



REPUBLIC OF MALAWI

**IN THE HIGH COURT OF MALAWI**

PRINCIPAL REGISTRY

CIVIL CAUSE NO.153 OF 2015

**BETWEEN:**

CHRIS KALIYA.....CLAIMANT

**AND**

TIMES TELEVISION LIMITED .....DEFENDANT

**CORAM**

**Mrs T. Soko : ASSISTANT REGISTRAR**

Kamkwasi : Counsel for the claimant

Kaluwa : Counsel for the defendant

Mrs Mkandawire : Court Clerk

**RULING**

This is a ruling on whether the costs should be taxed at this stage. The matter was commenced on 13<sup>th</sup> April 2015 and the claimant is claiming for damages for defamation and costs for the action. On 29<sup>th</sup> May 2015 the Court entered a default judgment against the defendant. On 27<sup>th</sup> July 2015 the court ordered the default judgment to be set aside following an application from the defendant. The defendant filed a defence. The matter went for mediation which did not materialize and the court made an order for directions on 27<sup>th</sup> October 2015. On 8<sup>th</sup> July 2016 the claimant through his Legal Practitioners obtained summons to strike out defence.

On 19<sup>th</sup> July 2016 the court ordered the defence to be struck out and judgment was entered in favor of the claimant. The court awarded the costs to the plaintiff. On 16<sup>th</sup> March 2017 the defendant applied for extension of time to file list of documents and leave to file list of documents out of time which was granted by the court on 22<sup>nd</sup> May 2017. Costs were also awarded to the plaintiff from the time the defendant's defence was struck out to the date of the order. It is on that basis that the matter came on 31<sup>st</sup> January 2018 for taxation of costs.

On the date of the hearing Counsel for the defendant made an objection on the ground that the proceedings were brought prematurely because the order of the Court did not state that costs must be taxed forthwith. Counsel further stated that the court file did not contain notes for the registrar who held the application hence he could not appreciate if the notes stated that the costs should be taxed forthwith. Counsel referred this court to O.62 rule 8 of the Rules of the Supreme Court. Counsel for the claimant in responding stated that the court should stick to what is in the file and there was an order which was granted for the costs to be taxed or agreed. Counsel for the defendant replied further that taxation of costs must wait and the court should be guided by Order 62 r.8 (1) of the Rules of the Supreme Court.

## **THE LAW**

Order 62 r. 8 (1) of the Rules of the Supreme Court provides that:

*(1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.*

*(2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may, except in a case to which paragraph (3) applies, order accordingly.*

Practice Note 62/8/1 of the Rules of the Supreme Court provides that:

*This rule states the new principle that costs are not to be taxed until the conclusion of the proceedings irrespective of the stage in the proceedings at which the order is made unless the court expressly orders an earlier taxation. In such cases, it will order "Taxation forthwith." ... a cause or matter ... is concluded when the court in question has finally determined the matters in issue, whether or not there is an appeal from that determination"*

## **DETERMINATION**

In the present matter the order of the Court clearly stated that costs to be taxed or agreed. The word 'to be' signifies a future event. Meaning that the costs will be taxed in future. I believe that the court meant after the determination of the issue which is before this court. After perusing the record of the court I found that the matter is not concluded and the defendants were given time to file the list of documents. This is an indication that the matter is ongoing. In the absence of the notes of the registrar the court has carefully looked at the order and there is nothing indicating that the court ordered the costs to be taxed forthwith

With the foregoing reasons the court finds that the hearing of the taxation of costs should be dismissed on the condition that such hearing shall take place after the final determination of the main issue of this matter.

Defendants are ordered to file the list of documents within 7 days from the date of this ruling.

Pronounced in chamber on this 1<sup>st</sup> day of March 2018



**T. SOKO**

**ASSISTANT REGISTRAR**