

CITATION: *Mirinyowan v Northern Territory of Australia* [2006] NTMC 014

PARTIES: LINDA MIRINYOWAN

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: Local Court

JURISDICTION: Crimes (Victims Assistance)

FILE NO(s): 20422898, 20421698, 20327542, 20422905, &
20421911

DELIVERED ON: 8th February 2006

DELIVERED AT: Darwin

HEARING DATE(s): 3rd February 2006

JUDGMENT OF: Judicial Registrar

CATCHWORDS:

Practice and Procedure – Costs – crimes (victims assistance)- multiple applications
– indemnity costs application to lump sum scale – work done by clerk

Noble v Northern Territory of Australia [2006] NTMC 012

REPRESENTATION:

Counsel:

Applicant: Ms Spurr
Respondent: Ms Farmer

Solicitors:

Applicant: Halfpennys
Respondent: Withnalls

Judgment category classification: C
Judgment ID number: [2006] NTMC 014
Number of paragraphs: 21

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20327542, 20421698, 20421911, 20422898,20422905

BETWEEN:

LINDA MIRINYOWAN
Applicant

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
Respondent

REASONS FOR DECISION

(Delivered 8th February 2006)

Judicial Registrar Fong Lim:

1. The Applicant was successful in her applications for assistance arising out of five separate assaults upon her by her promised husband. She was granted costs on an indemnity basis for files numbered 20327542, 20421698, 20421911, & 20422905.
2. In each of the files the Applicant was required to apply for an extension of time.
3. In her Bill of Costs the Applicant claims the allowable lump sum for preparation and hearing for each application. The Respondent argues that in relation to the application for extension of time the work was done by a clerk and therefore the lump sum should not be allowed. In relation to the claim for preparation the Respondent argues that the Applicant should not be allowed to claim the lump sum fee for each application as the Applicant's solicitors did not do separate preparation for each file.

4. For the reasons set out in my recent decision of Noble v Northern Territory of Australia [2006] NTMC 012 I agree with the Respondent's submissions regarding the claim for a lump sum preparation fee for each application and on the basis of that reasoning would allow one set of lump sum composite fees and disallow others allowing the applicant to redraw its bills of cost for the other four matters on a time basis.
5. The Applicant (whose solicitor acted for the respondent in the Noble case) submitted that this matter could be distinguished from Noble's case. In four of these applications the Applicant was granted indemnity costs and on that basis should be allowed the lump sum for each of those four applications without question.
6. The Respondent argued that the lump sum scale can not be affected by the application of the indemnity costs basis for taxation only costs claimed on a time basis. I do not accept that argument at all. If the court is of the view that the lump sum costs claimed are unreasonable or unnecessary then they can still be disallowed the exercise of discretion is just weighted more in favour of the receiving party than under the standard basis where the court has to decide if the costs claimed are reasonable and necessary.
7. In applying the test of costs on an indemnity basis it is my view that to claim a lump sum fee for each of the applications is unreasonable especially as the applications for extension of time, preparation of affidavit material and attendance at the hearing dealt with as a single matter.
8. The Applicant submits that the Respondent should not gain a "windfall" from the Applicant's efficiency in dealing with the applications as one. In my view there is no windfall, if the matters had separate affidavits and were had separate hearings there would in fact have to be separate documentation and separate appearances, more time and effort would have been spent and the fees charged accordingly. If the applications were separately dealt with then the Respondent would have to pay a separate fee for each application.

By dealing with the applications as one the Applicant has saved time and it is not a windfall to the Respondent that they are only be allowed on costs accordingly, it is more likely a windfall to the Applicant should she be allowed the lump sum fee for each application.

9. The Applicant may argue that the lump sum fees set out in the regulations and the 40% of Supreme Court Cost scale are grossly inadequate for the work that is necessary for these applications and therefore there is no windfall, I agree that this may be the case, however the court can only apply the costs scale as are allowed by the legislation and it is against that background the court should tax those costs. I accept that on an indemnity basis on the Supreme Court cost scale the Applicant would most likely have been able to claim more than she has done however this court can only apply the relevant scale as set out in the Crimes (Victims Assistance) regulations.
10. In these matters there is also the added complication that most of the work done for the Applicant was not been done by a qualified legal practitioner but an articulated clerk at the time. The Respondent uses this fact as a basis for the Applicant being disallowed the lump sum fee for the application for extension of time.
11. The regulations do not specify that the work contained in the lump sum fee must be done by a legal practitioner for example regulation 6(1)(a) provides
 - “(a) a fee of –
 - (i) \$1 000 for work up to and including the first prehearing conference, including taking instructions, obtaining preliminary medical reports, preparing, filing and serving the application, attending the mention and attending the first prehearing conference; or”
 - (ii) \$1 300 if the work referred to in subparagraph (i) also includes an application for an extension of time for the purposes of section 5(3) of the Act;”

12. There is no mention that the work must be done by a legal practitioner. However it is trite to say that the term “costs” generally used in the context of costs of a litigation will mean the legal fees paid by the party to their lawyers for the work done on their behalf. There is no definition of “costs” in the Crimes (Victims Assistance) Act except that in section 8(10) of the Crimes (Victims Assistance) Act there is a distinction made between costs and disbursements. The Respondent did not develop this argument in much detail therefore I have had to seek guidance from other sources.
13. In the Supreme Court Scale there are two sorts of lump sum fees those fee which relate to a particular item and those which are a composite fee for certain steps in the litigation eg the fee for a Ordinary letter and the fee for Discovery and interrogatories.
14. One of the distinctions between the two sorts of fees is that contained in the explanation of what is included in the fees in the Appendix to Order 63. An “Ordinary Letter” in the Supreme Court Scale is described as:

“means a letter that does not exceed one page in the composition of which, in the opinion of the Taxing Master, little or no exercise of the skill of a solicitor is required and includes –

 - (a) the time (up to 2 units) spent by a solicitor or clerk in the composition of the letter; and
 - (b) clerk's time (up to 3 units) in preparing it;”
15. Whereas a “Special Letter” is defined as:

special letter" means a letter that is between 1 and 2 pages in length and, in the opinion of the Taxing Master, the composition of which requires the exercise of the skill of a solicitor, and includes –

 - (a) the time (up to 3 units) spent by the solicitor in composition of the letter;
 - (b) as an allowance for care and conduct, an additional amount equal to 15% of the amount allowed under paragraph (a); and

(c) clerk's time (up to 3 units) in preparing it

16. The description of the work included for the composite fee for Discovery is as follows:

(3) items 10 and 11 include all time taken in carrying out work in respect of the giving or obtaining of discovery and the inspection of documents in accordance with Order 29, but do not include work done in or incidental to an application to the Court in which discovery or inspection is sought; and

17. In the description of “Ordinary Letter” and “Special Letter” there is a recognition that part of the work could be done by a clerk and part by a solicitor and there is a specific allocation of time included. In the description of the “Discovery” there is no such delineation.
18. The specification of units of time spent by a legal practitioner in the description for the categories of letter is in my view a guideline to the taxing officer of what is a reasonable amount of time spent to justify the claim for costs.
19. Where there is no indication of the units of time and any delineation between clerk’s time and solicitor’s time it is my view that the taxing officer only needs to be satisfied that the relevant work has been done and it does not matter whether that is by a clerk or a solicitor. Composite fees are among other things a recognition that work in a solicitors office can be done by non – qualified people supervised by qualified people. The ability to grant an allowance for general care and conduct to these amounts as part of “preparation” is also a recognition that there may have been some overall supervision of more junior staff by senior staff in the office.
20. It is my view that the lump sum scale fees set out in the Crimes (Victims Assistance) Regulations are akin the composite fees such as those contained in items 7 – 12 in the Supreme Court costs appendix. There is no requirement to satisfy the court that all of the work was done by a legal

practitioner only that the work is done. Therefore the claim for a lump sum fee for the extension of time is allowed for one file and for other reasons set out above the other four are disallowed with the Applicant given leave to file another bill of costs on a time basis.

21. **Orders**

21.1 Costs in file of 20421911 are taxed and allowed at \$2100 for preparation plus \$500 for attendance at hearing and \$93.72 for taxation costs.

21.2 In files 20422898,20421698,20327542 &20422905 the lump sum scale fees are disallowed and the taxation of those costs are adjourned for a date to be fixed with leave to the Applicant to file an amended Bill of costs calculated on a time basis.

21.3 The disbursements for filing fee, medical reports and taxing fees are allowed in their entirety.

Dated this 8th day of February 2006

Tanya Fong Lim
JUDICIAL REGISTRAR