



THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO.544 OF 2006

BETWEEN

FRANKLIN KOMANI NYASULU..... Plaintiff

AND

MALAWI HOUSING CORPORATION..... Defendant

CORAM: Madalitso Khoswe Chimwaza, Assistant Registrar

S. Mhango

Counsel for the plaintiff

D. Chagwamnjira

Counsel for defendants

Mpandaguta

Court Clerk

RULING ON TAXATION OF PARTY AND PARTY COSTS

This is a ruling on a preliminary objections against the expense rate per hour to be used in taxing a party and party bill of costs and some items in the bill. The party paying the costs is the defendant Malawi Housing Corporation who were represented by Chagwam'njira & Co. and the party receiving is Messrs KD Freeman & Associates.

The proposed fee earner expense rate for Counsel Likhwa Mussa of 12years standing at the bar was pegged at K15,000/hour. Counsel for the defendant objected to the hourly rate citing that at the time proceedings were commenced up to conclusion of the case the fee was K7,000/hour as the minimum and therefore it is wrong for counsel to claim K15,000/ hour without any valid reason. Counsel Chagwamnjira also objected to the costs being claimed on the appeal which set aside the summary judgments of the Judge of the High Court and Senior Deputy Registrar. On the appeal each party was ordered to bear own costs therefore they could not be included for taxation in this bill. Further based on the Supreme Court of appeal order on the rehearing of the matter the Registrar awarded costs to the defendants on dismissing the summary judgment therefore the costs are claimable by the defendants. This court will consider all these facts when arriving at its decision.

THE LAW

This court is enjoined to apply the new rules pursuant to **Order 35 Rule 14 of the Courts (High Court) Civil Procedure Rules, 2017** which states that:

Any assessment of costs that takes place on or after the commencement date shall be in accordance with Order 31.

Order 31 of the Courts (High Court) Civil Procedure Rules, 2017, Rule 3(1) provides that:

The court has discretion as to:

- (a) Whether costs are payable by one party to another
- (b) The amount of those costs, and
- (c) When they are to be paid.

Order 31 rule 4(1) states 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 rule 4(4) states 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

Order 31 rule 5(2) states that in particular, the court shall give effect to any orders which have already been made.

This court is aware that the award of costs is in the absolute discretion of the court. However the discretion has to be exercised judiciously. The court is mindful of the decision of Justice Dr. Mtambo in the case of *Barrow Investments Ltd vs MPICO Malls Limited*, Commercial Cause no. 6 of 2013 dated 2nd day of February 2015, in which the Judge ruled that the Registrars Notice of Revision of Party and Party Costs Hourly Rate that was applicable from 2005 was without legal basis. The Judge went on state that having discarded the Registrars Notice of Revision of Hourly rate there was no provision to regulate the quantum of party and party costs and that the effect of this was that there was no more certainty and predictability on the quantum of party and party costs unless Parliament amends section 30 of the Courts Act, then to introduce fetters in the courts discretion to award costs. My reading of the judgment it does not set any minimum hourly rates to be applied, the discretion lies with the court.

Reasoned Analysis of Law and Facts

Looking at the narrative of the law and case authorities cited, it is clear that the issue of hourly expense rate is at the discretion of the court. The fact that the matter commenced in 2006 and the hourly rate then was K7,000 for Counsel of Likhwa Mussa standing can no longer stand since it has been ruled that the rates were illegal as such they cannot form basis for the taxation in the present bill.

This court upon looking at the time the matter has taken to reach conclusion stage and in view of the fact that the value of the Malawi Kwacha has not been stable, although the case was not complex as it dealt with breach of contract, and the plaintiff did not prepare trial bundle or attach any copies of counsel diary for time spent on the case, this court is of the view that an expense rate of K10,000 per hour should apply in taxing the bill of costs. It is so ordered.

On the second objection regarding matters that went to the Supreme Court where summary judgement obtained before the High Court Judge and the SDR were set aside the judgment is clear that each party was to bear their own costs. Further when the matter went for rehearing before the Registrar costs were awarded to the defendant therefore the plaintiff cannot claim.

In view of the above and pursuant to **Order 31 Rule 5(2) of the Courts (High Court) Civil Procedure Rules, 2017**, this court gives effect to the orders on costs that were already made by the Supreme Court of appeal and by the Registrar on re hearing and therefore they are not to form part of the bill. It is so ordered.

On the actual number of hours the court was engaged in the substantial taxing with both parties and the hours that were allowed during the taxation session still stands. The plaintiff should proceed to calculate as per the allowed hours and the rate awarded in this order accordingly within 7 days from date of this order.

SET OFF

The defendant applied for leave to tax bill out of time on the costs that were awarded to the defendant in respect of an application to set aside summary judgment. Leave is granted and the defendant is entitled to set off the costs at an expense rate of K15,000 per hour. It is so ordered.

Any party not satisfied with the ruling of this court has the right to appeal.

Made in Chambers this 11th day of December 2017



Madalitso Khoswe Chimwaza

ASSISTANT REGISTRAR