

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 235 of 2008

BETWEEN : NARAYAN NAIR of 2 Namako Place, Stage 2, Tacirua, Suva, Fiji, Librarian.

PLAINTIFF
(Defendant)

AND : RANJANA NAIR of 2 Namako Place, Stage 2, Tacirua, Suva, Fiji, Librarian.

DEFENDANT
(Applicant)

Before : Master Vishwa Datt Sharma

Counsel : Mr. Varun Prasad for the Plaintiff/Defendant
: Mr Ramesh Prakash for the Defendant/Applicant

Date of Hearing : 22nd October, 2015
Date of Ruling : 23rd September, 2016

RULING

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

INTRODUCTION

1. The **Defendant** filed this application for **taxation of cost** pursuant to the order made on 17th January, 2013.

BACKGROUND

2. The Plaintiff instituted this action by **way of a Summons** coupled with an **affidavit in Support** of Narain Nair against the Defendant, Ranjana Nair on 28th July, 2008.
3. This application sought for the Sale of the Defendant's share in the matrimonial property to the Plaintiff.
4. An **Affidavit in Response** was filed on 01st August, 2008.
5. An **Affidavit in Reply** was filed by the Defendant on 16th September, 2008.
6. Henceforth, no further pleadings or applications were filed and the High Court Civil Registry issued a notice pursuant to **Order 25 Rule 9 and Order 3 Rule 5** of the High Court Rules 1988 on 08th October, 2012.
7. This court upon hearing both Counsels representing the Parties to this proceedings, on 17th January, 2013 made the following orders -
 - (i) That the action is struck off; and
 - (ii) Costs of the action to be taxed if not agreed.

ANALYSIS and DETERMINATION

8. The Defendant presented and filed a **Bill of Cost for Taxation Application** against the Plaintiff on 21st May, 2013.
9. The Plaintiff filed an **Affidavit in Opposition** to the Defendant's application for Taxation of costs on 12th July, 2013.
10. The application was scheduled for hearing on 03rd March, 2014.
11. An **Affidavit in Reply** of the Defendant was filed on 07th August, 2013.
12. The Defendant nor his Counsel appeared at the hearing and the Court struck out the Defendant's application for taxation.

13. The Defendant filed a **Summons** and an **Affidavit** on 06th March, 2014 seeking an order to reinstate the application of **Bill of Cost for Taxation struck out** by court on 17th January, 2013.
14. The **Affidavit in opposition** was filed to this application on 15th April, 2014 and listed for hearing on 06th November, 2014.
15. The application was reinstated and restored to the list on 07th August, 2014.
16. The application for the **Bill of Cost for Taxation** was heard on 01st April, 2015 and the Plaintiff filed his written submissions whereas the Defendant did not furnish any written submissions.
17. The Counsel for the Defendant and the Plaintiff made their respective oral submissions during the cause of the hearing.
18. The Counsel for the Plaintiff tendered his written submissions at the conclusion of the hearing.
19. Having considered the **Bill of Cost** and the respective submissions of the parties, I now proceed with my ruling as follows.
20. The Counsel for the Defendant submitted in his **Taxation** application a table setting out the Defendant's schedule of costs.
21. The Counsel for the Plaintiff opposed the **Bill of Cost** filed by the Defendant on the ground of excessiveness, and stated in his submissions a **Bill of Costs** and the **itemised bill** of the Defendant drawn up pursuant to the **Schedule 1 Scale of Costs- Standard basis- O62, r 13** (Discretion of Taxing Officer) under the **Legal Practitioners (High Court Costa) Regulations 2006**.

He further submitted that **Rule 23** as set out is ambiguous since it states that the costs allowable to any Defendant defending an action brought by way of an Originating Summons is limited to and fixed at \$400 (lower scale) and \$800 (higher scale) since the **rule** expressly states that 'instructions to defend originating summons inclusive of all services, inclusive of Barrister and Solicitor's fee thereon for fee thereon for the first day of hearing.

The Plaintiff's Counsel also submitted that items 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14 and 15 of the Defendant's schedule pursuant to **Rule 24 (b)** be disallowed since **Rule 24 (b)** is only applicable upon an occasion of adjourned hearing on summons,

motions and other applications under **24 (a)**. He added, in this case there has never been any other summons, motions or other applications filed and fixed for hearing.

22. I had the opportunity to peruse the entire file in terms of the Counsel's appearances in the matter before the Court. I was able to ascertain that Counsels representing parties to the proceedings made personal appearances on twenty-two (22) occasions.

23. **Order 62 Rule 12 (3)** states that;

"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".

24. It appears that the order made on 17th January, 2013 "**Costs to be taxed if not agreed**", has not specified the basis of the taxation of cost.

25. Therefore, the basis of taxation of this application is on the **standard basis**.

26. **Order 62 r 12 (1)** has provided the basis for taxation, where it states that;

"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".

27. Having taken into considered **Order 62 r 13** and the submissions of the parties, I award the following costs in respect of the **Bill of Cost** filed by the Defendant at the **Discretion of the Taxing Officer**.

	Date	Rule	Particulars	Disbursement s	Costs	Allowed Lower Scale
1.	8.08.08	23	Receiving instructions from the Defendant to defend Originating Summons For Sale of Property and			

			Affidavit in Support by Narain Nair, inclusive of barrister and solicitor's fee thereon, meeting with client making copy of the Summons and affidavit and opening file and entering diary records.	\$ 48.60 (photocopying charges)	\$ 400.00	\$150.00
2.	18.08.08	24 (b)	Attendance and appearance on the summons at the Suva High Court by our Counsel where the matter was listed before the Master J. Udit, who adjourned the Summons to 17 th September 2008.	\$5.00 (travel)	\$75.00	\$75.00
3.	17.09.08	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant where the matter was listed for mention	\$5.00 (travel)	\$75.00	\$75.00
4.	16.09.08	37	Attendance to service of the Affidavit in Reply of Ranjana Devi on MC Lawyers	\$ 7.00	\$ 30.00	\$30.00
5.	27.11.08	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00
6.	03.03.09	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00
7.	05.05.09	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00
8.		19	Preparing for trial, conducting legal research, compiling authorities and making skeleton submissions		\$ 300.00	\$100.00
9.	06.07.09	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00
10.	08.10.09	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00

11.	26.11.09	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00
12.	01.04.10	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00
13.	05.07.10	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00
14.	30.07.10	24 (b)	Attendance and appearance at the Suva High Court on behalf of the Defendant.	\$5.00 (travel)	\$75.00	\$75.00
15.	17.01.13	24 (b)	Attendance and appearance at the Suva High Court before the Master on behalf of the Defendant where the action was struck off and costs was to be taxed if not agreed.	\$ 7.00	\$ 75.00	\$75.00
16.	11.02.13	37	Attendance to service of the sealed Order on Shekinah Law	\$7.00	\$ 30.00	\$30.00
17.		31	Instructions for Taxation of Costs inclusive of all services from instructions to completion		\$ 200.00	\$200.00
			Total as per Scale of Costs 2006		\$ 1,860.00	\$1,410.00
For Business not covered by the Scale of Costs but provided for under Rule 40:						
18.	05.05.10	40	Conducting search at the Titles Office, obtaining copy of the Lease No. 19087 and Transfer No. 385688, perusal and consideration of the same and noting memorials on title.	60c pp (\$ 4.80) fees	75.00	\$75.00
19.	15.08.08	40	Meeting with the Defendant and			\$200.00

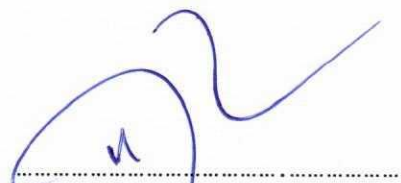
			explaining contents of the Summons and Affidavit and what to expect at the hearing.		\$ 200.00	
20.	16.09.08	40	Taking Instructions to prepare the affidavit in Reply , drafting and preparing Affidavit in Reply of Ranjana Nair, opposing the reliefs claimed, inclusive of its printing and binding, attendance to having the Affidavit sworn and its filing in court	\$56.25 (filing fees) \$23.40 (photocopy) \$5.00 (travel)	\$300.00	-
21.	20.11.08	40	Meeting between Mr. R Prakash and Ms. Ranjana Nair, discussion on the case proceedings and on the affidavits filed and preparing for trial.		\$ 200.00	\$200.00
22.	26.02.09	40	Received a Letter from the Plaintiff's Solicitors MC Lawyers, perusal and consideration and attendance to the same.		\$ 25.00	\$25.00
23.	03.03.09	40	Letter to client informing of the court proceedings and seeking instructions on the settlement offer from the Plaintiff, attendance to filing the letter in the file and attendance to its delivery to client.		\$ 75.00	\$75.00
24.	23.01.13	40	Meeting with client and discussion on the case and seeking instructions on the agreed costs.		\$ 200.00	\$200.00
25.	23.01.13	40	Letter to Shekinah Law seeking an agreement on costs and the amount that can be agreed costs, attendance to filing copy of the letter in the file and attendance to delivery of original letter to Shekinah Law.	7.00	\$ 75.00	\$75.00
26.	05.02.13	40	Preparing and Finalizing Order made by the Master on 17 th January 2013, attendance to its filing in the High Court and getting issued copies back	56.25 (Filing fees) 7.00	\$ 200.00	\$200.00

	Total under Rule 40 (Nos. 18 - 26)		\$ 159.70	\$ 1,350.00
	B/ F Total under Scale (Nos. 1 - 17)		\$ 124.60	\$ 1,860.00
	Total Solicitors Costs			\$ 3,210.00
	Add VAT 15 %			\$ 481.50
	Total disbursements		\$ 284.30	\$ 284.30
	TOTAL			\$3,975.80
				\$2,829.00

28. In my conclusion, I award sum of \$2,829 as taxed cost to be paid by the Plaintiff to the Defendant within 21 days of this Ruling.

Dated at Suva this 23rd Day of September, 2016




VISHWA DATT SHARMA
Master of High Court, Suva

cc: *V.P.Lawyers, Suva.*
Mishra Prakash & Associates, Suva.