



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 830 OF 2010

**BETWEEN**

DUNCAN THEU t/a DUEL CENTURY PRINTERS.....1<sup>st</sup> PLAINTIFF

WONGANI THEU (an infant suing through

DUNCAN THEU, his father and next friend).....2<sup>nd</sup> PLAINTIFF

**AND**

MALAWI SAVINGS BANK LIMITED.....DEFENDANT

**CORAM: WYSON CHAMDIMBA NKHATA**

Mr. Kauka, of Counsel for the Plaintiff

Mr. Masanje, of Counsel for the Defendant

Ms. Galafa, Official Interpreter/Court Reporter

**ORDER ON ASSESSMENT OF COSTS**

This matter was commenced by writ of summons issued on the 2<sup>nd</sup> of May 2017. The plaintiff was claiming damages for the wrongful dishonor of a bill of exchange and consequences thereof. After trial, judgment was entered in favour of the plaintiff with costs. The matter proceeded to assessment of damages and it has now come for assessment of costs. This court heard the parties on assessment of costs and reserved the ruling on the matter which I must now consider.

Before I proceed, I thought I should mention that this court is aware that this process must ensure that only costs which are necessary and proper for the administration of justice are allowable. The principle upon which these costs should be taxed is that the successful party should have an indemnity against costs reasonably incurred in prosecuting or defending the action.

In this case, Counsel for the plaintiff filed his Bill of Costs in which he is claiming K31,274,755.10. Upon going through the bill, Counsel for the Defendant challenged most of the proposed items arguing that they had either been hyped up or that they were not applicable in this case. I shall endeavor to highlight the items that were in dispute.

To begin with, Counsel for the plaintiff claims K30,000.00 as the hourly rate. He contends that the matter herein was the first of its kind in our jurisdiction as such it required skill and innovation. He thus believes it is only proper for the court to make an award of K30,000.00 per hour for items in the bill. On the other, hand, Counsel for the Defendant expresses doubt on the novelty of the case. He is of the opinion that the case would be different in facts but not that it's the first of its kind. He proposes a range of K10,000.00 to K12,000.00 as a reasonable rate. In my opinion, the rate sought by Counsel for the Plaintiff is not in tandem with prevailing rates by lawyers of reasonably comparable skills, experience and reputation rendering a similar service as in the case herein. I choose to agree with Counsel for the defendant that K30,000.00 per hour is on the higher side. I believe K15,000.00 would be reasonable in this case notwithstanding whether the case is the first of its kind in our jurisdiction or not.

Another issue that was challenged is the percentage proposed for Conduct and Care. Apparently, Counsel for the plaintiff is suggesting 80% for the same. He adopts the same argument as in the case of the hourly rate. The paying party however is of the view that 80% is exorbitantly too high. He states that the furthest he has seen is 60%. He therefore proposes 50% in that the case herein is an ordinary case involving wrongful dishonor of a cheque. I went through the record and I was able to appreciate the preparation that went into the case by Counsel for the plaintiff. This was a case that was handled with utmost conscientiousness. Clearly, ignoring the meticulous approach employed in this case would be to encourage 'shoddy work' as Counsel for the plaintiff chose to put it. I would think 70% on this regard is fair and reasonable for Part A and Part B. As for the part on Instruction and Taxation, I see no compelling reason for this court to go beyond 50% for Conduct and Care.

On the issue of disbursements, the contention is on transport. Counsel for the Plaintiff is claiming K15,000.00 for each trip made to and fro the court premises. On the other hand, Counsel for the defendant argues that Counsel for the plaintiff is within Blantyre and K6,000.00 is enough for the same. It is counter argued however that K15,000.00 is the minimum charge. The court was called upon to consider other sectors for instance the Sheriff who demand the same no matter how short a distance. I believe this court ought to consider costs reasonably incurred in prosecuting this case. Going beyond what was reasonably incurred merely to emulate what other departments are doing, in my view, would be going against the principles obtaining in assessment of costs. I shall therefore employ the rate of K10,000.00 per trip taken to and from the court.

On the issue of court attendances, I noticed that the time indicated by Counsel for the plaintiff against each appearance was as indicated on the record. Possibly it is the waiting time that I felt was a bit overstated. I thought it was only proper not to make alterations on the time except where it was overtly exaggerated particularly on waiting. On the same vein, I thought I should mention that I found no justification to make an award on refresher fees. A perusal of the record indicates that there was no instance in which the trial stretched over three hours. I compelled not to make an award on this regard.

Basically, these are the main items that this court felt were by and large in dispute. I therefore proceed to assess the costs as follows:

<b>PART A: No.</b>		
2	20 hrs	
2a	3½ hrs	
2b	7 hrs	
2c	26 hrs 20mins	
2d	3hrs	
2e	19hrs	
2f	2 hrs 30 mins	
	81hrs 20mins	K1,215,000.00
General care and conduct	70% of K1,215,000.00	K850,000.00
Disbursements		K54,000.00
<b>Total for Part A</b>		<b>K2,119,000.00</b>

<b>PART B</b>		
Trial Attendances	19hrs	K285,000.00
Disbursements		K105,000.00
General Care and Conduct	70% of K285,000.00	K199,500.00
Total for Part B		K589,500.00
<b>PART C</b>		
Refresher fees		
Instruction fees	50% of Part A	K1,059,000.00
		K1,059,000.00
<b>PART D</b>		
Taxation	6 hrs	K90,000.00
	50% being care and conduct for Taxation Disbursements	K45,000.00
		K12,000.00
		K147,000.00
<b>PART E</b>		
Stationery		K200,000.00
<b>TOTAL</b>		K4,114,500.00

## TOTAL

Disbursements K371, 000.00  
Professional fees K3,743,500.00  
16.5 VAT on Professional Fees K678,892.50

Costs are taxed at K4, 793, 392. 50.

MADE IN CHAMBERS THIS 16<sup>th</sup> OF MAY, 2018 AT PRINCIPAL REGISTRY

**WYSON CHAMDIMBA NKHATA**

ASSISTANT REGISTRAR