger. Essentially, I do not see any reason why this court should award a lawyer's hourly rate in the circumstances. I believe this is not in tandem with the principle of reasonably incurred costs. I shall tax off attendances to do with filing of documents.

ATTENDANCE	TIME PROPOSED BY THE RECEIVING PARTY	TIME ALLOWED BY THE COURT
Travelling to the High Court and back to his chambers at the issuance of the summons	1hr	-
Travelling to the High Court and back to his chambers at the hearing of the application for Default Judgment	1hr	1hr
Travelling to the High Court and back to his chambers at the issuance of the Notice of Appointment to Assess Damages	1hr	-
Travelling to the High Court and back to his chambers at the	1hr	1hr

hearing of Assessment of Damages		
Travelling to the High Court and back to his chambers at the delivery of the Ruling on Assessment of Damages	1hr	1hr
TOTAL		3hrs

INSTRUCTION FEES

The receiving party is claiming K1,500,000.00 as instruction fees. Order 31 rule 10 of the CPR 2017 provides that a legal practitioner or his law firm shall be entitled to an instruction fee and not a brief fee where he or his firm have had instructions to act for a party from the commencement of a proceeding to trial. My perusal of the court file led to the conclusion that Messrs John M. Chirwa & Partners were seised with the matter from commencement of proceedings to trial considering that the matter went up to assessment of damages. In this case, I am of the view that K1,500,000.00 as instruction fees is reasonable.

DISBURSEMENTS

On this part, the receiving party claims that they incurred K19,000.00 on filing various documents. I went through the record and am satisfied that the same was indeed incurred.

TAXATION

Counsel for the claimant proposes 4 hrs for preparing the bill of costs. I have gone through the bill and I believe 4hrs is fair. On the part of attending the Taxing Master to obtain his certificate, Counsel indicates 1 hr. However, the hearing did not take that long. Counsel simply adopted the bill and the matter was adjourned for ruling. It started at 10:04 am and finished at 10:08 am. I will allow 10 mins for this part. On the part of Care and Conduct, there is nothing out of the ordinary in preparing a bill of costs even if the subject matter of the case was quite complex. I believe 60% is just and fair. On disbursements, Counsel is claiming K5,000.00 for filing a Notice of Appointment to Assess Costs and K5,000.00 as filing fees for the Master's certificate on

Taxation. This court has no issues with the same and they are allowed. In total, this part shall be taxed at K143,000.00.

SUMMARY

ITEM	COSTS
PART A: Consultation	K40,000.00
Documents perused	K135,000.00
Letters prepared	K18,333.33
Letters perused	K3,333.33
Legal Research	K100,000.00
Court attendances	K18,333.33
Total for Part A	K314,999.99
PART B: General Care and Conduct 60% of Part A	K188,999.99
PART C: Travelling and waiting	K60,000.00
Instruction fees	K1,500,000.00
Taxation (less disbursements)	K133,000.00
Total Professional Fees	K2,196,999.98
VAT	K362,505.00
Total Disbursements (K19,000.00+K10,000.00)	K29,000.00
TOTAL	K2,588,504.98

The costs are taxed at **K2,588,504.98**.

MADE IN CHAMBERS THIS 16th OF MARCH, 2020

WYSON CHAMBIMBA NKHATA

ASSISTANT REGISTRAR