



IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 068 of 2019

(Before Honourable Justice K.T Manda)

BETWEEN

MCLEAN DEBWE.....CLAIMANT

AND

MALAWI TELECOMMUNICATIONS LIMITED..... DEFENDANT

CORAM: A.Z GUMULIRA, ASSISTANT REGISTRAR

Chagwamnjira, Of Counsel for the Claimant

Banda, Of Counsel for the Defendant

Kachilambe, Court Clerk

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Gumulira, AR

ORDER ON TAXATION OF PARTY AND PARTY COSTS

Introduction

On 13th November, 2019, the parties on consent through their Legal Practitioners agreed as follows:

- a. That the Defendant pays the sum of MK 720,000.00 being the proposed value of the rentals at MK40,000.00 per month for a period of 18 months from 10 January, 2018 to 6th June, 2019.
- b. That the Defendant pays the Plaintiff the unpaid water bill of MK55,113.67 plus reconnection fee of MK8,337.62, TOTALING TO mk63,451.29
- c. That the Defendant pays the sum of MK1,500,000.00 as property damage
- d. That party and Party costs be taxed by the Court in the event that the parties do not agree.

This order follows hearing of proceedings for taxation of party and party costs that was held on 20th January 2020.

Background Information

By a Writ of Summons issued on 7th March 2019, the Claimant took out the present action against the Defendants claiming possession of ownership of property number 420 Balaka, Damages, Payments of rentals from the date of final payment to date, Interest thereon at 1% above commercial bank lending rate and costs of this action.

Several processes were filed in the matter before the aforesaid agreement was struck between the parties, as the record will show. Accordingly, the Claimant took out notice of appointment to tax costs to which was attached the bill of costs herein. The Defendant filed their objection points regarding the various items of the bill of costs.

Herein is the order on taxation of costs.

Issues for Determination herein

- Counsel's Hourly Rate Applicable Herein
- The appropriate quantum of costs herein.

Counsel's Hourly Rate Apposite Herein

The Claimant's Counsel herein claims the hourly rate of K55,000.00 per hour. The Claimant counter-proposes an hourly rate of K40,000.00 per hour.

The issue of hourly rate of Counsel is well settled under Rule 2 of the Legal Practitioners (Hourly Expense Rates for Purposes of Taxing Party and Party Costs) Rules. Bearing in mind that Counsel Chagwamnjira has not been accorded the accolade of Senior Counsel yet, but is of more than 10 years standing at the Malawi Bar, an hourly rate of K40,000.00 per hour would, for purpose of this taxation, be apply.

The Appropriate Quantum of Costs Herein

There are two bases on which costs may be taxed, namely standard basis and indemnity basis (Order 31 rule 4(1) of the Courts (High Court) (Civil Procedure) Rules 2017). Where an order for costs is made without indicating the basis on which the costs are to be taxed, costs will always be taxed on the standard basis (Order 31 rule 4(4) of the Courts (High Court) (Civil Procedure) Rules 2017). In the present matter, the order for costs hereinbefore referred to did not indicate the basis on which the same are to be taxed. It follows, therefore, that the costs herein shall be taxed on the standard basis. Where costs are to be taxed on the standard basis, the court only allows costs which are proportionate to the matters in issue and resolves any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party (Order 31 rule 4(2) of the Courts (High Court) (Civil Procedure) Rules 2017). In taxing costs, the court takes into account the conduct of all the parties, the amount or value of any money or property involved, the importance of the matter to all the parties, the particular complexity of the matter or the difficulty or novelty of the questions raised, the skill or effort or specialized knowledge or responsibility involved, the time spent on the case and the place where and the circumstances in which work or any part of it was done (Order 31 rule 5(3) of the Courts (High Court) (Civil Procedure) Rules 2017).

Accordingly, bearing in mind the principles outlined above and taking into account the Claimant's and the Defendant's submissions on the various items of the bill herein, I hereby taxed the party and party costs herein as follows:

<u>PARTICULARS</u>	AMOUNT OF TIME AWARDED FOR PROFESSIONAL CHARGES	AMOUNT OF MONEY AWARDED AS PROFESSIONAL CHARGES
Counsel's hourly rate applicable herein, as above determined, is K40,000.00 per hour.		
PART A:		160,000.00
I. Preparation	4 hours	
II. Documents Prepared	11 hours	440,000.00
III. Case Authorities	5 hours	200,000.00
IV. Books and Statutes	4 hours	160,000.00
V. Documents Perused	6 hours	240,000.00
VI. Attendance to file documents	Taxed off	
Attendance before Justice Manda on 12 November, 2019	30min	20,000.00
VII. Correspondance	2 hours	80,000.00
Subtotal under Part A		<u>1,300,000.00</u>
<u>PART B:</u>		
General Care and Conduct		
The Claimant's case called upon Counsel to exercise a lot of care for the conduct of the same. Counsel has to peruse a lot of documents and read a lot of case		

authorities and other literature		
General care and conduct		
Subtotal under Part B	50% of Part A	<u>650,000.00</u>
PART C:		
DISBURSEMENTS		
Stationery		180,000.00
Printing and Photocopying		55,000.00
Telephone		12,500
Travelling Mr. Debwe from Lusaka to Lilongwe for assessment of damages	Taxed off	0
Messengerial		15,000.00
Subtotal Under Part C		<u>262,500.00</u>
Filing Fees		193,000.00
PART D:		
Taxation Proceedings	8 hours	320,000.00
General Care and Conduct	50% of Part D	160,000.00
Sub Total under Part D		<u>480,000.00</u>
Grand Total		
Part A		1,300,000.00
Part B		650,000.00
Part D		480,000.00
Total		2,430,000.00
Add 16.5 % V.A.T		400,950.00

Add Disbursements		262,500.00
GRAND TOTAL		<u>3,093,450.00</u>

Final Order

In view of the foregoing taxation, the party and party costs herein are hereby taxed at **MK 3,093,450.00**

Delivered in Chambers at the Lilongwe Registry of the Commercial Division of the High Court this 16th day of November 2022.

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A.Z.GUMULIRA

ASSISTANT REGISTRAR