

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 341 of 2014

BETWEEN : JOSHIKA SAMUJH of 14 Totoya Street, Samabula, Suva, Fiji, Legal Tribunal.

FIRST PLAINTIFF

BETWEEN : SAROJINI SAMUJH of Flat 1, 21 Kikau Street, Samabula, Suva, Fiji, Domestic Duties.

SECOND PLAINTIFF

BETWEEN : ASHWANI ASHIKA LAL of Flat 1, 21 Kikau Street, Samabula, Suva, Fiji, Domestic Duties.

THIRD PLAINTIFF

AND : ASHWIN AVINESH RAJ Flat 1, 21 Kikau Street, Samabula, Suva, Fiji, Project Manager.

FIRST DEFENDANT

AND : JAMILA BEGUM Flat 1, 21 Kikau Street, Samabula, Suva, Fiji, Project Manager.

SECOND DEFENDANT

AND : JAI RAJ Flat 1, 21 Kikau Street, Samabula, Suva, Fiji, Project Manager.

THIRD DEFENDANT

BEFORE : Master Vishwa Datt Sharma

COUNSEL : Mr. Ritesh Naidu - for the Plaintiff
Mr. Nilesh Lajendra - for the Defendant

Date of Ruling : 08th March, 2018

RULING

*[Defendant's Bill of Cost for Taxation made pursuant to Order 62
Rule 10 and 15 of the High Court Rules, 1988]*

A. APPLICATION

1. This is the Defendants Summons filed on 18th June, 2015 seeking the following order-
 - (i) *That the Defendants be granted costs on an indemnity basis against the Plaintiffs in respect of the costs incurred by the Defendants in the sum of \$10,386-03 for defending the Summons dated 28th November, 2014 and filed on 02nd December, 2014 by the Plaintiffs which was withdrawn on 16th March, 2015.*
 - (ii) *Costs of this application.*
 - (iii) *Such further and or/other orders the court may deem just and appropriate in the circumstances.*
2. This application is made pursuant to *Order 62 Rule 10 and 15 of the High Court Rules, 1988* and supported by the grounds contained in the Affidavit of Ashwin Avinesh Raj.
3. The Defendants were prompted to file this application seeking indemnity costs after the Plaintiff decided to withdraw their Injunction application filed against the Defendants on 02nd December, 2014.

B. THE LAW

4. *Order 62 of the High Court Rules, 1988 deals with costs.*
5. *Order 62 Rule 10 deals with when a party may sign judgment for costs without an order (O.62, r.10)*

10.-(1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made by him therein against any defendant, the defendant may tax his costs of the action or his costs occasioned by the matter withdrawn, as the case maybe, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them.
6. *Order 62 Rule 15 deals with Extension, etc., of time (O.62, r.15)*
 5. *Halsbury's Laws of England/CIVIL PROCEDURE (VOLUME 11 (2009) 5TH EDITION, PARAS 1-1108; VOLUME 12 (2009) 5TH EDITION, PARAS 1109-1836)/26. COSTS/ (2) GENERAL RULES ABOUT COSTS/ (ii) Assessment of Costs/1747.*

C. BACKGROUND

7. The Plaintiff instituted the substantive action on 02nd December, 2014 against the Defendants by a Writ of Summons and sought for various orders therein. Simultaneously with this Writ action, the Plaintiff also filed a Summons coupled with an affidavit in support seeking an order for an interim injunction.

8. The Summons for Interim Injunction was assigned with 04th December, 2014 as the returnable date of the Summons.
9. On 04th December, 2014, the Court granted the Plaintiffs time to serve the 2nd and 3rd Defendants and granted time to the 1st Defendant to file his affidavit in opposition and Plaintiff to file and serve his reply thereafter. The matter was then adjourned to 25th February, 2015.
10. This Court then re-listed the matter on 02nd February, 2015 and vacated the adjournment date of 25th February, 2015 and reassigned 16th March, 2015 @ 9.30 am. The reason for vacating the adjournment date was that the court had already fixed a trial on the 25th February, 2015.
11. When the matter came before the Court on 16th March, 2015, the Plaintiff's Counsel withdrew the summons filed on 02nd December, 2014.
12. Accordingly, the court proceeded to strike off the Summons filed on 02nd December, 2014 and made a further order in terms of the cost issue to be assessed if not agreed upon.
13. Thus, the current application by Summons filed by the Defendants seeking for taxation for costs.

ANALYSIS and DETERMINATION

14. The Defendants presented and filed a Bill of Cost for Taxation Application against the Plaintiff on 18th June, 2015 and sought an order for an award \$10,386-03 costs.
15. The Plaintiff filed an Affidavit in Reply to the Defendant's application for Taxation of costs on 19th August, 2015. In their written submissions, the Plaintiffs are seek an award of costs in the gross sum in the range of \$500-\$1,000.
16. The application was scheduled for hearing on 03rd September, 2015.
17. Both parties filed their respective written submissions and accordingly argued the application.
18. Having considered the Bill of Cost and the respective submissions of the parties, I now proceed with my ruling as follows.
19. On the hearing date of the 16th March, 2015 the Plaintiff's Counsel withdrew the pending Summons filed on 02nd December, 2015.

20. The Defence Counsel had no objection to the withdrawal of the application but sought for costs on indemnity basis.
21. This Court made an order **striking out the summons** but noted that the issue of **costs to be assessed if not agreed upon**.
22. The Counsel for the **Defendants** submitted in his **Taxation** application a table setting out the **Defendant's** schedule of costs. The **Bill of Cost** sets out a detailed breakdown of the work undertaken by the Defendants in defending the Plaintiff's Summons for injunction.
23. According to the Defendants, this legal cost is now the Defendants responsibility to clear since that has been unnecessarily incurred as a result of the conduct of the Plaintiffs in the injunction application.
24. The Plaintiff's Counsel opposed the **Bill of Cost** filed by the Defendant.
25. The Defendants did not give prior notice to the Plaintiffs that they will be seeking costs on an indemnity basis on the interlocutory injunction application.
26. It was necessary for the Defendants to put the Plaintiff's on notice that they will be seeking indemnity costs against the Plaintiffs on the interlocutory injunction.
27. I have also made particular reference to the following-
 - Summons for injunction filed on 02nd December, 2014 and withdrawn on 16th March, 2015. If Court had not vacated the hearing date of 25th February, 2015 and re-scheduling to the 16th March, 2015, then it is possible the withdrawal of Summons would have taken place on 25th February, 2015; (Within a period of 2 months' time) and reduced the costs;
 - Further the Defendants Counsel was informed at least 4 days prior to the hearing about the withdrawal of Summons;
 - Court also bears in mind that the substantive vacant possession was dealt with by the Plaintiff when she vacated the premises resulting in the withdrawal of the Interlocutory Injunction application/Summons as well;
 - Defence Counsel's legal fees per hour of \$300 has been granted concession to \$175 per hour;
28. Therefore, the cost awarded to the Defendants in these circumstances should be minimised calculated on a standard basis.
29. The purpose of indemnity costs is not penal but compensatory.

30. **Order 62 Rule 7 (4) of the High Court (Amendment) Rules, 1988** allows a Court to award a gross sum in lieu of taxed costs. *South Pacific Recording v Yates* FCA, 39 of 1996 (14 November, 1997).
31. The main purpose behind the power to award a gross sum instead of taxed costs is to avoid the expense, delay and aggravation involved in protracted litigation arising out of taxation.
32. **Order 62 rule 12 (3)** provides as follows-
- "Where the court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on basis other than the standard basis or the indemnity basis, the costs shall be taxed on the standard basis".
33. Referring to **Order 62 Rule 12 (3)**, Singh J in *Credit Corporation (Fiji) Limited v Cabella Pacific Construction (Fiji) Limited and Another*, High Court, Suva Civil Action No. HBC 560 of 2005 (09 May 2008) and "where the order is silent as to the basis of costs then its costs are to be calculated on the standard basis.
34. Upon the perusal of the Judges Minutes of 16th March, 2015 it appears that the order does not specify the basis of the taxation of cost.
35. Hence the basis of taxation of this application is done on the **standard basis**.
36. **Order 62 r 12 (1)** has provided the basis for taxation, where it states as follows;
- "On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these rules the term "the standard basis" in relation to the taxation of costs shall be construed accordingly"*.
37. Taking into consideration the provisions of **Order 62 r 10, 12 and 13** together with the written submissions and the oral arguments of the parties, I award the following costs in respect of the **Bill of cost** filed by the Defendants against the Plaintiffs at the **Discretion of the Taxing Officer**.
- 38.

Particulars	Hours Spent	Hours Allowed
To all our professional attendances herein; receiving instructions from you together with Writ of Summons, Acknowledgement of Service, Summons for Interim Injunction, Affidavit in Support letter dated 11.11.14 from Naidu Law, letter from you to the Chief Registrar dated 20.11.14, Notice to Quit issued to Ms Joshika Samujh & Ashika Ashwani Lal; perusing the same; noting diary;	3 hrs @ \$175 = \$525	\$350

Meeting with you on 03.12.14 discussing the matter;	1 hr @ \$175 = \$175	\$87.50
Receiving & perusing email from you on 03.12.14 providing instructions for us to appear on your behalf; emailing you on 03.12.14 advising that a report will be sent after our court appearance;	10mins @\$175 = \$29.17	\$29.17
Appearing in Court on 04.12.14; we informed the Court that the injunction application is opposed and sought time to file Affidavit in Opposition; Court noted our submissions and gave directions for filing of Affidavit's; matter adjourned' to 25.02.15 for hearing;	45mins @\$175 = \$131.25	\$87.50
Reporting to you;	30mins @ \$175 = \$87.50	\$29.17
Finalizing and filing the same in High Court; attending to serve Notice of Appointment. of Solicitors to Messrs Naidu Law; reporting to you;	20mins @ \$175 = \$58.33	\$58.33
Emailing you on 18.12.14 following up on your responses to Ms Joshika Samujh'S Affidavit receiving & perusing email from you on 19.12.14 advising that your responses to the Affidavit almost done; noting file;	15mins @ \$175 = \$43.75	\$43.75
Receiving & perusing your responses to Joshika Samujh's Affidavit and related correspondences by way of attachment by email on 19.12.14 together with relevant annexures; analyzing and making notes;	4hrs @ \$175 = \$700	\$350
Receiving & perusing email from you on 11.01.15 advising your concerns and the retrogressive developments on your property over the weekend;	20mins @ \$175 = \$58.33	\$58.33
Drafting letter to Messrs Naidu Law; forwarding the draft to, you for your approval; receiving your comments; finalizing and forwarding the letter to Messrs Naidu Law on 13.01.15;	1hr @ \$175 = \$175	\$87.50
Receiving & perusing letter of 16.01.15 from Messrs Naidu Law in regards to civil action; making notes;' reporting to you;	30mins @ \$175 = \$87.50	\$29.17
Receiving & perusing Notice of Adjournment from High Court Civil Registry advising that. the matter has been vacated to 02.02.15 for mention to fix a hearing date; noting diary; reporting to you;	10mins @ \$175 = \$29.17	\$29.17

Perusing the Plaintiffs' 'Affidavit in Support, your response; analyzing same; conducting research on case materials; analyzing the relevant case Materials; making notes;	4hrs @ \$175 = \$700	\$175
Drafting Affidavit in Opposition;	10mins @ \$175 = \$29.17	\$29.17
Emailing you on 28.01.15 advising that we are finalizing the draft Affidavit in Opposition and also requesting a copy of loan offer letter', receiving & perusing email from you on 28.01.15 advising that you will forward loan offer letter;	10mins @ \$175 = \$29.17	\$29.17
Further amending and expanding draft Affidavit in Opposition; emailing you on 30.01.15 draft Affidavit in Opposition for your approval;	1 ½ hr @ \$175 = \$262.50	\$87.50
Appearing in Court on 02.02.15; the Court informed us that 25.02.15 is not a suitable date for hearing; Court proceeded to fix a new hearing date; we sought additional time to file Affidavit in Opposition; application granted; matter adjourned to 16.03.15 for hearing;	45mins @ \$175 = \$131.25	\$87.50
reporting to you;	30mins @ \$175 = \$87.50	\$29.17
Getting your approval on draft, Affidavit in Opposition; attending to finalizing the same; sorting and compiling the annexures and making 3 copies of the same; binding and arranging execution of Affidavit in Opposition with you;	30mins @ \$175 = \$87.50	\$29.17
Filing of Affidavit in Opposition in High Court and serving the same to Messrs Naidu Law; reporting to you; receiving & perusing email from you on 09.02.15 acknowledging the same;	20mins @ \$175 = \$58.33	\$58.33
Receiving & perusing email from you on 24.02.15 making notes of issues to be raised in the Supplementary Affidavit;	20mins @ \$175 = \$58.33	\$29.17
Receiving & perusing letter on 05.03.15 from Messrs Naidu Law requesting your consent for an extension of time to file & serve the Plaintiff's Affidavit in Reply; liaising with you regarding the same;	10mins @ \$175 = \$29.17	\$29.17
Writing to Messrs Naidu Law on 05.03.15 informing them that we awaiting your instructions regarding their request;	5mins @ \$175 = \$14.58	\$14.58
Receiving your consent for extension of time; Writing to Messrs Naidu Law on 05.03.15 for consent to late filing;	10mins @ \$175 = \$29.17	\$29.17

Receiving & perusing Affidavit in Reply of the Plaintiffs;	4hrs @ \$175 = \$700	\$87.50
Meeting with you with a view of discussing the Plaintiffs Affidavit in Reply;	1hr @ \$175 = =\$175	\$87.50
Preparing Supplementary Affidavit; forwarding the same to you for your perusal and comments;	30mins @ \$175 = \$87.50	\$87.50
Receiving your comments; finalizing the Supplementary Affidavit with you; filing and service of the Supplementary Affidavit; compiling annexures (3 sets);	20mins @ \$175 = \$58.33	\$58.33
Conducting research, obtaining case authorities; analyzing same; making notes;	2hrs @ \$175 = \$350	\$175
Drafting Submissions;	10mins @ \$175 = \$29.17	\$29.17
Receiving and perusing letter from Messrs Naidu Law on 12.03.15 advising that they will not pursue the injunction application; forwarding the letter to you; discussing the matter with you over the phone;	15mins @ \$175 = \$43.75	\$43.75
Appearing in court on 16.03.15; we informed the Court that the reason advanced is bit strange and to support this proposition we made Reference to a number of factors; Court noted our position and made orders that the Summons is struck out and issue of cost to be agreed between both parties if not agreed to be taxed;	45mins @ \$175 = \$131.25	\$87.50
Reporting to you and to all our incidental attendances herein.	30mins @ \$175 = =\$87.50	\$87.50
Total Time Spent		As above
Our fees (hourly rate of \$300.00 discounted to \$175.00)		As above
Disbursements		As above
Filing Fees --- Notice of Appointment of Solicitors Filing Fees - Affidavit in Opposition Forms & Photocopy (3 sets of Affidavit in Opposition) & Forms & Photocopy (3 sets of Supplementary Affidavit together with other photocopies of material) Telephone & Fax		

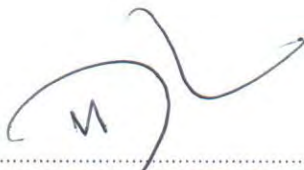
Office Bureau		As above
VAT (9%)		\$234.94
Total		\$2845.38

Certificate

39. I hereby certify that the Nominal Defendant's Bill of Costs was taxed pursuant to Order 62 of the High Court Rules.
40. The taxed costs were calculated using the fees prescribed under Part 1 of Appendix 4 of the High Court Rules.
41. Costs taxed and allowed at: \$2845.38

DATED AT SUVA THIS 08TH DAY OF MARCH 2018




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MR VISHWA DATT SHARMA
Master of the High Court

cc. *Mr. Ritesh Naidu of Naidu Law, Suva*
Mr. Nilesh Lajendra of Lajendra Law, Suva