

THE HIGH COURT

[2022] IEHC 692

[2007 2370 P]

BETWEEN

ANTONIO CASIMIRO LOPES

PLAINTIFF

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

DEFENDANT

JUDGMENT of Mr. Justice Charles Meenan delivered on the 16th day of December 2022

Introduction

1. In these proceedings the plaintiff, on foot of a notice of motion dated 17 May 2019, seeks to review a decision of the Taxing Master of 29 April 2019 and his rulings on taxation in respect of the costs of proceedings in both the High Court and the Supreme Court.

Background

2. The plaintiff brought proceedings against the defendant on 26 March 2007, alleging *inter alia* discrimination on the part of a “state body”, namely the High Court and the Supreme Court judges who at various times had dealt with litigation brought by him arising out of a road traffic accident which occurred on 11 December 1988.

3. By a notice of motion dated 29 June 2007, the defendant sought an order pursuant to O.19 r. 28 of the Rules of the Superior Courts (RSC) striking out the plaintiff’s proceedings as being frivolous and/or vexatious and as disclosing no reasonable cause of action. In the first instance, this application was in the High Court on 4 June 2008. The High Court ordered that

the plaintiff's action be struck out and the costs of the proceedings were awarded to the defendant.

4. By notice of appeal dated 10 July 2008, the plaintiff appealed the decision of the High Court to the Supreme Court. The matter came on for hearing on 12 November 2013 and the Supreme Court dismissed the plaintiff's appeal. The costs of the appeal were awarded to the defendant.

5. The costs of both the High Court application and subsequent appeal to the Supreme Court were taxed before the Taxing Master on 11 October 2017. In his ruling, the Taxing Master allowed counsel's brief fee in full as claimed being €5,125 and he reduced the solicitor's instruction fee claimed from €9,500 to €8,500. In relation to the Supreme Court fees, the Taxing Master allowed the instruction fee as claimed being €6,000 and counsel's fee in the sum of €5,999 being a brief fee of €5,125 and a fee for written legal submissions of €874.

6. The plaintiff was dissatisfied with the rulings made by the Taxing Master and on or about 30 January 2018 he raised objections to the rulings. In support of his objections, the plaintiff lodged grounds of appeal against the Taxing Master's decision concerning the High Court proceedings only.

7. In an affidavit in support of this application, the plaintiff has set out some nine grounds of appeal.

Relevant legal principles and statutory provisions

8. Section 27 of the Courts and Courts Officers Act, 1995 provides:

“On a taxation of costs as between party and party by a Taxing Master of the High Court...the Taxing Master ... shall have power on such taxation to examine the nature and extent of any work done, or services rendered ...”

9. Order 99 r. 37 (22) provides:

“(ii) In exercising his discretion in relation to any item, the Taxing Master shall have regard to all relevant circumstances, and in particular to

- (a) the complexity of the item or the cause or matter in which it arises and the difficulty or novelty of the questions involved.
- (b) Skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor
- (c) The number and importance of the documents (however brief) prepared or perused
- (d) ---
- (e) The importance of the cause or matter to the client
---”

10. In *HM v. SM* [2018] IECA 396 the Court of Appeal set out principles to be adopted on a review of taxation:

“26. The review is not an appeal on the merits but rather, is conducted in the light of the statutory conjunctive test that an error be established in the approach of the Taxing Master and that an injustice has resulted. That a result be unjust is more than a test that the costs are more or less than that for which either party contends and injustice must be tested in the context of an assessment of the nature of the litigation, the amount of expertise engaged, and all of the other factors that might be relevant in the case in issue. Findings of fact are not to be reversed unless a manifest error or error in approach is found.”

Rulings of the Taxing Master

11. The fees which the plaintiff objects to are the brief fees and instruction fees in both the High Court and the Supreme Court. In his ruling of January 2018, the Taxing Master considered the instruction fee. Having set out the relevant principles to be applied and having considered the instruction fee being sought he stated, at para. 12:

“The plaintiff had raised issues grounded on alleged racism and bias which required detailed attention. It is apparent from a perusal of the defendant’s affidavit grounding the motion to strike out the proceedings and confirmed by my perusal of the file that the solicitor fully examined and considered all documentation, liaised with counsel at all times in reference to (a) initial strategy (b) in perfecting the affidavit grounding the application (c) in considering the plaintiff’s lengthy replying affidavit (d) attendance at lists to fix dates (e) preparation of brief for counsel and (f) consideration of the plaintiff’s supplemental affidavit received on the eve of the hearing which required urgent consideration and addition to the brief”.

12. The Taxing Master then considered the breakdown of the instruction fee and approved a fee of €8,500. As regards the instruction fee being sought for the appeal to the Supreme Court, the Taxing Master had regard to the work undertaken by the solicitor and looked at various aspects of the instruction fee. Having done so, he allowed a figure of €6,000.

13. In respect of the brief fee which the Taxing Master allowed for counsel, he stated:

“It seems to me that having regard to the nature of the application and the legal issues which arose for consideration as to the applicable constitutional and EU law, together with the relevant case law as to maintaining an action against members of the judiciary or vicariously against the State, in addition to the legal principles attaching to the court’s exercise of its powers to dismiss an action which is bound to fail, the brief fee is fairly claimed against the plaintiff in the sum of €5,125.” The Taxing Master carried out a similar exercise in respect of the brief fee claimed in respect of the appeal to the Supreme Court.

It should be noted that a lengthy and detailed bill of costs was furnished by the defendant setting out each and every item being claimed.

Decision

14. Having considered the affidavit filed in this matter together with the exhibits, I am fully satisfied that no error can be identified on the part of the Taxing Master in reaching this decision on the amount of both the instruction fee and the brief fee in respect of the High Court application and subsequent appeal to the Supreme Court. It is clear from the documentation that the Taxing Master applied the correct statutory provisions and legal principles.

15. I will now deal with the various grounds put forward by the plaintiff in his grounding affidavit sworn 17 May 2019:

“(1) The plaintiff maintains that the Taxing Master misinterpreted the decision of the Supreme Court in *Sheehan v. Corr* [2017] 3 IR 252. It is clear from the decision of the Taxing Master that the principles set out in *Sheehan v. Corr* were followed by the Taxing Master. This position is reflected in the decision of the Court of Appeal in *HM v. SM*, referred to above.

(2) The plaintiff states correctly the Taxing Master must take into account the complexity and/or the number and importance of the documents prepared or perused and referred to the fact that in the High Court counsel’s submission on the part of the defendant took about 20 to 30 minutes and in the Supreme Court about ten minutes. Instruction fees and brief fees cannot be calculated on the time a submission takes to make in court. It is very often the case that the shorter the time for submission the greater time required for preparation.

(3) This ground concerns the keeping of time records and the plaintiff maintains there was no evidence to support the defendant’s claim.

This is clearly incorrect. I have already referred to a very detailed bill of costs and also the fact that the Taxing Master in reaching his decisions looked, in detail, at the amounts claimed for instruction fees and brief fees.

- (4) This ground also refers to an alleged lack of documentation in support of the defendant's claim. I have dealt with this at (3) above.
- (5) This ground deals again with counsel's submission taking only 20 minutes in the High Court and about ten minutes in the Supreme Court. I have dealt with this at (2) above.
- (6) This ground refers again to the defendant's alleged failure to provide an itemised bill of costs. This again is not correct. The bill of costs is exhibited in the replying affidavit of Mr. Conor Minogue, the Chief State Solicitor's Office.
- (7) Again, this ground is based on the plaintiff's misconception that the Supreme Court decision in *Sheehan v. Corr* introduced new principles for the taxation and review of taxation of costs.
- (8) Again, this is a criticism of an alleged lack of documentation which I have already dealt with.
- (9) This ground concerned the entitlement of the public "to know what they pay for their money". The decisions of the Taxing Master and the reasons for it are clearly in the public domain. All of this information was referred to in open court at the hearing of this application.

Conclusion

16. By reason of the foregoing, I dismiss the plaintiff's application herein. On the matter of costs my provisional view is that as the defendant has been entirely successful, it is entitled to an order for costs. Should any issue be taken with this, I would invite short written submissions (no more than 2,000 words) to be filed on or before 13 January 2023. I will list the matter for final orders on 20 January 2023.