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The Judiciary

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 475 OF 2018

Between

JOHN JOSOPHAT (Suing on his own behalf and of other beneficiaries)CLAIMANT

-and-

PRIME INSURANCE CO. LTD..... DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. M. Msukwa, for the Claimant

None for the Defendant

Ms. F. Makhambera, Clerk/ Official Interpreter

Banda

ORDER ON ASSESSMENT OF COSTS

Background

John Josophat (“Claimant”) was successful in his claim for damages against the Defendant through a Default Judgment. He was further awarded party and party costs in both the Default Judgment and Order on Assessment of Damages. He filed a Bill of Costs and a notice of appointment with the Registrar for assessment of costs. Prime Insurance Company Limited (“Defendant”) did not avail itself or by Counsel for the assessment of costs hearing. I proceeded to hear the Claimant in the absence of the Defendant after appraising myself to the fact that the Defendant was appropriately served with the notice and Bill of Costs.

The Claimant through Counsel asked me to allow costs as presented in the Bill of Costs. He, however, submitted that he was cognisant of the principle that discretion to allow costs was on the Court. I adjourned the matter so that the Court could assess the Bill of Costs item by item. There are a few items on which the Court made changes on the Bill of Costs following that exercise. In this Order, it was not necessary to put out the whole Bill. I have only concentrated on the items that have been taxed upon and made the necessary changes as follows.

The 1st part that I found necessary to tax costs was on Court Attendance for Assessment of Courts. Counsel's attendance took 10 minutes according to the Record. I allowed 35 minutes for one way travel to Court, and 10 minutes for waiting. In my view therefore time allowed is (35 minutes times 2, plus 10 minutes, plus 10 minutes) is 1 hour 30 minutes. The Bill of Costs had anticipated 3 hours on this aspect.

The second area where I taxed was Legal Research area. The Bill had 25 hours on this item. There were eight cases which Counsel indicated to have read. I found it reasonable that each case would be read, with understanding for an hour and some minutes. I therefore allowed 10 hours for this case. The two aspects discussed above meant changes to the figure on Care and Conduct in both aspects.

There was also one aspect that must change. The issue of Disbursement. Value Added Tax (VAT) is paid on purchase of a service or goods at the point of obtaining the service or goods. To charge VAT on Disbursements in the assessment of costs is to over tax the paying party. As such I will add the Disbursements cost after VAT is calculated on the rest of the items.

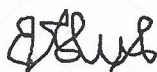
In summary therefore, the costs are assessed as follows:

ITEM	TIME ALLOWED	AMOUNT (Including Care and Conduct at 60%)
Court Attendances	6 hours	K336, 000.00
Assessment of Costs	1.5 hours	K84, 000.00
Preparation	44.5 hours	K2, 492,000.00
Travelling and Waiting	Not Considered	-
VAT @ 16.5%	-	K480, 480.00
Disbursement		K137, 000.00
GRAND TOTAL		K3, 529,480.00

Conclusion

Costs in the within matter are assessed at K 3, 529,480.00. The Defendant should pay this sum within 14 days of the date of this Order.

Made this 12th of February, 2020.



Austin Jesse Banda

ASSISTANT REGISTRAR