

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**CIVIL JURISDICTION**

**Judicial Review No HBJ 4 of 2007**

**IN THE MATTER** of an application by **DHARMENDRA SINGH** father's name Dukhi Singh of Basoga, Labasa, Self Employed for leave to apply for Judicial Review under Order 53 of the High Court Rules for Declaration and Certiorari against the decision of the Minister of Finance, National Planning and Sugar Industry.

**AND**

**IN THE MATTER** of an application by **DHARMENDRA SINGH** father's name Dukhi Singh of Basoga, Labasa, Self-employed for an order for Certiorari to **quash** the decision of the Minister of Finance, National Planning and Sugar Industry whereby the Minister dismissed the Appeal of the Applicant and upheld the decision of the Tax Agents Registration Board that had refused the Applicants appeal against de-registration as a Tax Agent.

**AND**

**IN THE MATTER** of an application by **DHARMENDRA SINGH** father's name Dulchi Singh of Basoga, Labasa, Self-employed for relief under Republic of Fiji Constitution and/or under the Human Rights Act.

**AND**

**AND IN THE MATTER** of alleged breaches of the principles of natural justice.

**STATE**

**-v-**

**MINISTER OF FINANCE, NATIONAL PLANNING AND SUGAR INDUSTRY**, Ro Lalabalavu House, Victoria Parade, Suva, Fiji

**TAX AGENTS REGISTRATION BOARD**, Level 3 Ro Lalabalavu House, Suva

**ATTORNEY GENERAL OF FIJI**

**EX-PARTE**

:

**DHARMENDRA SINGH** father's name  
Dukhi Singh of Basoga, Labasa, Self-  
Employed

**DECISION**

*(Taxation of Indemnity Costs)*

**Introduction**

(1). After the applicant had sought leave from the High Court for judicial review, the Court on the 30 November 2007 made the following orders:-

(i). *An order of certiorari to remove the decision of the Minister of Finance, National Planning and Sugar Industry dated 14.02.2007 and 17.05.2007 upholding and/or affirming the decision of the Tax Registration Board's decision and disallowing the appeal of the applicant against the decision of the Tax Agent's Registration Board whereby the applicant's application to be registered as a Tax Agent was refused;*

(ii). *An order of certiorari to quash the decision of the Minister of Finance, National Planning and Sugar Industry dated 13.04.2007 and 17.05.2007 upholding and/or affirming the decision of the Tax Agent's Registration Board's decision and disallowing the appeal application against the decision of the Tax Agent's Registration Board; and*

(iii). *That assessed costs of \$3,000:00 to be paid by 3:00pm on 14 December 2007.*

(2). On the respondent's non-compliance with the Court's orders the applicant made a further application for the enforcement of the said order. Judgement on that application was then granted on the 9 December 2011 with costs to be taxed on an indemnity basis. This cost order is before the Master however for a proper appraisal of the costs order it is important to consider the matter in totality from the beginning.

(3). On the 30 November 2007 Justice Coventry gave a brief decision on the application for judicial review of the decision of the Tax Agent's Registration Board and further allowed the applicant to practice for six months to run from 1 December 2007. As one of the reason used to disallow the applicant to be a tax agent was his lack of qualification, the applicant was to sit for an examination and if successful then it is a matter for the Board to act in

accordance with its statutory powers. On 10 December 2007 when Justice Coventry gave his judgement' an application for costs of \$4,000:00 was made by the applicant's counsel. This application for costs against the respondent was granted and summarily assessed at \$3,000:00.

(4). When the respondent did not comply with the orders given by Justice Coventry, the applicant made a further application to compel the respondent to comply with the orders. A decision was then given by Justice Hettiarachchi on 9 December 2011 and an order for indemnity costs was granted. It is this indemnity cost which is to be taxed. This is further confirmed by Justice Kotigalage on the 6 March 2013 after he had heard and refused a further summons by the applicant seeking an order, inter alia, that the applicant be registered as a tax agent. What that means is that only the work done in the application before Justice Hettiarachchi (i.e. to compel the respondent to comply with the orders of Justice Coventry) is to be taxed on an indemnity basis. It is therefore important that the schedule of costs to be taxed should be in chronological order and itemised correctly to reflect the above situation. This was however not done which made the taxing slightly difficult and time consuming.

(5). Order 62 rule 12(2) of the High Court Rules states that:-

*On a taxation on the indemnity basis all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonable incurred and any doubts which the taxation officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term 'indemnity basis' in relation to taxation of costs shall be construed accordingly.*

(6). It is clear from the rules that the costs must be reasonable and if there is any doubt in the taxation officer's mind as to whether or not it is reasonable the doubt should be in favour of the paying party. The best way to understand what indemnity costs is, is by understanding the meaning of the word itself, the Macquarie Dictionary defines indemnity as '*protection or security against damage or loss or compensation for damage or loss sustained*'. In respect of matters litigated it is the costs given to the person to indemnify or compensate him/her in respect of costs incurred in a proceeding which the other party compelled that person to take. It is not meant to punish the person nor is it intended as a bonus to the person who receives them. (see *Harold -v- Smith (1860) 35 LT (OS) INS 556*). In this regard it is not full compensation but rather reasonable compensation. It is in effect reasonable costs to a solicitor incurred by client to defend or litigate the matter. Therefore a successful party is not to expect his opponent to pay for a '*Rolls Royce representation*'; see *South Pacific*

Recording Company Ltd - v- Tabs (1997) Court of Appeal, Civil Appeal No ABU 0039/1996.

(7). The practice appears to be either to tax individual items in the schedule or make a global assessment; (see Master Udit in Vitiana Timbers (Fiji) Ltd -v- DanzasAei Ltd (2008) HBC 327/07. My view, with respect, is that the reasonableness of the costs is better taxed when the costs is itemised and in chronological order. This is the requirement under Order 62 rule 13 (3) for standard costs and having the items in chronological order is a helpful guide in taxing costs in case where indemnity costs apply only in certain applications within a matter. This is very much so in this instance where the indemnity costs was granted only in respect of the application to enforce the order but not in the preceding applications or applications thereafter.

(8). The time frame or the relevant period is from the 10 December 2007 (date of Justice Coventry's decision) to 9 December 2011 (date of Justice Hettiarachchi's decision). The provisions as to bill of costs for solicitor/client costs are that the professional charges and disbursements must be entered in separate columns and every column must be cast before the bill is left for taxation.

(9). That is, the bill must be computed or calculated and added as a column of figures; (Order 62 r22). Although the bill of costs provided by the counsel for the applicant complies with Order 62 r22 it is not in chronological order. For this reason the taxation shall be applicable only from the time of the application under Order 45 rule 5. I have also taken the view expressed by Justice Amaratunga in David Gilmour &Ors -v- JanuszKubs CA 655/98 that although I am inclined to direct the applicant's counsel to re-submit (for the second time) the bill of costs in chronological order in compliance with the rules I shall not do so as further delay is unnecessary.

(10). Further as the bill of costs provided by the applicant's counsel had repeats of item numbers or duplication of item numbering I will continue the numbering of items to follow numerically to prevent confusion. This will result in there being 52 itemsaltogether.

(11). To summarise the bill of costs shall contain in short items numbered consecutively a chronological description of the work done by the solicitor his servants or agents. Beside each item the costs claimed for the work described in the item followed by what the taxing officer considers reasonable.

**The Taxation**

**SCHEDULE**

ITEM	SCALE	PARTICULARS	COSTS AND DISBURSEMENT	ALLOWED BY TAXING OFFICER
1.		Obtaining instructions from client, (2 hours)	\$ 500.00	\$200:00 rest unreasonable.
2.		Having client interview, (3 hours)	\$ 750.00	Not allowed duplication of item1.
3.		Assessing the instructions and the interview of client and doing research, (4 hours)	\$1,000.00	Not allowed as unreasonable given the initial instruction to litigate and the fact that this was an application to compel the respondent to follow the Court's order)
4.		Obtaining necessary documents from client. (half an hour)	\$ 125.00	Not allowed no further documents required (the application was a summons to compel the respondent to follow the Courts order).
5.		Perusing the documents (2 hours)	\$ 500.00	Not allowed as

				unreasonable (see above.)
6.		Giving opinion to client pertaining to instructions	\$ 300.00	\$150:00 allowed figure given unreasonable.
7.		Writing to Tax Agents Registration Board dated	\$ 200.00	\$55:00 only allowed (\$200 for a letter is unreasonable)
8.		Following up notice to Tax Agents Registration Board	\$ 200.00	\$55:00 allowed amount claimed unreasonable
9.		Obtaining an independent opinion on the instructions	\$ 400.00	Unnecessary as instruction is to seek order to compel the registration board to follow court order.
10.		Providing client on the opinion on the strength of his case	\$ 475.00	Unnecessary see above.
11.		Drafting affidavit (3 hours)	\$ 750.00	Unreasonable amount for what is required. Allow \$150:00.
12.		Obtaining necessary annexures	\$ 250.00	Not allowed see item 4 above.
13.		Photocopying necessary annexures, @\$5 x 8 pages + \$2.50 for binding	\$ 42.00	\$42:00 allowed
14.		Providing the client with copy of affidavit for perusal and approval (printing costs)	\$ 250.00	Not allowed as unreasonable
15.		Obtaining final draft of the affidavit	\$ 250.00	Not allowed unreasonable

16.		Attaching the necessary annexures then perusing the affidavit	\$ 250.00	\$50:00 only allowed rest is considered unreasonable
17.		Preparing summons under Order 45 Rule 5 of the High Court Rules	\$ 500.00	\$150:00 only allowed.
18.		Attending to execution of the affidavit	\$ 100.00	\$50:00 only allowed.
19.		Obtaining the affidavit upon execution	\$ 100.00	Not allowed unnecessary costs.
20.		Filing the affidavit in High Court for sealing with filing cost	\$ 157.50	\$100:00 only rest claimed unreasonable.
21.		Receiving the affidavit from High Court upon filing	\$ 100.00	Not allowed unnecessary costs.
22.		Advising the client on the progress of the matter.	\$ 100.00	Not allowed as unreasonable
23.		Obtaining instruction for service from the client	\$ 100.00	Unnecessary not allowed
24.		Attending to providing instructions to city agents in Suva	\$ 100.00	\$55:00 only allowed
25.		Obtaining directions of delivery of documents on city agents	\$ 100.00	Unnecessary not allowed.
26.		Arranging the city agents for service of documents	\$ 100.00	Unnecessary and a duplication of item 24 above.
27.		Attending to payment of charges to city agents	\$ 100.00	Amount claimed unnecessary.
28.		Attending to receipt of documents from city agents with affidavit of service on various defendants	\$ 100.00	Not allowed see above.
29.		Attending to filing of affidavit of service in court	\$ 100.00	\$22:00 only allowed rest is

				unreasonable.
30.		Receiving affidavit in opposition of TevitaBolonavanua	\$ 100.00	Not allowed
31.		Perusing the affidavit and checking the contents (2 hours)	\$ 500.00	Excessive and unreasonable \$55:00 only allowed.
32.		Advising client on the affidavit in opposition	\$ 250.00	\$55:00 only allowed rest is unreasonable.
33.		Receiving supplementary affidavit of Mohit Raj in support of affidavit of TevitaBolanavanua	\$ 250.00	Amount claimed unreasonable not allowed.
34.		Perusing the affidavit and checking the content	\$ 500.00	\$55:00 only allowed rest is unreasonable.
35.		Advising client on the affidavit	\$ 100.00	\$55:00 only allowed.
36.		Attending to court on the call of the summons		
37.		Attending to court appearance on 12 different dates (12 x \$350)	\$4,200.00	Unreasonable amount allowed is \$100:0 per court appearance \$1,200:00
38.		Attending to direction of court	\$ 150.00	No direction specified unnecessary.
39.		Noting directions of the court on file	\$ 100.00	Unnecessary & excessive
40.		Advising the client on directions	\$ 250.00	\$55:00 only allowed
41.		Obtaining further instructions from client	\$ 150.00	Not allowed. Unnecessary.
42.		Attending to hearing of this matter	\$1,000.00	\$800:00 allowed.
43.		At the hearing of this matter, reading out affidavit.	\$ 400.00	Not allowed duplication of



				item 43
44.		Making closing submissions to court	\$1,000.00	Not allowed duplication of item 43.
45.		Advising client on hearing of the matter	\$ 200.00	\$55:00 only allowed.
46.		Receiving closing submissions of the defendant	\$ 250.00	Not allowed unnecessary
47.		Perusing the same	\$ 250.00	Not allowed unnecessary
48.		Advising client on the submission of the defendant	\$ 250.00	Not allowed unnecessary .
49.		Advising client on progress of the matter	\$ 250.00	\$55:00 only allowed.
50.		Obtaining delivery of the judgment from High Court	\$ 200.00	\$55:00 only allowed.
51.		Advising the client on the judgment	\$ 250.00	\$55:00 only allowed.
52.		Providing opinion to client on the judgment	\$ 300.00	\$100:00 only allowed.
		SOLICITOR		<u>\$3674:00</u>
		COSTS		
		FILING FEES AND HEARING		
		FEES		<u>\$3674:00</u>
		TOTAL FEES		VAT 15%
		VAT 15 %		\$551:00
		TOTAL FEES		<u>\$4,225:00</u>

### **Conclusion**

(12). I have taxed the costs of the application to enforce or to compel the respondent to comply with Justice Coventry's order as was ordered by Justice Hettiarachchi. The solicitor clients costs refers only to work done for this application as a result some of the work done under some items were unnecessary given the fact that the bulk of the work including instructions proper were obtained during the application for leave for an order of certiorari.

(13). The fact that the items and the work done under each item were not chronologically presented together with the duplication of item numbers made the task difficult to put into the right context. Nonetheless the taxation were given at the higher scale of the amount allowed under Appendix 4 of the standard basis under Order 62 r.13 where applicable.

(14). A certificate of taxation is accordingly issued herewith for the sum of **\$4,225:00.**



H A Robinson  
Master, Labasa High Court.  
8 August 2014.