

THE REPUBLIC OF UGANDA
IN THE INSURANCE APPEALS TRIBUNAL OF UGANDA
AT KAMPALA

APPEAL No. 2 OF 2022

BETWEEN

ICEA LION GENERAL INSURANCE COMPANY LIMITED::::::::::::: APPELLANT

VERSUS

SHARK MEDIA LIMITED::::::::::::: RESPONDENT

BEFORE: ISAAC N. MPANGA, REGISTRAR

RULING.

This ruling arises from the taxation of the bill of costs presented by counsel for the Respondent.

The appeal filed by the applicant before the tribunal on 18th October 2022 was heard and dismissed with costs by the tribunal on a preliminary point of law raised by the respondent. Accordingly, the respondent drew and presented its bill of costs amounting to UGX 14,821,200/= for taxation.

During the taxation of the bill of costs, two issues arose for determination by the taxing master namely;

1. What is the subject matter for purposes of taxation of the bill of costs?
2. Whether the respondent is entirely entitled to the instruction fees computed in accordance with the subject matter.

Issue 1.

Counsel for the respondent submitted that the subject matter in the appeal is USD 15,400 as presented in the pleadings and that the respondent is entitled to compute the fees payable using that sum.

Counsel for the Appellant in reply opposed the computation of fees based on USD 15,400 as the subject matter contending that at the time of filing the Appeal, a sum of USD 4200 was admitted and was not in dispute and that at the end of the hearing of the appeal, this sum was paid to the respondent and it should therefore not form part of the subject matter of the claim against which fees are computed. Counsel contended that the subject matter in contention is USD 10,800 and that any fees payable to counsel should be computed based on that sum and based on item 1(e) of the 6th Schedule and not item 1(f).

Counsel for the respondent made a brief rejoinder stating that he was instructed by the Respondent to defend an appeal on fraud and not the amount to be paid. Prior to the appeal, the appellant had never proposed any payment of part of the claim. Even at the filing of the appeal, the appellant had not [aid the USD 4200 which it claims to admit. The said amount was only paid after the decision of the tribunal on 19th December 2022. He prayed that the objection be dismissed and the tribunal allows the taxed bill based on the subject matter of USD 15,400.

I have listened to the submissions of both Counsel on the issue. What is not in contention is that at the time of filing the appeal and throughout the hearing of the appeal, the amount claimed by counsel for the applicant to be admitted had not been paid.

It is also not in contention that during the hearing of the appeal, the tribunal directed that the sum not in contention be paid to the respondent.

Based on the facts above, it cannot be said that the sum admitted did not form part of the subject matter. It is not enough to admit a particular part of a claim in dispute. The admission ought to be unequivocal and unconditional and must

be acted on by actually paying the admitted part of the claim. The payment must be done without unreasonable delay.

In the instant case, whereas the appellant admitted the claim, it withheld it and only waited for the matter to be brought to the tribunal for it to act.

In the circumstances, and for the foregoing reasons, I find that the subject matter of the appeal is and has always been USD 15,400 and that the respondent is entitled to compute its bill based on the same figure.

Issue 2

Counsel for the appellant objected to granting counsel for the respondent the full costs of the suit on grounds that the appeal had been determined at a preliminary point of law and did not proceed to full trial.

Counsel relied on the decision of the High Court in **HCMA 73 of 2022 Nijel Rawlins vs Tito Turiyo** where the high court considered the question as to whether counsel in a case that has not progressed to full trial, is entitled to the full costs of the case.

In reply, counsel for the respondent contended that the matter at hand is highly distinguishable from the authority provided. In this authority and the authorities relied upon, the matter did not proceed for trial. The matter was withdrawn before any court appearance. It also refers to matters where the advocate doesn't conduct a full trial.

In the instant case, all parties appeared for trial. The PO was raised and submissions made orally. The ruling was deferred until the conclusion of the matter.

The parties proceeded on the main case. The parties went ahead and wrote submissions as ordered by the tribunal and not on the PO because the PO was orally dealt with.

There is no doubt that the matter was dealt with to its full conclusion and the tribunal came up with a ruling on PO.

If the ruling on the PO was in the negative, the parties had no other time to come for litigation on the matter. The tribunal would have gone ahead to give its verdict on the final matter. In other words the matter at Hand went through a FULL TRIAL.

In the circumstances, the matter is distinguishable from the above case since the case was withdrawn before the full Trial.

Secondly, the learned Judge gave the figures using his discretion. There is no mention of a percentage or its equivalent in such scenarios. It appears to me that the taxing officer would use his discretion accordingly if the matter falls within the same parameters.

He prayed that the objection by counsel be overruled and the instruction fee be taxed and allowed according to the law.

I have carefully considered the submissions of both counsel and the authority so, generously provided by counsel for the Appellant.

The main principle in the authority is that the fees earned by counsel are not determined upon instruction but are determined as the hearing of the suit progresses

“...an advocate will not ordinarily become entitled at the moment of instruction to the whole fee which he may ultimately claim...The whole picture of his input only emerges as the case progresses...We therefore agree that the entitlement under instruction fees grows as the matter proceeds. A case that ends on a technicality cannot attract the same fees as the one that proceeds for trial. By the same logic, an advocate who only files pleadings and makes a few appearances cannot be remunerated the same way as one who takes a case through a full blown trial. At the end

of the case, a minimum fee may be reviewed upwards or even downwards, based on the advocate's involvement, complexity and other related matters...While we accept that an advocate is not allowed to charge a client below the minimum fee allowed by the Rules, this does not fetter the discretion of the taxing officer to determine whether Page 8 the amount charged is commensurate with the work done...If an advocate does not conduct his client's case to the end, ... then a taxing officer is empowered to determine the appropriate fee...it is therefore our judgment that an advocate is not entitled to the full instruction fees on filing and subsequent progress on a case is relevant...It is also our judgment that the learned Principal Judge did not err in law and applied the correct principles of law when he held [t]hat a lawyer is not entitled to the whole of the instruction fee when the matter is withdrawn from him...It is also our finding that the Learned Principal Judge did not err in law by holding that the instruction fee is determined by the subsequent progress of the matter."

This position of the law is, not only correct but also binding on the Tribunal. The record of proceedings shows that the appeal was determined on a preliminary point of law. Whereas I agree with counsel that the parties submitted on all matters raised in the appeal, there were matters that were not delved into including calling of witnesses that had been listed in the pleadings.

It is therefore not possible to conclude that the appeal proceeded to its fullest extent.

In the circumstances, I am enjoined to take into account this fact in determining the amount of fees payable and I allow the fees at a discount as prayed for giving the final instruction fees taxed and allowed of UGX 5,376,720.

All the other items in the bill are taxed and allowed at the figures indicated during the taxation hearing.

In the result I order as follows;

1. The subject matter of the appeal for purposes of taxation of the bill of costs is USD 15,400.
2. The instruction fees are taxed and allowed at UGX 5,376,720.
3. The final taxation certificate is UGX 9,011,720.

DATED and DELIVERED at KAMPALA on the 2nd **day of**
JANUARY 2023.



Isaac N. Mpanga
Registrar, Insurance Appeals Tribunal