



REPUBLIC OF MALAWI
IN THE INDUSTRIAL RELATIONS COURT OF MALAWI
SITTING AT BLANTYRE
IRC MATTER NO. 361 OF 2016

BETWEEN:

EMILY CHIRWA.....APPLICANT

-and-

THE MALAWI REVENUE AUTHORITY.....RESPONDENT

CORAM: H/H PETER M.E KANDULU, AR
Ndhlovu, Counsel for the Applicant,
Kamowa, Counsel for the Respondent,
Ms Rose Msimuko, Court Clerk.

ORDER ON ASSESSMENT OF COSTS

Background

1. The assessment of costs at hand was ordered by the Court of the acting Deputy Chairperson then, Hon. Innocent Nebi in a judgement delivered on 9th day of July 2021 especially in paragraph 15
2. Counsel for the applicant filed notice of assessment of costs pursuant to Order XXX r 2 of the Subordinate Court Rules. Counsel avers that the applicant commenced the present action by IRC Form on 14th day of July, 2016 claiming for unfair dismissal, unfair labour practices, unlawful withholding of severance allowances, constructive dismissal, non-payment of pension benefits, severance pay, non-payment of arrears in annual salary increment, non-payment of leave days, wrongful deduction of money from terminal benefits package and salary increment on promotion.
3. Counsel states that on 9th day of July, 2021, the court delivered its Judgement and found in favour of the applicant and further condemned the respondents to pay compensation for unfair dismissal and costs of the action to the applicant.
4. On 3rd day of February 2022, the court delivered its order on assessment of compensation and awarded the applicant the sum of MK21, 942, 607,61 for all the claims arising from unfair dismissal that she suffered.
5. Counsel states in paragraph 6 that the court has jurisdiction to assess costs under Order xxx r 2 of the Subordinate Court Rules and the said costs are supposed to be assessed in accordance with the second schedule of the said Rules.
6. According to Rule 6 of the Second Schedule aforesaid, applicant's costs are 10 per centum of MK21, 942, 607.61 which is equal to MK2, 194, 260.76.
7. Counsel further states that according to Rule 6 of the Second Schedule, a refresher fee not exceeding three-quarters of the scale fees may be allowed when hearing has occupied more than three hours without being concluded, such refresher fee may be allowed in respect of each period of three hours or part thereof subsequent, to the first three hours.
8. He avers that in the present action, counsel attended court on 23rd May 2018, 04th October and 25th November of 2019, 01st February, 17th August, 26th August, 16th

September, 4th November, 10th November and 01st December of 2021. On 21st January 2022 and on assessment of costs.

9. The applicant therefore prays for a refresher fee of 5 times on and this gives them $\frac{3}{4} \times$ MK2, 194, 260.76 $\times 5 =$ MK8, 228, 477.85
10. Counsel further prays for attendance costs pegged at MK2, 000.00 per day and the total of which is MK22, 000.00, service of process which the applicant claims is MK19, 000 and disbursements the sum of MK19, 000. Secretariat service pegged at MK2, 500,000 and in total counsel prays MK12, 982, 783.61.
11. The respondent filed a notice to object the assessment of costs. in support filed an affidavit and skeletal argument in support of the points of objection and or in opposition to the notice of assessment of costs.
12. Counsel for the respondent admit that in terms of Order xxx r 2 of the Subordinate Court Rules, this court has jurisdiction to assess costs. The assessment ought to be done in accordance with the second schedule of the Rules.
13. Counsel for the respondent does not dispute legal practitioners costs in accordance with Rule 1 of the Second Schedule which pegs the legal practitioners costs at 10 percent of the judgement debt in this case MK2, 194, 260.20.
14. In paragraph 4 and 5 of the affidavit counsel opposes the proposition by counsel Ndhlovu as there has never been an court which lasted more than 3 hours as alleged. He avers there have been several adjournments or breaks after a matter has ran for 10 minutes or so. The respondent avers the court should dismiss this head and the applicant should be awarded zero costs under that head.
15. On attendance costs, counsel suggest that the applicant must be awarded MK10,000.00 for the same.
16. On service of process, counsel suggests, there are 18 documents at MK1,000.00 the court must award the applicant MK18,000.00.
17. In terms of court fees, counsel argues that in terms of Rule 1 of the Second Schedule, the expended court fees is covered under issue of process. Since the court has already awarded the applicant 10 of the judgement debt, the same should cover this aspect.
18. In terms of secretarial, transport and stationery, the respondent modest view is that Mk200,000 for secretarial, 100,000 for transport and additional MK200,000 for

stationery. He pray to court to award on this head the total sum of MK500, 000.00 and not MK2, 500, 000 as prayed by the applicant as the same is not justified.

19. The respondent prays that a total sum of MK2, 712, 260.00 must be awarded to the applicant as costs of the proceedings.

The law on assessment of cost

20. Order 22 (1) of the Labour Relations Act, 1996, Industrial Relations Court (Procedure Rules) 1999, provides as follows: Costs shall be taxed by the registrar in accordance with the scale employed by the High Court for the time being.

(2) Costs taxed by the Registrar shall be subject to review by the Chairperson or Deputy Chairperson on application by one or more of the parties on notice to all other parties within 14 days of such taxation.

(3) An application for review under sub-rule (2) shall identify each dispute item or part of an item together with the grounds of objection to the allowance or disallowance thereof:

(4) Any party may within 14 days of receipt of an application under such rule (2) submit written contentions, including ones not advanced at the taxation , on each item sought to be reviewed and thereafter the Registrar shall frame his report and supply a copy to each party who may within 7 days of receipt thereof submit further contentions

(5) The Registrar shall submit the document under sub-rules (2) and (4) to the Chairperson or Deputy Chairperson who may decide the matter-

(a) on the documents alone;

(b) on the documents and such information as he may require from the Registrar; or

(c) if he deems fit, after hearing the parties in chambers.

21. Under order xxx r 1 of the Subordinate Court Rules, they provides subject to these orders and rules, costs of all proceedings shall be in the discretion of the court. The court may award costs of proceedings filed in the court although it has no jurisdiction to determine such proceedings.

22. Under order xxx, r 2 of the same Rules, they provide costs shall not be taxed but shall be assessed in accordance with the scale and rules in the second schedule by the court at the trial or hearing, on settling the terms of the judgement or order, and shall be added

to or set off against any sum payable thereunder. Costs may be made a charge on the subject matter of the proceedings.

23. Part 1 to the Second Schedule of the Subordinate Court Rules provides as follows: (Plaintiffs' costs or defendant's costs shall be 10 per centum of the sum sued for or value of the subject matter of the Judgement).
24. Rule 1 of the Second Schedule of the Subordinate Court Rules provides that (1) plaintiffs costs in the above table include instructions, issues of process and, save as otherwise herein provided, every other proceeding down to the issue of execution.
25. All the parties have agreed that this court has jurisdiction to adjudicate or assess costs of the proceedings. Such mandate is statutory as provided by both the Industrial Relations Rules and the Subordinate Court Rules. Several sections or orders have been cited as the relevant law to refer in disposing of the present proceedings. Suffice to mention part 1 of the second schedule has been cited by both counsels.
26. The applicant has submitted the amount which ought to be awarded as costs. The respondent had objected that according to their experience during court proceedings of the action at hand, there was never any time the court sat three hours or more. According to counsel for the respondent, there were several adjournments that were occasioned since the matter was disposed of on a point of law. According to the law, a refresher can only be granted if the court had sat three hours or more. In this case there is no such evidence that the court sat more than 3 hours or more.
27. Having heard both counsels and having analysed the arguments for both parties, I had the occasion to read, read again and understand to appreciate the wording of the law cited by both counsels, having read the law Order xxx r 1 and 2, the court agrees that the 10 per centum of the Judgement sum is awarded to the applicant as of right.
28. However, the court position on refresher fees is that the same is payable when the court sitting is 3 hours or exceeds 3 hours continuously.
29. It is my observation that counsel for applicant did not bring or tender any court attendance sheet to show and prove that at their court sitting in the matter, they were sitting more than 3 hours at once.

30. Having looked at the dates as presented by both counsels, in my view, the court is not satisfied that the refresher fees have to be paid when the court seating did not meet the minimum requirement set by the law of 3 hours or more per court seating.
31. However, the court awards the applicant the following costs incurred.
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|--------------------|------------------------|
| 10 per centum | MK2, 194, 260.74 |
| Attendance Cost | MK 22,000.00 |
| Service of Process | MK 18,000.00 |
| Disbursement | MK 19,000.00 |
| Secretarial | MK1, 000, 000.00 |
| Stationery | MK 500,000.00 |
| Total | MK3, 772,260.76 |
32. Payment to be effected within 14 days from the date of service of this order.
33. Delivered in chambers this 12th day of October 2022 at Blantyre.

PETER M.E KANDULU
ASSISTANT REGISTRAR

