



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
COMMERCIAL COURT
LILONGWE REGISTRY
COMMERCIAL CAUSE NO. 333 OF 2020
(Before Justice Dr Kachale)



BETWEEN:

FLEET TECH SERVICES.....CLAIMANT

AND

ATTORNEY GENERAL (MINISTRY OF TRADE AND TOURISM).....DEFENDANT

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

ORDER ON TAXATION OF COSTS

1. This is an order on taxation of costs pursuant to a default judgment dated 30th November 2020 which awarded the costs of the action to the claimant. The claimant filed a party and party bill of costs. On the date of hearing of taxation of costs, Counsel for the claimant adopted the bill amounting to K11,432,920.00. The defendant neither filed the points of objections nor appeared before the Court despite being served with the notice of assessment of costs on 4th January, 202
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.

Hourly Rate

3. The Court will use the hourly rate of K40,000.00 for Counsel Chimwemwe Kanyamula Sikwese of more than 10 years standing at the bar as per Rule 2 of the Legal Practitioners (Hourly Expense Rates for Purposes of Taxing Party and Party Costs) Rules. Counsel Sikwese was representing the claimant who is the receiving party in this matter.

PART A

PREPARATION

The Client

4. Counsel claims 20 hours for taking instructions from the claimant on numerous occasions and provided audience to the claimant on diverse dates briefing them on the progress and obtaining evidence. This included interviewing the claimant's manager and staff, getting the relevant documents from them including letters, invoices and other pertinent

documents. Counsel also corresponded with the court and officials of the defendant. However, there is no sufficient evidence to substantiate the 20 hours claimed. The court has gone through the whole file and the bill of costs over and over again to quest for evidence that supports that Counsel spent 20 hours on this and has found none. Nevertheless, the court is aware that Counsel attended to the client and obtained instructions which in the absence of substantial evidence, the court is of the considered view that it did not take 20 hours of Counsel for the claimant. The court therefore finds that 5 hours is reasonable and accordingly awards K200,000.00.

Documents

5. Counsel claims 1 hour for preparing a demand letter. However the said letter is not that long and the content is also not much. 45 minutes is reasonable and the court awards/ K30,000.00. Counsel also claims 5 hours for preparing initial directions, writ of summons, statement of claim and list of documents. The court has perused the said documents and in the court's assessment, the documents could not take 5 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 5 hours is on the higher side. 2 hours is reasonable and accordingly awards K80,000.00.

6. Counsel further claims 2 hours for preparing an ex parte application for default judgment, sworn statement in support and draft order of default judgment. The court has gone through the documents and has noted that each document is just a page and there is not much content. It is therefore the court's considered view that an hour is reasonable, and accordingly, the court awards K40,000.00. Counsel also claims 30 minutes for preparing a letter to the Attorney General dated 1st December, 2020. This is reasonable and the court awards K20,000.00. Counsel furthermore claims 30 minutes for preparing a notice of appointment to assess interest and damages. 15 minutes is reasonable and accordingly, the court awards K10,000.00. Counsel also claims 5 hours for preparing witness statement of Chimwemwe Phiri, sworn statement verifying statement and skeleton arguments on assessment of interest and damages. Considering the said documents, 3 hours is reasonable

and the court accordingly awards K120,000.00. The 30 minutes claimed for preparing an order on assessment of interest and damages is reasonable, and accordingly, the court awards K20,000.00.

7. Counsel also claims 2.5 hours for perusing through and considering a total of 45 documents related to the claimant's dealings with the defendant invoices for the services subject of the litigation. However, the court has not had a chance to go through all the 45 documents because not all of them are on court file. The court therefore awards 2 hours which translates to K80,000.00.

Research

8. Counsel claims 15.5 hours for considering Chitty on Contract 27th Edition, Vol. 1, Bullen and Leake, Mc Gregor on damages, Charlie's Principles of Mercantile Law (Revised Edition) Westwood J. London, Court (High Court) (Civil Procedure) Rules, 2017 (CPR) and Courts Act. The court has failed to appreciate why counsel would spend 5 hours on the CPR and 4 hours on Chitty on Contract when it was important to select only relevant parts to read. The 15.5 hours claimed is unjustifiable. 6 hours is reasonable which translates to K240,000.00.
9. Counsel further claims 7.5 hours for considering a total of five cases. The said cases are *Hadley v Baxendale* (1854) 9 Exch. 341, *Victoria Laundry (Windsor) Ltd v Newman Industries Ltd* [1949] 2 K.B. 528, *Unipro (Africa) Ltd v Trans Nacala t/a Union Transport* Civil Cause No. 499 of 2002, *Gombwa v City Motors Ltd* [471996] MLR 390, *Energem Petroleum Ltd v Mr. Baisi* Commercial Case No. 219 of 2016 (unreported). The court finds this reasonable and awards K300,000.00.

PART B

General Care and Conduct

10. Counsel claims 80% of part A. he submitted that this was a very important case to the claimant in that his business was seriously affected by the breach of the defendant due to reduced capital. Therefore a lot of care and vigilance was required to achieve the required

results and to ensure that the various applications and the assessment of damages were within the rules of practice and procedure. The court is of the considered view that there is nothing new or exceptional about the present case. In the case of *Kavwenje v Chilambe* 1996 MLR 113 it was stated that for ordinary cases, care and conduct should be between 50% and 60%. I find that 60% is reasonable considering that there is nothing complex in the proceedings and the matter was short-lived because a default judgment was obtained and it never went for trial. The 60% translates to K684,000.00.

PART C

Court Attendance

11. Counsel claims 8 hours for attending court on filing initial directions, writ of summons, statement of claim and list of documents; ex parte application for default judgment, sworn statement in support and draft order of default judgment; notice of appointment to assess interest and damages; witness statement of Chimwemwe Phiri, sworn statement verifying statement and skeleton arguments on assessment of interest and damages; and order on assessment of interest and damages. However, the court is of the considered view that these are messengerial works that do not need to be billed by counsel and are considered under disbursements. This was also observed in the case of *Shazeb Khan and Samina Shazeb Khan v Minister of Homeland Security and Others* Civil Cause Number 249 of 2021 where his Honour Nkhata stated the following:

“I hold the view that where counsel undertakes to go around court registries filing documents he is basically on a frolic of his own. The same ought not to attract the lawyer’s expense rate. It ought to be covered under disbursements. I shall disregard the same.”

12. Similarly, in the present case, the court does not appreciate why counsel is claiming 8 hours on filing documents. Clearly he went on a frolic of his own and it cannot attract his expense rate. The court therefore makes no award on this.

13. Counsel also claims 3 hours for attending court on assessment of damages and interest. However, the court has noted that counsel was the only one on this day as the defendant was absent. The claimant's witness was not even cross-examined on this day. Considering the court record, the court is not satisfied that the proceedings on this day took 3 hours. Counsel did not even give any explanation for the said 3 hours. The court finds 30 minutes to be reasonable, and accordingly award K20,000.00.

Brief Fees

14. Counsel claims K1,000,000.00 for brief fees. Order 31, rule 10 of the CPR provides as follows:

“(1) A legal practitioner or his law firm shall be entitled to an instruction fee and not a brief fee where he or his firm have had instructions to act for a party from the commencement of a proceeding to trial. There is therefore no basis for counsel to make such a claim. As such, the court will not award this claim.

(2) the court may allow a legal practitioner or his law firm to be entitled to a single fee

(3) A legal practitioner or his law firm shall be entitled to a brief fee where he or his firm have instructions from another legal practitioner or firm to appear on behalf of that legal practitioner or firm at trial.”

15. It is clear from the foregoing that counsel's claim for brief fees is baseless considering that counsel had instructions to act for the claimant from the commencement of the proceedings. Counsel did not have instructions from another legal practitioner or firm to appear on behalf of them. The court therefore makes no award on this claim.

Travelling and Waiting

16. Counsel claims 15 hours on all court attendances when he travelled to and from his office to the High Court. Counsel did not particularize the court attendances. The 15 hours is on the higher side in the court's considered view bearing in mind that the matter was short lived and did not even go to trial. 5 hours is reasonable which translates to K200,000.00.

Care and Conduct

17. Counsel claims 80% care and conduct for part C. However, as already stated above, the court is of the considered view that 60% is reasonable. The court therefore awards K132,000.00.

PART D

Taxation

18. Counsel claims 15 hours for preparing the bill of costs for taxation and attending court for the same. The 15 hours is on the higher side in the considered view of the court. The said bill of costs does not contain a lot of pages. Court attendance for the taxation of costs also did not take a long time since it was unopposed. The court record also shows that it was only for 12 minutes. The court is of the view that 3 hours is reasonable for all this, and accordingly the court awards K120,000.00.
19. Counsel further claims 1 hour for preparing notice of appointment for taxation of costs and notice of adjournment. The court is of the considered view that this not reasonable. 15 minutes is reasonable, and accordingly, the court awards K10,000.00.
20. Counsel claims 80% for care and conduct. However, as already stated above, the court is of the considered view that 60% is reasonable, and accordingly awards K78,000.00.
21. Counsel also claims 8 hours for travelling and waiting. He submitted that when he travelled from his chambers, he covered a distance of 10km to file the bill of taxation and during the hearing of taxation and waiting for his turn to appear before the taxation master. The court finds this unreasonable. 1 hour is proportionate. As such the court awards K40,000.00.

PART E

Disbursements

22. Counsel claims K169,000.00 for filling fees, K40,000.00 for photocopying and stationery, and K100,000.00 for airtime, a total of K309,000.00. There is however no sufficient evidence to substantiate the K40,000.00 for photocopying and stationery and K100,000.00

for airtime. The court is of the view that K80,000.00 is reasonable for both. As such a total of K249,000.00 is awarded for this.

SUMMARY

Part A	K1, 140,000.00
Part B	K684,000.00
Part C	K352,000.00
Part D	K248,000.00
16.5% VAT	K399,960.00
Disbursements	K249,000.00
Total	K3,072,960.00

Delivered in Chambers this 23rd day of May 2023,



F.M. Msekandiana
Assistant Registrar