



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 191 OF 2020

BETWEEN:

SINOLIYA SHADRECK KALUMBI (Suing on her own behalf and on
behalf of the beneficiaries of the Estate of FRANK KALUMBI-deceased).....CLAIMANT

AND

CHIKONDI KAPYEPEYE.....1st DEFENDANT
PRIME INSURANCE COMPANY LIMITED.....2nd DEFENDANT

CORAM: WYSON CHAMDIMBA NKHATA (AR)

Mr. Chizimba- of Counsel for the Claimant

Mr. Ndhlovu- of Counsel for the Defendant

Ms. Chida- Court Clerk and Official Interpreter

ORDER ON TAXATION OF COSTS

The deceased in this matter was hit by a motor vehicle registration number MH229 Toyota Sienta Saloon as he was cycling from the direction of Radio Maria heading to Mangochi along the Liwonde – Mangochi road. Apparently, the injuries he sustained led to his death. Through a writ of summons issued on the 1st of July 2020, the Claimant commenced this action claiming damages for loss of expectation of life, loss of dependency, funeral expenses and costs of this action. A default judgment was entered in favour of the

claimant on the 5th of August, 2020 and it was adjudged that the defendants do pay the claimant the aforementioned claims. The matter came for assessment of damages on the 13th of October 2020 and the claimant was awarded K7,870,000.00. Subsequently, the matter came for assessment of costs which is the subject of this ruling.

The parties appeared before this court for assessment of costs on the 11th of December 2020. The claimants (hereinafter referred to as the receiving party) through Counsel filed a bill of costs which Counsel Chizimba representing the receiving party adopted in court. In the said bill of costs, the receiving party is claiming K5,278,500.00 as costs of this action. The Defendants (hereinafter referred to as the paying party) did not file points of dispute on the bill of costs. However, they opted to make oral submissions to the items listed on the bill of costs which I shall consider as and when necessary.

THE 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:

It is of great importance to litigants who are unsuccessful that they should not be oppressed into having to pay an excessive amount of costs ... 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. Any charges merely for conducting mitigation more conveniently may be called luxuries and must be paid by the party incurring them.

Order 31(5)(3) of the Courts (High Court) (Civil Procedure) Rules 2017 hereinafter CPR 2017 provides that in awarding costs the Court shall also have regard among others things 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 and the time spent on the case.

Order 31 rule 5 of the CPR provides that the court should have regard to whether the costs were proportionate and reasonable in amount. It is clear that the law regulating assessment of costs abhors costs disproportionate to the amount recovered that was the subject matter of the proceedings. I believe the proportionality of costs to the value of the result is central to the just and efficient conduct of civil proceedings. The test of what is a proportionate amount of costs to incur therefore involves considerations of the amount recovered.

Order 31(4)(1) provides that where the Court is to assess the amount of costs, whether by summary or detailed assessment, those costs shall be assessed on the standard basis or the indemnity basis, but the Court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

Order 31(4)(2) provides that where the amount of costs is to be assessed on the standard basis, the Court shall (a) only allow costs which are proportionate to the matters in issue and (b) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

THE BASIS FOR THE ASSESSMENT

Order 31(4)(4) of the CPR provides that where the Court makes an order about costs without indicating the basis on which the costs are to be assessed or the Court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis, the costs will be assessed on the standard basis. In this case, the order on costs as stipulated in the Judgment does not indicate the basis upon which the costs ought to be assessed. It follows therefore that this court ought to assess the costs on standard basis which according to Order 31(4)(2) of the CPR the court ought to allow only those costs which are proportionate to the matters in issue and resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

CONSIDERATION OF THE ITEMS OF THE BILL

A. HOURLY RATE

The receiving party seeks K30,000.00 as the hourly rate. It is indicated that the matter was handled by Counsel Chizimba whose expense rate is at K30,000.00 per hour. Since the matter was commenced on the 1st July 2020, there is no doubt that the Legal Practitioners Hourly Expense Rate for Purposes of Taxing Party and Party Costs is applicable and that K30,000.00 is the prescribed rate.

B. ATTENDANCES UPON THE CLIENT

Counsel representing the receiving party is proposing 2 hours for attendances upon the client to take instructions to commence the proceedings and weighing whether or not to commence proceedings. Further to that, Counsel submits that they corresponded with the client and prepared proof of evidence. The paying party did not have qualms with the same. Equally, this court has no issues with the same and the proposed **2 hours** is allowed.

C. ATTENDANCES UPON OTHER PARTIES

Counsel representing the receiving party is proposing 2 hours for correspondence with other parties. They submit that they attended upon and corresponded with other parties including the defendants. The paying party contends that there is no record for such correspondences as such it should be taxed off. In my considered opinion, the doubt that has been raised by the paying party and not convincingly challenged by the receiving party entails that the proposal by the receiving party ought to be reduced. I shall allow **1 hour**.

D. DOCUMENTS PREPARED

The receiving party claims 18 hours 30 minutes for documents prepared. However, the paying party is of the view that most of the time proposed is exaggerated. It is contended that most documents are prescribed and Counsel simply adds parties. It is counter proposed that for such documents the court should allow 2 minutes for each.

Firstly, I observed that Counsel chose to consider the summons and the accompanying documents separately. Much as the initial court process constitutes of several documents, I believe it is rather expedient to treat them as one. Having looked at the proposals made by the parties and having considered the length and complexity of the documents listed and attached to the bill, this court was of the view that the reasonable amounts to allow would be as follows:

DOCUMENTS PREPARED	TIME PROPOSED BY THE RECEIVING PARTY	TIME PROPOSED BY THE PAYING PARTY	TIME ALLOWED BY THE COURT
Initial directions, writ of summons, statement of claim, list of documents, sworn statement verifying the case, details of the	8hrs	2hrs 11 mins	3hrs

claimant and response dated 17/03/2020.			
Sworn statement of service dated 27/07/2020	1hr	15 mins	30mins
Ex-parte summons to enter default judgment	1hr	1hr	30mins
Sworn statement in support of ex parte summons to enter default judgment	2hrs	1hr	1hr
Default judgment	1hr	30mins	30mins
Claimant's witness statement for use on assessment of damages	2hrs	1hr	1hr
Claimant's skeleton arguments on assessment of damages	3hrs	2hrs	2hrs
Notice of appointment of assessment of damages	30mins	15mins	15mins
TOTAL			8 hrs 45 mins

E. DOCUMENTS PERUSED

Having looked at the proposals made by the parties and having considered the length and complexity of the documents listed and attached to the bill, this court was of the view that the reasonable amounts to allow would be as follows:

DOCUMENTS	TIME PROPOSED BY THE RECEIVING PARTY	TIME PROPOSED BY THE PAYING PARTY	TIME ALLOWED BY THE COURT
Death Report	1hr	5mins	30mins
Police Report	1hr	5mins	30mins
Order on Assessment of Damages	2hr	30mins	1hr
TOTAL			2hrs

F. CASE AUTHORITIES READ

On this part, the receiving party has listed 10 case authorities that they claim to have read in the course of the action. They claim 3 hours for each. The paying party contends that most of the case authorities have not been read. He is of the view that the receiving party just copied and pasted from the case authorities. The receiving party however insists on having read the cases and counter-proposes 2 hours for each. I am grateful that the copies of the cases have been attached to the assessment bundle. Having considered their length and complexity, I will allow an average of one hour for each. In total, the court allows **10 hours** for this part.

G. BOOKS AND STATUTES READ

Under this part, the receiving party claims 12 hours. However, the paying party contends that the receiving party did not indicate what actually was read as such the court ought not to make an award on the same. Further to that, they counter propose 5 minutes for the rest of the listed rules from the CPR 2017. Having gone through the CPR 2017, I noticed that some of the rules referred to were just one paragraph of about 3 lines long. They dealt with straight forward principles of the law which would not demand 3 hours to read and comprehend for Counsel who has dealt with personal injury matters for many a time. I shall allow 1 hour for each. In total the court allows **6 hours** for this part.

H. ATTENDANCES (INCLUSIVE OF TRAVELLING AND WAITING)

The receiving party claims 27 hours for attendances inclusive travelling and waiting. Observably, they claim 2 hours each for filing of initial directions, writ of summons, statement of claim, list of documents, sworn statement verifying the case and details of the claimant and response dated 17/03/2020. As already stated above, the initial process is a bundle and does not warrant individual trips to file the components. In any case, I agree with Counsel Ndhlovu in that this is messengerial and does not warrant taxation based on the lawyer's hourly rate. I take note that attached to the bill are forms for disbursements on trips undertaken in this matter in support of individual trips to file components of the initial court process. I will allow one trip making a total of 9 trips at 1 hour each. Essentially, the court allows **9 hours** for attendances.

I. GENERAL CARE AND CONDUCT FOR PART A

On this part, Counsel for the claimant is seeking 80% of Part 3. It is submitted that the claimant's case called upon Counsel to exercise a lot of care for the conduct of the same. It is said that Counsel had to peruse a lot, read a lot of case authorities and other literature. It is also submitted that a lot of care was taken in the preparation of court process and the presentation of arguments at various stages of the case. However, the

paying party is of the view that the matter was a straight forward case which can best be described as one of the run on the mill cases. I agree that this was a straight forward case much as it was important to the claimants, the matter did not raise complex issues and it was resolved as mediation which means it did not involve lengthy and difficult hearings. Neither did the matter require a display of higher level of skill on the part of the legal teams involved. I am of the view that **60%** would be reasonable.

J. DISBURSEMENTS

On disbursements the applicant is claiming K360,000.00 for stationery, printing and photocopying, telephone and travelling. There are no supporting documents to the claimed expenditures. I am of the view that the doubt should be exercised in favour of the paying party as follows:

ITEM	AMOUNT PROPOSED BY THE RECEIVING PARTY	AMOUNT PROPOSED BY THE PAYING PARTY	AMOUNT ALLOWED BY THE COURT
Stationery	K100,000.00	K30,000.00	K50,000.00
Photocopying	K60,000.00	K10,000.00	K50,000.00
Travelling	K150,000.00	K5,000.00	K100,000.00
Telephones	K50,000.00	K20,000.00	K30,000.00
TOTAL			K230,000.00

K. TAXATION

Counsel for the claimant proposes 8 hours for preparing the bill of costs. Counsel also claims 30mins for preparing a Notice of Appointment to Assess Costs. He further claims 3 hours for attending hearing on assessment of damages. the paying party is of the view that the figures are exaggerated and counter-proposes 2 hours for preparation of the bill, 5 minutes for the notice and 20% for the care and conduct of the taxation proceedings.

I wish to agree with the paying party in that some of the proposals are exaggerated. I have gone through the bill and I believe 5 hours for preparing the same is fair. As for preparing the Notice of Appointment to Assess Costs, I will allow 15 mins considering the length and nature of the document. On attendance, the hearing started at 9:43 am and finished at 10:22 am. I will allow 2 hours for this part taking into consideration the waiting since the case was scheduled for 9:30am. On the part of Care and Conduct, I agree that 50% is fair and just. In total, this part shall be taxed at **K326,250.00**.

SUMMARY

ITEM	COSTS
PART A: Attendances upon client	K60,000.00
Attendances upon other parties	K30,000.00
Documents prepared	K262,000.00
Documents perused	K60,000.00
Case authorities read	K300,000.00
Books and statutes read	K180,000.00
Court attendances	K270,000.00
Total for Part A	K1,162,000.00
PART B: General Care and Conduct 60% of Part A	K697,200.00
Taxation	K326,250.00
Total Professional Fees	K2,185,450.00
VAT	K360,599.25
Total Disbursements	K230,000.00
TOTAL	K2,776,049.25

The costs are taxed at **K2,776,049.25**.

MADE IN CHAMBERS THIS 6th OF JANUARY, 2021


WYSON CHAMDIMBA NKHATA

ASSISTANT REGISTRAR