



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

COMMERCIAL COURT

LILONGWE REGISTRY

COMMERCIAL CAUSE NO. 63 OF 2021

BETWEEN

EDWIN NYIRENDA.....CLAIMANT

AND

MALAWI HOUSING CORPORATION.....DEFENDANT

CORAM: F.M. Msekandiana, Assistant Registrar
Nkhata, Counsel for the claimant
Mwenda, Counsel for the Defendant
Mwale, Court Clerk/Official Interpreter

ORDER ON TAXATION OF COSTS

1. The claimant commenced this action on 11th February, 2021 seeking the following:
 - a) Purchase price for the land in the sum of K7,848,648.00
 - b) Compound interest on the sum of K7,848,648.00 at 4% above the commercial bank lending rate
 - c) Damages for inconvenience, to be assessed
 - d) Costs of the action

2. Order 31, rule 4(1) of the Courts (High Court) (Civil Procedure) Rules, 2017 (CPR) obligates the court not to allow costs which have been unreasonably incurred or are unreasonable in amount. Paragraph (2)(a) of the same rule further mandates the court to allow only costs which are proportionate to the matters in issue. It is important for the court

to highlight Order 1, Rule 5 of the CPR which provides that the overriding objective of the Rules is to deal with proceedings justly. This objective includes saving expenses, dealing with a proceeding in ways which are proportionate to the amount of money involved, the importance of the proceeding and complexity of issues; See *Nedbank Malawi Limited v Patrick Uka, and Others Personal Injury Cause No. 692 of 2019*.

Statement of Fee Earner

3. The Court will use the hourly rate of K30,000.00 for Counsel Tryness Chihana of 3 years standing at the bar as prescribed by the Legal Practitioners (Hourly Expense Rates for Purposes of Taxing Party and Party Costs) Rules.

PART A

Preparation

a. Client Conferencing and Obtaining Instructions

4. Counsel claims 4 hours for attending to clients and receiving instructions, and perusing all the documentation accompanying the instruction. However, counsel for the defendant was of the view that the hours are excessive and 2 hours is sufficient because counsel handling this matter would be familiar with this case having handled a similar matter of *Matthews Nyirenda v Malawi Housing Cooperation Commercial Cause No. 60 of 2021*. In reply counsel for the claimant submitted that the client conferencing is throughout the subsistence of proceedings, from obtaining instructions, updating the client on the matter and the 4 hours is an understatement. Further that the costs for the matter that counsel has referred to has not yet been concluded so the objection should not be based on that. The court has indeed noted from the court record that the matter ended early through summary judgment as such there was not even much to update the client. The 4 hours is not proportionate. The court finds 3 hours reasonable, and awards K90,000.00.

b. Court Documents Prepared

5. Counsel claims 8 hours for preparing summons with supporting documents namely, relief, statement of case, sworn statement verifying the statement of case and list of documents, claimant's list of documents, notice of inspection and draft response. However, counsel for

the defendant is of the view that the hours claimed are excessive and un-proportionate to the nature of the claim. As such counsel was of the view that 2 hours is sufficient and that other documents listed are templates requiring few changes. Counsel for the claimant submitted that the statement of claim is not a template and it is tailored to what you want to do. Further that you have to refer to books like Bullen and Leake. The court has perused the summons and the documents which counsel indicated that they were prepared and in my assessment, the documents could not take 8 hours to prepare. Some of the documents such as summons and response are standard forms which are already in the CPR and Counsel simply filled the relevant information which in my view cannot take much of the time. The court therefore finds that 8 hours is on the higher side. 2 hours is reasonable and I award K60,000.00.

6. Counsel further claims 8 hours for preparing an application for summary judgment supported by a sworn statement and skeleton arguments. But counsel for the defendant submitted that the time is unreasonable because counsel is already familiar with the facts of the case, and exhibits are a reproduction of documents already drafted as such 2.5 hours is sufficient. Counsel for the claimant however submitted that you have to read and re-read a sworn statement to check if it is complying with order 18 and you have to make sure it is making sense. Further that you draft skeleton arguments that are supposed to fit the sworn statement that you intend to file. He thus submitted that the court should not award less than 5 hours and that it takes the whole afternoon to draft this. The court has noted that the application for summary judgment could not take more than 15 minutes. The sworn statement is two and a half pages and the rest are attachments, while the skeleton arguments are three pages. The court is of the considered view that 3 hours is reasonable which translates to K90,000.00.
7. Counsel also claims 8 hours for preparing an application for a third party debt order supported by a sworn statement in support of the application, skeleton arguments and the interim third party debt order. However counsel for the defendant submitted that the time is unreasonably excessive thus 1.5 hours is sufficient. To this counsel for the claimant submitted that if the court is minded to reduce the hours, it should not exceed 5 hours. The

court having perused the said application has noted that the application for third party debt order is two pages, likewise the sworn statement. The interim third party debt order is one and a half pages. There is also nothing complicated about the documents. As such 2 hours is reasonable which translates to K60,000.00.

8. Counsel claims 2 hours for preparing a consent order. Counsel for the defendant submitted that the consent order is fairly straight forward and one paged. That the hours have been exaggerated and 15 minutes is sufficient. Counsel for the claimant submitted that counsel for the defendant has not mentioned the background when coming up with the consent order. The court agrees with counsel for the defendant that the hours have been exaggerated. The consent order is only one and a half pages. Even though counsel for the defendant did not mention the background when coming up with the consent order, counsel for the claimant equally did not mention the said background. It is the court's considered view that 45 minutes is sufficient which translates to K22,500.00.
9. Counsel also claims 1 hour for preparing a notice of assessment, and 1 hour for preparing a notice of delivery of ruling. However, counsel for the defendant is of the view that 15 minutes is sufficient. It is the court's considered view that it is unproductive for counsel to spend 1 hour preparing a notice of assessment or a notice of delivery of ruling. 15 minutes for each notice is reasonable. This translates to K15,000.00.
10. Counsel claims 8 hours for preparing an assessment bundle inclusive of witness statement, sworn statement verifying, skeleton arguments/quantum of damages, list of authorities and list of documents. But the defendant submitted that the assessment bundle is exaggerated and 1.5 hours is sufficient. Counsel for the claimant maintains the claim for 8 hours. The court has gone through the assessment bundle and has noted that the skeleton arguments are six and a half pages while the other documents are short and simple and the rest are attachments. It is the court's considered view that 5 hours is reasonable which translates to K150,000.00.

c. Correspondence Prepared

Counsel claims 2 hours for preparing a demand letter. Counsel for the defendant submitted ~~that it is a simple document and a template that is used time and again. As such 5 minutes~~ is sufficient. However, counsel for the claimant prayed for 30 minutes and submitted that no one can write a letter in 15 minutes. Unfortunately, the court has not had the chance to go through the letter but is of the considered view that 30 minutes is reasonable. the court therefore awards K15,000.00.

d. Court Documents Perused

Counsel claims 12 hours for perusing a sworn statement in opposition to the application for summary judgment and skeleton arguments in support of the application for summary judgment. Counsel for the defendant submitted that 30 minutes is sufficient for the sworn statement and 10 minutes is sufficient for the skeleton arguments for the hours are unreasonably exaggerated and the sworn statement is three pages and straight forward while the skeleton arguments are one paged. Counsel for the claimant submitted that sometimes one has to re-read a sworn statement in preparing for a hearing and that for the skeleton arguments, there is a need to understand why the arguments are like that and one cannot read them in 10 minutes. The court has noted that the sworn statement is two pages, likewise the skeleton arguments. The said sworn statement also has attachments. In the court's view, 12 hours is on the higher side considering that the documents were not much to render counsel to spend that much time. 3 hours is reasonable. The court therefore awards K90,000.00.

Counsel further claims 10 hours for perusing an interpartes application for an order staying interest of damages for inconvenience and interest pending the hearing of an application for leave to appeal out of time and skeleton arguments. The court is of the considered view that 10 hours is on the higher side. 3 hours is reasonable. The court therefore awards K90,000.00.

e. Legal Research

Counsel claims 18 hours for reading books and the CPR. Counsel for the defendant was of the view that the hours are excessive. While counsel for the claimant maintained the claims. The court has failed to appreciate why counsel would take 6 hours to read Bullen and Leake on precedents of pleadings, another 6 hours for reading MC Gregor on damages and 4 hours for reading Chitty on Contracts when it was important to select only relevant parts to read. The court finds that 18 hours for reading the CPR and books are on the higher side. The court therefore allocates 5 hours which translates to K150,000.00.

f. Case Authorities

Counsel claims a total of 64 hours for 19 case authorities. Out of these cases, counsel for the defendant submitted that 10 cases should not be awarded because they are not attached to the bundle contrary to order 12 rule 1 of the CPR. Counsel did not object to 2 cases, wherein 2 hours was claimed. Counsel for the claimant submitted that the court should look at whether these authorities have been used in these proceedings and then exercise discretion to award as prayed for. Further that court should look at the attached authorities and decide whether the amount of time is reasonable. Indeed some of the authorities have not been attached to the bill of costs as per the requirement of the law. However, the court is aware that counsel would not ably represent the claimant without reading relevant authorities. Nevertheless, the 64 hours is on the higher side. The court is of the considered view that 25 hours is reasonable. The court therefore awards K750,000.00.

PART B

General Care and Conduct of the Proceedings

11. Counsel claims 80% for general care and conduct of the proceedings. He submitted that the matter was handled diligently by counsel, as such exceptional skill and knowledge was applied. While counsel for the defendant submitted that this is not provided for in the CPR. However, in the alternative, 50% should suffice. Even though care and conduct are not expressly provided in the CPR, the same is done in practice and there are abounding

authorities on this. This was also discussed in the *The State (on application of Timothy Mtambo, Macdonald Sembereka and Gift Trapence) v Inspector General of Police and Officer in Charge – Lilongwe Police Station, Judicial Review No. 10 of 2020* where the court stated the following:

“It is trite that parties are entitled to awards for care and conduct. Although care and conduct is not expressly mentioned in the Courts (High Court) (Civil Procedure) Rules, courts have been making awards for care and conduct: see Dr Saulos Klaus Chilima and Dr Lazarus McCarthy Chakwera v Professor Arthur Peter Mutharika and Electoral Commission, Constitutional Reference No. 1 of 2019 and Ruth Belentino v Hanif Mahommed and General Alliance Insurance Company Limited, Personal Injury Cause No. 914 of 2016.”

12. In view of this therefore, now the question is the percentage to be awarded for care and conduct. It is the court’s considered view that there is nothing complex in the proceedings and the matter was short since it ended at summary judgment. The court will therefore assess general care and conduct at 60% which translates to K949,500.00.

Disbursements

13. Counsel claims K1,000,000.00 for stationery, messengerial and secretarial services, telephones, filing fees, postage, photocopying expenses, transport and miscellaneous expenses. However, counsel for the defendant submitted that the matter was straight forward and it ended early through summary judgment and some of the hearing was done through zoom, as such K250,000.00 is sufficient. It is in the court’s considered view that this is excessive. The court finds K300,000.00 reasonable.

PART C

a) Taxation

Counsel claims 15 hours for preparing the bill of costs, notice of appointment to tax costs, statement of parties and summary. Counsel for the defendant submitted that this is grossly exaggerated but 4.5 hours is sufficient. The court is also of the view that the 15 hours is

unreasonable and awards 5 hours which translates to K150,000.00. On court attendance for taxation, and travelling and waiting for court to tax, the court awards 2 hours which translates to K60,000.00.

Care and Conduct for Part C

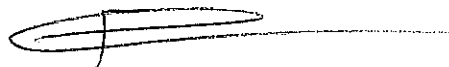
Counsel claims 80% for care and conduct for part c. However, counsel for the defendant submitted that 40% is sufficient. The court herein however awards 60% as such is reasonable under the circumstances. The court therefore awards K126,000.00.

SUMMARY

Part A	K1,582,500.00
Part B	K949,500.00
Part C	K336,000.00
Disbursements	K300,000.00
Subtotal	K3,168,000.00
16.5% VAT	K522,720.00
MLS 1% Levy	K31,680.00
Total	K3,722,400.00

14. In view of all this, the party and party costs are hereby assessed at K3,722,400.00.

Made this 27th day of March, 2023 at Lilongwe



Florence M. Msekandiana
ASSISTANT REGISTRAR