

THE T. O. MUTUAL COMPANY (PTY.) LTD. v. GEORGE W. C.
KALUWA.

CIVIL APPEAL CAUSE NO. 26 OF 1940.

Costs—allowances under Item 45 (now 49) of Appendix D of the Subordinate Court Rules.

The facts are set out in the case submitted to the High Court which read as follows:

"1. At a court held at Mazabuka the plaintiffs sued the defendant for the sum of £4 and costs. This cause was heard by me on the 14th day of May and the 16th day of July, 1940, and judgment was given for the plaintiffs for £4 and £6 6s. 10d. costs subject to the opinion of the High Court.

CASE.

2. In addition to the costs allowed by the court, Mr. Metcalfe Walton, solicitor for the plaintiffs, submitted that he was entitled to further costs under Item 45 of Appendix D of the Subordinate Court Rules as follows:

	£	s.	d.
(a) For attendance on 14/5/40, $\frac{1}{2}$ sustenance at 12s. 6d.	0	6	3
(b) For attendance on 16/7/40, $\frac{1}{2}$ sustenance at 12s. 6d.	0	6	3
(c) For attendance on 14/5/40, $\frac{1}{2}$ of day's allowance of £5 5s.	2	12	6
(d) For attendance on 16/7/40, $\frac{1}{2}$ of day's allowance of £5 5s.	2	12	6

3. Mr. Walton stated that the 12s. 6d. was made up as follows: Breakfast on train, 3s. 6d.; lunch, room and dinner at hotel, 9s. 0d. average.

4. To enable Mr. Walton to appear in court on Tuesday at Mazabuka it is necessary for him to catch a train at Broken Hill at 3.5 a.m. on the Tuesday morning; this train arrives at Mazabuka at 9.23 a.m. Mr. Walton is able to catch the train leaving Mazabuka at 8.7 p.m. on the Tuesday and arriving back at Broken Hill at 3.40 a.m. on the Wednesday morning.

5. The reason for half rates being claimed as set out in paragraph 2 hereof is that Mr. Walton was engaged in another civil case at Mazabuka on 14/5/40 and 16/7/40.

OPINION.

6. I was of opinion—

- (i) that Mr. Walton was entitled to 1s. 9d. on each of Items (a) and (b) in paragraph 2 hereof, this sum being a moiety of the 3s. 6d. for the breakfast on the train, this being incurred while Mr. Walton was engaged in travelling from his place of business to the place of trial; and
- (ii) that Mr. Walton was not entitled to any other allowance under Item 45 because he was not detained at the place of trial prior to or subsequent to the trial.

7. The rail fares and attendances at the trial have been allowed and are included in the sum of £6 6s. 10d. costs.

QUESTION.

9. The question upon which the opinion of the High Court is desired is whether any allowance should be made under Item 45 and if so the amount of such allowance."

The opinion of the High Court is set out below. It should be noted that item 45 has become item 49 in the Subordinate Courts (Civil Jurisdiction) Rules, 1940.

Law, C.J.: Mr. Metcalfe Walton was not detained at Mazabuka on either occasion for any day prior or subsequent to the day of trial. The second part of item 45 therefore does not apply.

2. On the other hand, though Mr. Walton was not engaged in travelling for a day (that is, a whole day) to or from Mazabuka on either occasion, yet undoubtedly on each occasion he did spend a portion of a day when going to and a portion of a day when returning from Mazabuka.

3. It is not necessary, under the first part of item 45, that the travelling should be done prior or subsequent to the day of trial.

4. In the result, I am of opinion that Mr. Walton is entitled in all to allowances for four portions of a day under item 45, and I would fix the amount at 10s. 6d. in respect of each portion of the day, or at £2 2s. 0d. in all under this item.