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REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 601 OF 2020

BETWEEN:

TOBIUS JOHN BAULENI.....1<sup>ST</sup> CLAIMANT  
BEN BAULENI.....2<sup>ND</sup> CLAIMANT  
BILLY LIGOMEKA.....3<sup>RD</sup> CLAIMANT

-AND-

EUNICE KURESHI.....1<sup>ST</sup> DEFENDANT  
GENERAL ALLIANCE INSURANCE LIMITED.....2<sup>ND</sup> DEFENDANT

Coram

- E. Chapita-Banda, Assistant Registrar
- Mr Mwantisi, Counsel for the claimant
- Mr Chipeta, Counsel for the Defendants
- Ms Chida, Court Clerk

ORDER ON ASSESSMENT OF COSTS

The claimants successfully sued the defendants and were awarded damages amounting to K6,303,000.00. The suit arose out of a road traffic accident involving motor vehicle registration

number MH9631, VW Golf Saloon that was driven by the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant was sued as the insurer of the motor vehicle at the time of the accident. Liability of the defendants was settled at mediation stage. Besides damages, the claimants were awarded costs of the action and the parties appeared before me on 12<sup>th</sup> January 2022 for hearing of the assessment of the costs.

In course of the assessment, the defendant raised two issues. The first issue was whether instruction fees are payable or not. The second issue raised was whether the 2<sup>nd</sup> defendant should pay the costs or not having already paid damages up to the limit in the insurance policy. This is the court's ruling on these two issues and an order on assessment of the costs.

### **Instruction fees**

The defendant's view is that instruction fees are not payable.

Order 31 rule 10 (1) states:

*"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."*

In the present matter, the legal practitioner had instructions to act for the claimant and they have acted, as the record shows, from the commencement of the matter. It is my view that instruction fees are payable.

In his submissions, counsel for the claimant referred to **Ampex Limited V Mota Engil Limited**, Commercial Case No. 178 of 2013 (unreported) in which it was stated that the value of the subject matter and generally the nature of the matter should be considered when determining the amount of instruction fees to award. A personal injury matter is not a complicated case and rarely raises complex issues for determination. The sum of K1,000,000 is therefore reasonable as instruction fees. With this sorted and pursuant to the assessment hearing in court, costs awarded to the claimant are summarized as follows:

ITEM NO.	BILL ITEMS AND TIME ALLOWED	TOTAL TIME ALLOWED BY COURT	AMOUNT
1.	<p><u>PREPARATORY WORK</u></p> <p><b>A. <u>The Client</u></b></p> <p>i. Holding several conferences with the clients (3 hrs);</p> <p>ii. Settlement discussions with the Defendants (0.25 hr);</p> <p><b>B. <u>Documents Perused</u></b></p> <p>1. Police Report (0.25 hr);</p> <p>2. Medical Reports (0.25 hr);</p> <p>3. Quotations (0.5 hr)</p> <p>4. Bullen &amp; Leake (2 hrs)</p>	6.25 hrs	K250,000.00
2.	Court Documents Perused (10 hrs)	10 hrs	K400,000.00
3.	Documents Prepared (10 hrs)	10 hrs	K400,000.00
4.	Court Attendances (5 hrs)	5 hrs	K200,000.00
5.	General Care and Conduct 50% of MK1,250,000.00		K625,000.00
6.	Travelling and Waiting	3 hrs	K120,000.00
7.	Instruction Fee		K1,000,000.00
8.	Disbursements		K212,000.00
9.	<p><u>TAXATION</u></p> <p>a. Preparing Party and Party Bill of Costs and photocopying (5 hrs);</p>		

	b. Filing Notice of Appointment for Assessment of costs (0.5hr)		
	c. Attending taxation proceedings. (1 hr);		
	d. Care and Conduct at 50%	6.5 hrs	K260,000.00  K130,000.00
	e. Traveling to High Court for Taxation Proceedings and waiting (1 hr)		
	f. Attending Taxation Proceedings (1 hr)		
		2 hrs	K80,000.00
10	<b>SUB TOTAL</b> (Less Disbursement)		MK3,465,000.00
	Add 16.5% Government Surtax		MK554,400.00
	Add back Disbursements		MK212,000.00
	<b>TOTAL</b>		<b>MK4,231,400.00</b>

The claimant is awarded the sum of K4,231,400.00 as costs of the action.

**Who pays the costs**

I now move to the last issue regarding whether the 2<sup>nd</sup> defendant must pay the costs or not.

I find it imperative at this point to reproduce court order dated 2<sup>nd</sup> July 2021. The order states:

*'... the defendants should pay the claimants damages for personal injuries to be assessed by the Registrar if not agreed*

*The 2<sup>nd</sup> defendant's liability in damages to third parties be limited to the policy of insurance with its insured*

*That the defendants should pay the Claimants party and party costs to be assessed'*  
(emphasis mine).

It is worth noting that although this order was issued by the Registrar, it was made pursuant to an Order that the Judge made by hand on 17<sup>th</sup> June 2021. Surprisingly, this handwritten order is worded differently to the order that the assistant registrar issued which the claimant's legal practitioner drafted.

The issue before me, determining whether the 2<sup>nd</sup> defendant should pay the costs having exhausted their policy limit is asking me to clarify or interpret the Judge's order which I must and do decline for lack of jurisdiction. It is only the Judge who made the order who can do so and any willing party can move the court.

DATED 11<sup>th</sup> DAY OF May 2022

E. CHAPITA-BANDA

ASSISTANT REGISTRAR 