



THE HIGH COURT
(COMMERCIAL DIVISION)
LIBRARY
P/BAG 22, BLANTYRE

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 85 of 2016

(Before Honourable Justice Sikwese)

BETWEEN

ADAMS RENT A CAR.....CLAIMANT

AND

MOTA ENGIL ENGENHARIA E CONSTRUCAO AFRICA SA.....DEFENDANT

CORAM: D.H. SANKHULANI, ESQ., ASSISTANT REGISTRAR

Claimant (paying costs), absent

Mr. L. Mtonga, of Counsel for the Defendant (receiving costs)

Mr. A. Nyirongo, Court Clerk

Sankhulani, AR

ORDER ON TAXATION OF PARTY AND PARTY COSTS

Introduction

This order follows hearing of proceedings for taxation of party and party costs that was held herein.

Background Information

The Claimant commenced the present action against the Defendant.

The Defendant duly filed defence.

Subsequently, the Claimant's action was, on the Defendant's application, dismissed with costs, because the Claimant had failed to comply with an order for directions that was made at a scheduling conference.

Accordingly, the Defendant filed the present bill of costs.

Hearing of these proceedings for assessment of costs took place in the absence of the Claimant, since there was proof of service of the notice of appointment on it. At the hearing, the Defendant presented and adopted the bill of costs herein. The matter was then adjourned to today's date for an order on taxation of costs. Hence the present order.

Issues for Determination herein

From the bill of costs herein, I have isolated issues for determination as are listed below. My determination on all the other issues and items of the bill shall be reflected in the awards I shall make herein.

- Counsel's hourly rate apposite herein.
- The appropriate quantum of costs herein.

Counsel's Hourly Rate Apposite Herein

This matter was alternately handled by Counsel Nyemba and Counsel Mtonga, on behalf of the Defendant. Counsel Nyemba is of 4 years standing at the Bar whereas Counsel Mtonga is of 3 years. For both Counsel, the Defendant claims an expense rate of K30,000.00 per hour, as prescribed under the **Legal Practitioners (Hourly Expense Rates for Purposes of Taxing Party and Party Costs) Rules 2018**.

Due to its absence at the hearing of these proceedings, the Claimant did not raise any dispute against the expense rate as claimed by the Defendant. Nevertheless, this being a court of justice, I shall make a determination on the expense rate apposite herein.

The **Legal Practitioners (Hourly Expense Rates for Purposes of Taxing Party and Party Costs) Rules 2018** came into force on 1st January 2019. Counsel's work in this matter, the subject of the present taxation, was partly done before 1st January 2019 and partly thereafter. The Defendant claims the rate of K30,000 per hour for the whole bill herein. However, in my most-considered opinion, the applicable expense rate is that which obtained at the time the work under consideration was done, and not that which obtains at the time of taxation. I am not aware of any authority to the contrary. Therefore, it follows that the current prescribed expense rates are not applicable to the whole bill herein. I so opine and find. This means that the expense rate of K30,000 per hour shall apply only to the relevant parts of the present bill, that is to say, those parts relating work done after 1st January, 2019. I so hold. As regards work done before 1st January 2019, the issue of the appropriate expense rate lies in this Court's discretion, as it was held in **Barrow Investments Ltd vs. MPICO Malls Ltd** (Commercial Cause Number 6 of 2013, High Court-Commercial Division, Blantyre Registry, Unreported). Therefore, taking into account Counsel Nyemba's and Counsel Mtonga's respective experience, the factors referred to in **Order 31, rule 5(3) of the Courts (High Court) (Civil Procedure) Rules 2017** and all the circumstances of the present matter, I am of the view that the expense rate of K7,000.00 per hour would, for purposes of this taxation, be reasonable for all the work done before 1st January, 2019. I, therefore, **ORDER** that the expense rates of K7,000.00 per hour and K30,000.00 per hour **be, and are hereby**, alternately adopted, for purposes of the present taxation, depending on whether the work was done before or after 1st January 2019.

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 relevant order for costs 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).

Bearing in mind the legal principles outlined above and taking into account all the circumstances of the present matter, I hereby tax party and party costs herein as follows:

Date	No.	Particulars and Time and Percentage Claimed	Time Granted	Amount in Kwacha
		Brief Facts		
		As provided in Background Information		
		Expense Rates		
		K30,000 per hour and K7,000 per hour, alternately, as above determined		
	1.	<p><u>PART A</u></p> <p>(i) <u>Meetings and Court Attendances</u></p> <ul style="list-style-type: none"> • Attending mediation on 4th July 2016 (2 ½ hrs) • Attending pre-trial conference on 13th March 2018.(3 hrs) • Attending court on 17th September 2019. (4hrs) • Meeting the judge to execute formal order. (25 min) 	<p>4 min</p> <p>150 min</p> <p>180 min</p> <p>25 min</p>	<p>466,67</p> <p>17,500</p> <p>90,000</p> <p>12,500</p>
	2.	<p><u>Documentation</u></p> <p>Counsel prepared the following</p>		

	documents for the matter:		
	(i) <u>Documents prepared</u>		
	<ul style="list-style-type: none"> • Notice of Appointment of Legal Practitioners.(20min) • Defence (3hrs) • List of documents (1hr) • Mediation bundle. (3hrs) • Legal Opinion (6 hrs) • Preparing a Notice of scheduling conference (10 mins) • Witness statement (4hrs) • Skeleton arguments (6 hrs) • Application to dismiss matter. (5hrs) • Formal order. (30mins) 	<ul style="list-style-type: none"> 10 min 120 min 30 min 60 min 180 min Disallowed. Not seen 120 min 240 min 120 min 30 min 	<ul style="list-style-type: none"> 1,166.67 14,000 3,500 7,000 21,000 0 14,000 28,000 60,000 15,000
	(ii) <u>Documents perused</u>		
	Counsel perused/considered the following documents for the matter:		
	<ul style="list-style-type: none"> • Bundle of documents. (2 hours) • Contracts (1hr) • Plaintiff's Mediation bundle (2hrs) • Computation of interest (40 min) 	<ul style="list-style-type: none"> 60 min 60 min 60 min 40 min 	<ul style="list-style-type: none"> 7,000 7,000 7,000 4,666.67

		<ul style="list-style-type: none"> • Notice of scheduling conference. (5 min) 	2 min	233.33
		<ul style="list-style-type: none"> • Notice of adjournment of pre-trial conference. (5 min) 	2 min	233.33
		<ul style="list-style-type: none"> • Claimant's application on 30th May 2017 (2hrs) 	Disallowed. Not described	0
		<ul style="list-style-type: none"> • Claimant's witness statement. (40 min) 	40 min	20,000
		<ul style="list-style-type: none"> • Claimant's skeleton arguments. (30 min) 	30 min	15,000
		<ul style="list-style-type: none"> • Claimant's skeleton arguments in support of amendment. (30 min) 	30 min	15,000
		<ul style="list-style-type: none"> • Claimant's sworn statement in opposition to application to dismiss matter. (35mins) 	35 min	17,500
		<ul style="list-style-type: none"> • Sworn statement verifying witness statement. (10mins) 	5 min	2,500
		<p>(iii) <u>Correspondence</u></p> <p>Counsel spent time on the following correspondence among others, in connection with the matter:</p> <ul style="list-style-type: none"> • Email with attachments dated 9th May 2016; (3hrs) 	60 min	7,000
		<ul style="list-style-type: none"> • Email dated 10th October 2017 (6 min) 	6 min	700
		<ul style="list-style-type: none"> • Email dated 12th October 2017 (5 min) 	5 min	583.33
		<ul style="list-style-type: none"> • Email dated 11th January 		

		<p>2018 (6 min)</p> <ul style="list-style-type: none"> Email from Claimant's lawyers (10 min) Email dated 2nd September 2019. (6 min) Email dated 19th September 2019.(4mins) 	<p>6 min</p> <p>10 min</p> <p>6 min</p> <p>4 min</p>	<p>700</p> <p>1,166,67</p> <p>3,000</p> <p>2,000</p>
		<p>(iv) <u>Books/Authorities read</u></p> <p>Counsel conducted research and read the following authorities in readiness for preparation of legal opinion, skeleton arguments and affidavits/sworn statements. Some of the authorities were cited by the Claimant in its skeleton arguments and Counsel had to consider them to fully appreciate the position taken by the Claimant.</p> <ul style="list-style-type: none"> Rules of the Supreme Court; (1hr) High Court (Exercise of Jurisdiction of Registrar) Rules; (15mins) Court (High Court) Civil Procedure Rules of 2017. (6hrs) <u>Malawi Railways Limited – vs- PTK Nyasulu, MSCA Civil Appeal No. 13 of 1992; (45mins)</u> <u>Burco Electronic System Limited v City Motors</u> 	<p>30 min</p> <p>15 min</p> <p>60 min</p> <p>45 min</p>	<p>3,500</p> <p>1,750</p> <p>30,000</p> <p>22,500</p>

		<u>Limited, Commercial Case</u> No.13 of 2017 (1hr)	60 min	30,000
		• The Antaios (1984) A.C 191 (2 hrs)	60 min	30,000
		• Trustee Auctioneers Limited v Finance Corporation of Malawi Limited MSCA Civil Appeal No. 30 of 2000. (2hours)	120 min	60,000
		• L'Estrange vs Graucob (1934) 2 K.B 394 (30 min)	30 min	15,000
		• Phekani vs Automotive Products Limited 16 (1) MLR 427 (1 hour)	60 min	30,000
		• B.P Exploration Co. (Libya) vs Hunt (No. 2) (1982) 1 All ER 925 at 974 (2 hours)	120 min	60,000
		• Einstein Construction Company Limited v Mota Engil, Commercial case no 269 of 2015. (40 min)	40 min	20,000
		• Malawi Telecommunications Limited vs S.R Nicholas Limited, Civil Appeal case no. 1 of 2011. (1hr)	60 min	30,000
		• Ecobank Malawi Limited vs Harvey Kalamula, Civil Cause Number 434 of 2013. (3hrs)	180 min	90,000
		TOTAL OF PART A		818,166.67
		PART B		

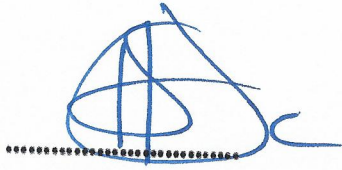
		<p>(i) <u>General Care and Conduct</u></p> <p>The case also involved complex issues of law and therefore required great diligence from counsel.</p> <p>80% of Part A</p>	<p>60% of Part A granted</p>	<p>490,900</p>
		<p>(ii) Instruction fee claimed K2,000,000</p>	<p>K500,000 granted</p>	<p>500,000</p>
		<p>TOTAL OF PART B</p>		<p>990,900</p>
		<p><u>PART C</u></p> <p>Travelling and waiting in connection with the attendances listed in PART A. (3hrs)</p>	<p>40 min @ K7,000 per hour and 40 min @ K30,000 per hour granted</p>	<p>24,666.67</p>
		<p>PART D</p>		
	5.	<p><u>Taxation</u></p> <p>Taxation of costs:</p>		
		<p>(i) Preparing taxation bill and compiling attachments to the bill. (12hrs)</p>	<p>420 min</p>	<p>210,000</p>
		<p>(ii) Care and conduct; (60% of (i) above)</p>	<p>60% of (i) granted</p>	<p>126,000</p>

		Totals of Part D		336,000
	6.	Disbursements		
		(i) Fuel claimed: K80,000	K20,000 granted	20,000
		(ii) Stationery claimed: K60,000	K14,000 granted	14,000
		(iii) Court Fees	K16,000 granted	16,000
		Total Disbursements		50,000
		TOTAL (Professional fees)	K2,169,733.34	
		16.5% V.A.T. on total professional fees	K 358,006.00	
		Add Disbursements	K 50,000.00	
		GRAND TOTAL PAYABLE	K2,577,739.34	

Final Order

In view of the foregoing taxation, the party and party costs herein are hereby taxed at a total of **K2,577,739,34**. The Defendant shall file a certificate of taxation for issuing.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 28th day of January 2020.



D.H. SANKHULANI
ASSISTANT REGISTRAR



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P/Blantyre