



IN THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Cases No 21 & 23 of 2014

BETWEEN: MANELLA APPIN & MILO RENZO

PLAINTIFFS

And SECRETARY JUSTICE

FIRST DEFENDANT

And NAURU PHOSPHATE ROYALTIES TRUST

SECOND DEFENDANT

For the Plaintiff: Mr V Clodumar
For the First Defendant: Mr J Daurewa
For the Second Defendant: D Aingimea

Date of Hearing: 20 January 2015
Written Reasons delivered: 23 January 2015

CATCHWORDS:

Assessment of costs – Civil Procedure Rules 1972 Order 40 rule 16 – Obsolescence of Rules
– Local perspective – Costs summarily assessed

WRITTEN REASONS

1. On 20 January 2015 costs in these amalgamated proceedings were summarily assessed by the Court for \$7,500.00. This followed closely upon respective concessions by counsel for the First and Second Respondents that \$6,500.00 would be a reasonable amount to claim. Counsel for the Plaintiffs had claimed a total of \$13,662.50 and was not prepared to accept the concession made by the Respondents.
2. The law which applies presently is the Barristers and Solicitors (Remuneration: Non-Contentious Business) Rules 1974 which were issued by Thompson CJ on 11 February 1974 pursuant to section 57 of the Legal Practitioners Act 1973

3. Order 40 rule 16 of the Civil Procedure Rules 1972 (the “Rules”) provide as follows-

“40 (16). Scales of fees chargeable by barristers and solicitors and by pleaders contained in the written laws of Nauru relating to legal practitioners shall, when made, be applied in the taxation of the costs, unless in any suit the Court for special reasons directs otherwise.”

4. Rule 6 of Order 40 also refers to special matters to be taken into account as appropriate by the Court in exercising its discretion as to costs which are not relevant for present purposes.

5. In relation to the Plaintiffs’ claim for engagement of overseas counsel for advice, Counsel for the First Respondent cited the case of *Tom v Degoregore*¹ as authority for the proposition where a party had done so, that cost was to be significantly discounted to reflect local conditions.

6. In the Court’s respectful opinion Tom’s case also suggests that those costs were summarily assessed both in the District and Supreme Courts because the Rules only relate to non-contentious matters.

7. Without dwelling at length on the matter, the obsolescence of the Rules is sufficient basis for special reasons to be made out in terms of Order 40 rule 16. Socio-economic conditions have changed considerably in nearly forty-one years and to overlook that fact would be a grave injustice to the Plaintiffs.

8. The Court takes note of counsel for the Second Respondent’s observation that some wisdom needed to be exercised in making an award and the resulting need to bear in mind the local perspective as was emphasised in Tom’s case. Those remarks are well-taken.

9. To that end, the Department of Justice should consider expeditiously holding consultations with the members of the local legal fraternity and the Registrar to formulate proposals for the Court to consider and enact as soon as convenient.

10. Counsel for the Plaintiffs adjusted the claim for costs to \$5,500.00 for each case plus \$1,000.00 in disbursements.

11. In view of the admissions made by counsel for the Respondents and taking into consideration particular circumstances, such as discounting engagement of overseas counsel, a global sum of \$7,500 summarily assessed appears to be a reasonable amount.

DATED this 23rd day of January 2015.

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Chief Justice Joni Madraiwiwi

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Judge Jane Hamilton-White

¹ [1977] NRSC 5; [1969-1982] NLR (D) 61 (27 September 1977)

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Judge Mohammad S Khan