



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL APPEAL NUMBER 26 OF 2012
(Being IRC Matter Number 176 of 2006)

BETWEEN:

MALAWI UNION FOR THE BLIND.....APPELLANT

AND

KASSIM B. GAMA.....RESPONDENT

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. Mhone- of Counsel for the Appellant

Ms. Malimbasa-of Counsel for the Respondent

Mrs. Chawinga- Court Clerk and Official Interpreter

ORDER ON TAXATION OF COSTS

INTRODUCTION

The respondent who in this application we shall conveniently refer to as the receiving party obtained a judgment on an action premised on unfair dismissal in the Industrial Relations Court against the appellant who in this application we shall conveniently refer to as the paying party. The record indicates that the matter was set down for assessment in the year 2012 but the appellant filed an appeal and stayed the assessment proceedings. Apparently, the appellant never filed any further process relating to the appeal for 6 years. The respondent applied for a dismissal of the appeal of the appeal for want of prosecution. The court granted the order dismissing the appeal. The court further awarded party and party costs to the respondent. Subsequently, the matter was referred to this court for assessment of costs which I must now consider.

LAW AND PRINCIPLES ON ASSESSMENT ON COSTS

Basically, the principle upon which costs should be taxed is that the successful party should be allowed costs reasonably incurred in prosecuting or defending the action. 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. In the case of **Harold Smith** [1860] 5H & N 381, Bramwell B stated that Costs as between party and party are given by the law as an indemnity to the person entitled to them; they are not imposed as a punishment on the party who pays them, or given as a bonus to the party who receives them. In the case of **Smith v Buller** [1875] LR 19 Eq 473, Sir Richard Malins V.C. stated that the costs chargeable under a taxation as between party and party are all that are necessary to enable the adverse party to conduct litigation and no more.

SUBMISSIONS BY THE PARTIES

The receiving party filed a notice of appointment to assess costs and a bill of costs in which they are claiming K3,348,630.00 as costs of this action. The paying party did not file points of objections to the Bill of Costs but made oral submissions in opposition to some of the items on the bill. I shall refer to the nitty gritty details of the submissions as and when necessary. At this point I must highlight some cross cutting issues that are in contention.

Firstly, the receiving party submits that the items on the bill be taxed at K40,000.00 and K30,000.00 per hour considering that the matter was handled by Professor Mwiza Nkhata and Dr Sunduzwayo Madise respectively. The paying party opposes the same. They contend that the rates used are current ones based on the Legal Practitioners (Hourly Expense Rate for Purposes of Taxing Party and Party Costs) Rules, 2018. They counter-propose K25,000.00 and K15,000.00 respectively. Counsel representing the receiving party while admitting that the law cannot be applied retrospectively moves the court to consider the rationale behind the revision of the legal practitioners' hourly rate.

Basically, before the Legal Practitioners Hourly Expense Rate was gazetted the court had discretion to decide the hourly rate taking into account among other things the complexity, difficulty and novelty of the issues involved. Mostly, K10,000.00 to K15,000.00 per hour would suffice in cases that did not require specialized skills or knowledge. In this case, it is not in dispute that the work was done before the Legal Practitioners Hourly Expense Rate was gazetted. Mindful that laws cannot be applied retrospectively, the court takes note that with the passage of time the value of the costs cannot be same. The costs must have been adversely affected by the ravages of inflation and devaluation. In my view, there is need to bring the hourly rate at par

with economic realities. This could have been the rationale behind the review of the hourly rates leading to the Legal Practitioners Hourly Expense Rate. In the circumstances of this case, in all fairness, considering the passage of time and the experience of Counsel representing the receiving party, I will allow **K30,000.00** per hour for both.

CONSIDERATION OF THE ITEMS OF THE BILL

A. INSTRUCTION FEES

The receiving party is also claiming K600,000.00 as instruction fees. The paying party questions the reason for claiming such an amount. They submit that there was no preparatory work for the appeal save for an application to dismiss the matter for want of prosecution and they contend that there was not much to do. They counter propose 2 hours at the least. In her response, Counsel representing the receiving party argues that much as their initial instruction was to represent their client at the Industrial Relations Court they had to check with him on what to do with the matter having brought to the High Court. In my opinion, of paramount importance is that Counsel performed the barrister and solicitor duties to ensure the application is properly presented. Considering the experience of Counsel who handled this matter and the nature of the application that was made, I am of the view that **K400,000.00** is reasonable.

B. CONFERENCES

The receiving party is claiming 2 hours for a meeting with the client. The paying did not raise issues with the time proposed save to reiterate their position that the same be subject to an expense rate of K15,000.00 per hour. The issue of the hourly rate having already been resolved above, I will allow K60,000.00 on this item.

C. DOCUMENTS PERUSED

The receiving party prays for 2 hours for perusal of documents. In particular, they refer to the court file under IRC matter 176 of 2006. The paying did not raise issues with the time proposed save to reiterate their position that the same be subject to an expense rate of K15,000.00 per hour. The issue of the hourly rate having already been resolved above, I will allow the K60,000.00 on this item.

D. CONDUCTING RESEARCH

The receiving party has listed six case authorities, the CPR 2017 and the New Civil Court in Action (1993) Butterworth's page 276. They claim one hour for each making a total of eight hours. The paying party questions the need for such listed research materials. They argue that there was nothing filed save for the summons to dismiss the matter for want of prosecution. Frankly, I found this a bit contradictory. There is no

doubt that the respondent filed a summons to dismiss the appeal for want of prosecution. I am failing to see how it can be argued that nothing was filed. Perhaps, the issue could have been the relevancy of the material claimed to have been perused. Suffice to say, I took time to check the cases. Observably, they focus on dismissal of a case for want of prosecution which is in tandem with the application which was made herein. I will allow the 8 hours claimed under this head which translates to K240,000.00.

E. DOCUMENTS PREPARED

The receiving party prays for 10 hours 30 minutes for preparation of documents in their application before the High Court and a letter to the Registrar of the High Court of Malawi. The paying party did not have issues with the time proposed by the receiving party. The paying did not raise issues with the time proposed save to reiterate their position that the same be subject to an expense rate of K15,000.00 per hour. The issue of the hourly rate having already been resolved above, I will allow the 10.5 hours making a total of K315,000.00.

F. COURT PREPARATION

The receiving party claims 2 hours for court preparation. The paying party counter-proposes 1 hour. This court is inclined to agree with the paying party on this regard taking into consideration, the experience of the legal practitioners who handled the application and nature of the application itself. The court shall allow K30,000.00 under this part.

G. GENERAL CARE AND CONDUCT

The receiving party proposes 60% of Part A as General Care and Conduct. The paying party is of the view that the 60% is on the higher side. They counter-propose 30% as being commensurate to the work done. In my opinion, the matter was of great importance to the respondent considering that his dues were being held in an indeterminate state by the appellant's inaction. On the other hand, the court takes into consideration the fact that the application did not raise novel or complex questions for determination. I am of the opinion that 50% General Care and Conduct is reasonable.

H. COURT ATTENDANCE

The receiving party is claiming 2 hours for court attendance. The paying party counter-proposes 1 hour subject to the court record. Unfortunately, I could not find the notes in the court record. Nonetheless, this is an application that 1 hour would suffice. I shall allow 1 hour on this item being K30,000.00.

SUMMARY

I therefore tax the bill as follows:

ITEM	COSTS
Instruction Fees	K400,000.00
Conferences	K60,000.00
Documents perused	K60,000.00
Conducting research	K240,000.00
Documents prepared	K315,000.00
Court preparation	K30,000.00
Court attendance	K30,000.00
Total	K1,135,000.00
PART B: General Care and Conduct 50% of Part A, C and D	K567,500.00
Travelling and waiting	K90,000.00
Taxation	K135,000.00
Total Professional Fees	K1,927,500.00
VAT 16.5%	K318,037.50
Disbursements	K101,000.00
TOTAL	K2,346,537.50

The costs are taxed at **K2,346,537.50**.

MADE IN CHAMBERS THIS 1ST OF NOVEMBER, 2021


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR