



IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

Blantyre Registry

Commercial Case No. 240 of 2016

(Before Honourable Justice Sikwese)

BETWEEN

YI MING LIMITED.....CLAIMANT

AND

CAI LIANG YOU t/a HUA YOU INVESTMENTS.....DEFENDANT

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

Mr. J. Kamkwasi, Of Counsel for the Claimant (paying costs)

Mr. C. Ghambi, Of Counsel for the Defendant (receiving costs)

Mr. Y. Makonyo, Court Clerk

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Sankhulani, AR

RULING ON REVIEW OF PARTY AND PARTY COSTS

Introduction

This ruling follows hearing that was held on the Defendant's application for review of taxation of party and party costs that had been done earlier on in the present matter.

Background Information

The Claimant commenced the present action against the Defendant.

Eventually, trial was held and judgment was delivered, by which the action was dismissed with costs.

Accordingly, Defendant took out notice of appointment to tax costs to which was attached the original bill of costs herein.

There were two bills of costs herein, the original one and a supplementary one. The latter came about because on one occasion hearing of taxation proceedings was adjourned at the instance of the Claimant. The adjournment was granted and the Claimant was condemned in costs of that day's appearance. Hence the Defendant's filing of the supplementary bill of costs.

Hearing of the taxation proceedings was followed by an order on taxation that was delivered on 22nd August, 2018. Being unhappy with that order on taxation, the Defendant filed an application for review of the taxation. Alongside the application for review, the Defendant filed grounds of objections to the said taxation. In summary, by those objections, the Defendant seeks to have reviewed the hourly rate adopted, the percentage of care and conduct awarded, the amount of money awarded on accommodation, fuel, clerical and secretarial expenses and amount of time awarded on all items of the two bills of costs herein.

The present application (for review) was heard in the presence of both sides hereto. The matter was then adjourned for ruling. Hence this ruling.

Issues for Determination herein

- Whether Counsel's hourly rate of K10,000 adopted herein ought to be reviewed upwards.
- Whether the percentage of care and conduct allowed herein ought to be reviewed upwards.
- Whether the award on accommodation made herein ought to be reviewed upwards.
- Whether the award on fuel made herein ought to be reviewed upwards.
- Whether the award on clerical and secretarial services ought to be reviewed upwards.
- Whether the amount of time allowed on all items ought to be reviewed upwards.

Whether Counsel's Hourly Rate of K10,000 Adopted Herein Ought to be Reviewed Upwards

The first ground on which the Defendant wants the hourly rate reviewed is that, by an agreement between it and its legal practitioner, the hourly rate was fixed at K30,000. The agreement was produced before this Court. I am, however, unable to be persuaded in this regard. The reason is simple. That agreement applies to legal practitioner-and-own client costs, and not the party-and-party costs herein. In fact, there is no law known to this Court to the effect that whatever hourly rate is claimed by counsel in legal practitioner-and-own client costs and accepted by the client should automatically be accepted by the court in party-and-party costs.

The second ground on which the Defendant wants the hourly rate reviewed is that the matter was complicated in that Malawian jurisprudence on area of law dealt with in this matter is not well developed, such that there was a great deal of reliance on foreign authorities. Again, I find this argument not to be tenable. Firstly, in adopting the hourly rate of K10,000, this Court took into account 'all the circumstances of this matter' which, in my opinion, includes the complexity of the matter in terms of **Order 31, rule 5(3)(d) of the Courts (High Court) (Civil Procedure) Rules 2017**. Secondly, all the foreign authorities listed in the original bill of costs were considered and the attendant costs were taxed. I, therefore, find no merit in the above argument.

The third ground on which the Defendant wants the hourly rate reviewed is that the case was very important to it as the Claimant was seeking to have its entire business closed. This argument is, again, untenable. The reason is that, as I have held above, this Court took into account 'all the circumstances of this matter' which, in my view, includes the importance of the

matter to all the parties in terms of **Order 31, rule 5(3)(c) of the Courts (High Court) (Civil Procedure) Rules 2017**. Accordingly, I also find no merit in the above argument.

In view of the foregoing findings and reasoning, Counsel's hourly rate of K10,000 adopted herein ought not to be reviewed upwards. I so opine and find. The Defendant's objection in this regard is overruled, accordingly.

Whether the Percentage of Care and Conduct Allowed Herein Ought to be Reviewed Upwards

The Defendant seeks an upward review of the percentage of care and conduct allowed herein. This, according to the Defendant, should be so considering the complexity of the matter.

This Court, in allowing the percentage of care and conduct, did take into account the skill, effort and responsibility that was involved in this matter in terms of **Order 31, rule 5(3)(e) of the Courts (High Court) (Civil Procedure) Rules 2017**. I find the Defendant to have failed to make its case for an upward review of the percentage of care and conduct that was allowed herein.

Therefore, I finally find that the percentage of care and conduct that was allowed herein ought not to be reviewed upwards. The Defendant's objection in this regard is overruled, accordingly.

Whether the Award on Accommodation Made Herein Ought to be Reviewed Upwards

The Defendant seeks to have reviewed upwards accommodation which was awarded at the rate of K20,000 per night. This Court was, in this regard, called upon to have regard to the status of Counsel.

In my opinion, it is unrealistic to expect Counsel to find befitting accommodation in the city at the rate of K20,000 per night. An accommodation rate of K50,000 per night in the city would be reasonable and befitting of Counsel. I so opine.

It is my finding, therefore, that the accommodation rate of K20,000 per night awarded herein ought to be reviewed upwards to K50,000 per night. The Defendant's objection in this regard is upheld, accordingly.

Whether the Award on Fuel Made Herein Ought to be Reviewed Upwards

The Defendant seeks to have reviewed upwards fuel which was awarded at the rate of K80,000 per round trip for the original bill and K90,000 for the supplementary bill. This Court was, in this regard, called upon to bear in mind that Counsel, who is based in Mzuzu City, uses a Toyota Progress whose engine capacity is 3000 litres and which uses more than K160,000 per round trip.

I am, however, unable to be persuaded to review what was awarded on fuel. I furnish my reasons. On review of costs, the court may receive further evidence (**Order 31, rule 17(4) of the Courts (High Court) (Civil Procedure) Rules 2017**). Thus the Defendant had all the opportunity to present to this court receipts for fuel recently purchased, if the earlier ones had been lost. However, that was not done. Therefore, I find the Defendant to have failed to make its case for an upward review of the award that was made on fuel herein.

Therefore, I finally find that the award on fuel that was made herein ought not to be reviewed upwards. The Defendant's objection in this regard is overruled, accordingly.

Whether the Award on Clerical and Secretarial Services Ought to be Reviewed Upwards

The Defendant also seeks to have reviewed the award that was made on clerical and secretarial services.

However, I am unable to make an upward review in this regard. Why do I opine thus? A party seeking review of taxation is supposed to state the nature of objections and to provide grounds for those objections (see **Order 31, rule 17(4) of the Courts (High Court) (Civil Procedure) Rules 2017**). In the matter at hand, the Defendant did not provide any grounds for seeking an upward review. I, therefore, find the Defendant to have failed to make its case for an upward review of the award that was made herein on clerical and secretarial services.

Therefore, I finally find that the award on clerical and secretarial services that was made herein ought not to be reviewed upwards. The Defendant's objection in this regard is overruled, accordingly.

Whether the Amount of Time Allowed on All Items Ought to be Reviewed Upwards

By the present application, the Defendant also seeks to have reviewed the amount of time allowed on all items.

However, I am unable to make an upward review in this regard. I provide my reasons. As it has been held above, a party seeking review of taxation is supposed to state the nature of objections and to provide grounds for those objections (**Order 31, rule 17(4) of the Courts (High Court) (Civil Procedure) Rules 2017**). Coming to the present matter, the Defendant did not provide any grounds for seeking an upward review. It only said the time allowed on all items was greatly reduced, without stating why the time may be said to have been greatly reduced in the circumstances of the present matter. I, therefore, find the Defendant to have failed to make its case for an upward review in this regard.

Therefore, I finally find that the time that was allowed on all items of the two bills herein ought not to be reviewed upwards. Accordingly, the Defendant's objection in this regard is also overruled.

Final Order

In view of the foregoing findings and reasoning, the present application is allowed only as regards the issue of accommodation as above held. The application fails on all other aspects.

Accordingly, this Court having done the necessary simple mathematics, it is ordered that party and party costs awarded earlier on herein **BE, AND ARE HEREBY, REVIEWED** from **K3,544,036.53 to K4,054,036.53**.

The Defendant shall file, for issuing, a certificate of taxation reflecting the present award.

Each party shall bear its own costs of the present application.

Delivered in Chambers at Blantyre Registry of the Commercial Division of the High Court this 8th day of October 2018.

The seal of the High Court of Malawi is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text 'THE HIGH COURT OF MALAWI'. Below the seal, the name 'D.H. SANKHULANI' is printed in bold, and below that, the title 'ASSISTANT REGISTRAR' is printed in bold and underlined.

D.H. SANKHULANI
ASSISTANT REGISTRAR