MINISTER OF LANDS AND ANOR (Appellants, Defendants) v. THE HON. TUITA (Respondent, Plaintiff)

This was an appeal from a taxation of costs made by the Judge of the Supreme Court (Hunter J.) in the above case (reported at Page.....) by order of the Privy Council (Hommett C.J.). The Privy Council held that there had been no taxation because there had ben no scale of costs laid down and therefore costs could not be taxed. Faced with this dilemma the Privy Council itself assesed the costs.

The judgment, delivered on 12th December, 1958 is as follows :

On 23rd April, 1956, judgment was given by the Supreme Court for Tuita against both the Defendants for a total of £967 15/0. Tu'akoi for Tuita asked for £302/3/0 costs but at the request of the Defence an order was made for costs to be taxed.

Both sides appealed to the Privy Council.

On 28th January, 1957, the Privy Council varied the decision of the Supreme Court. Judgment was given for the Premier against Tuita with no order as to costs and judgment against the Minister of Lands was reduced to one for £87/15/0 and costs. Mr. Harris for the Minister of Lands asked for an order that costs be taxed and this was granted.

It was not pointed out at the time that in fact there is no scale of costs laid down by the Supreme Court or the Privy Council. If we had realised this we would not have ordered costs to be taxed.

The two lawyers for Tuita presented to the Supreme Court separate accounts of their fees, claiming a total of £273/12/6 costs. In these accounts no attempt has been made to show separately disbursements and profit costs and none of the costs, save six letters for which a total of £23/2/0 was claimed, have been itemised separately. In fact these accounts cannot be regarded as an itemised Bill of costs at all.

The Supreme Court has allowed the costs of Tuita at a totol of £165/9/0.

The Crown Solicitor for the Minister of Lands has now appealed to the Privy Council for an order declaring that the costs of this matter have not been duly taxed.

It is clear that no appeal lies from a taxation of costs by a Judge by virtue of the provision of the Supreme Court Act Cap. 6 Section 17 (9). What has to be decided therefore, is whether there has been a taxation of costs in this case or not.

Before a legal practitioner's costs can be taxed there must, in our view, be a scale of costs in existence setting out the maximum costs allowable for each item of work, against which the bill of

costs may be taxed. Further, the legal practitioner must deliver a detailed and itemised bill of costs distinguishing his disbursements from his profit costs. Again, no items of profit costs can be allowed unless they are provided for in the scale laid down by the Rules of Court. Out of pocket expenses must wherever possible be supported by receipts.

The learned Judge of the Supreme Court has been placed in the embarrassing position of being required by the Privy Council to tax costs when in fact it is not possible to tax costs owing to the absence of any scale of costs having been laid down against which they can be taxed.

We regret that he has been placed in such a position and we consider he took a reasonable course in assessing the costs of Tuita. If the parties had accepted his assessment and the costs had been paid that would have been an end of the matter.

The Minister of Lands has, however, objected to this Assessment and we agree with this contention that there has in fact been no taxation of costs.

We have considered what should be done in these circumstances. As the order stands, Tuita cannot recover any costs at all against the Minister of Lands since it is not possible to tax his costs in the absence of a scale of costs having been provided by the Rules of Court. Our order is not therefore possible of fulfilment.

We have heard both sides on this matter and since they have no objection to our doing so, we have decided to vary our original order that costs shall be taxed to the order that the costs be assessed and we shall assess the costs ourselves.

In the assessment of costs we are of the opinion that the following considerations amongst others, must be borne in mind, namely —

1) the extent to which a Plaintiff has succeeded in his claim;

2) the extent to which the Defendant has succeeded in his defence;

3) the amount of necessary work involved in the case. Unless there are special reasons for ordering otherwise the costs of only one lawyer will be allowed to each party; and

4) the need for the costs to bear some reasonable proportion to the amount adjudged due to the successful party.

In this case the Plaintiff originally claimed £1,200 and succeeded in the Court below to the extent of £967/15/0. His lawyer then asked for costs amounting to £302. In this Court the Plaintiff has failed against one Defendant entirely and has succeeded against the other only to the extent of £87/15/0. His lawyer

asked for £273 costs when they were to be taxed and now asks that his costs be assessed at £165. He says his disbursements amounts to £11 odd, but he has produced no receipts to support this.

In our opinion Tuita is not entitled to full costs on his claim since he was unsuccessful in respect of a large part of his claim and failed entirely against one of the Defendants. He is entitled to costs only in respect of that part of his claim in which he was successful, namely £87/15/0.

We appreciate that this was a long case and involved matters of law of some importance. Had this not been so we would not have been disposed to allow more than £25 in respect of costs.

Having regard to all the circumstances, however, we assess the costs of Tuita in respect of his successful claim of £87/15/0 against the Minister of Lands at a total of £63/0/0 and our original order is therefore varied accordingly.