

2. **THAT the learned Registrar erred in law and fact and improperly allowed costs of attendance, drawing, filing, service and transport thus arriving at a wrong decision and hence occasioning a miscarriage of justice.**

5 However, the respondent raised a preliminary objection in their written submissions that there is no reference properly before Court as envisaged by the Judicature (Court of Appeal Rules) Directions, SI 13-10. I will proceed to determine that objection first.

10 Counsel for the respondent contended that no reference lies before this Court by virtue of **Rule 110** of the Court of Appeal Rules. Counsel pointed out that the letter dated 19th December 2014 (Annexure “A”) merely requests for proceedings and is self explanatory. Instead, that the grounds of reference which commence the reference, numbered taxation reference number 208 of 2014 is time barred and should be rejected. Counsel submitted that the application ought to comply with **Rule 43 (1)** of the Court of Appeal Rules which procedure is by Notice of Motion.

15 Counsel for the appellant opposed this objection by submitting that **Rule 110** of the Rules of this Court provides for a simple and expeditious procedure allowing for such references to be commenced informally or by letter. The objection was thus misconceived as commencement by notice of motion for general applications under **Rule 43 (1)** of the Court of Appeal Rules is wrong and was prohibited in the cases of **A.K.P.M Lutaaya v. Attorney General, Supreme Court Civil Application No. 1 of 2007** and **Goodman Agencies Ltd v. Hasa Agencies (K) Ltd, Supreme Court Civil Application No. 1 of 2011.**

I have carefully considered the submissions of both parties as well as the authorities provided. I agree with counsel for the appellant that the purpose of **Rule 110** of the Rules of this Court is to provide for a simple and expeditious manner of instituting references such as this one. Indeed, **Rule 110 (5)** of the Rules of this Court provides that:

25 *“An application for a reference may be made to the Registrar **informally at the time of taxation or in writing** within seven days after that time”* (emphasis mine)

30 According to the record, the letter dated 19th December 2014 by counsel for the appellant requests for the record of proceedings in order to institute a reference to a single Justice. There is no other evidence on record indicating institution on a reference. Clearly, I consider this an aspect of sloppy drafting or over sight on the part of counsel. However, from Annexure “A”, the appellant’s intention to appeal or refer the matter to a single Justice of this Court is clear. I find that no prejudice is occasioned to the respondent by this anomaly. It

must be remembered that rules of procedure are handmaidens of justice and this should not be used to debar any litigant from enforcing their legal right. I accordingly over rule this objection and proceed to determine the grounds of this reference.

Ground 1

5 This ground challenges the instruction fees awarded by the learned Registrar of this Court as being manifestly excessive. Counsel for the appellant submitted that the taxing officer erred in failing to consider the guiding principles regarding taxation laid down in a number of authorities cited. These include: **Attorney General v Uganda Blanket Manufacturers, SCCAppl. No. 17 of 1993; Patrick Makumbi & Anor v Sole Electronics (U) Ltd, SCCAppl. No. 11 of 1994; Bank of Uganda v Banco Arabe Espanol, SCCAppl. No.23 of 10 1999; Obiga Mario Kania v Electoral Commission & Anor, Court of Appeal Civil Reference No. 169 of 2012; and Lanyero Sarah Ochieng & Anor v Lanyero Molly, Court of Appeal Civil Reference No. 225 of 2013**

15 Counsel for the appellant prayed that this Court varies the instruction fees of Ug.shs. 60m for the appeal and further varies in the Ug shs. 60m awarded on the cross-appeal to an amount that is reasonable.

In reply, Counsel for the respondent submitted that this was an election petition that involved perusing voluminous files of about 680 pages and numerous affidavits as well as laborious research. He prayed that the decision of the learned Registrar should be upheld.

20 I have considered the able submissions of both counsel as well as the authorities provided. The relevant guiding principles relating to taxation are enshrined under **Rule 9 (2)** of the Third Schedule to the Rules of this Court. These were reiterated in the case of **Lanyero Sarah (supra)** as the following:

- 25 i. The sum should be reasonable
- ii. The amount involved in the appeal should be considered
- iii. The nature, importance and difficulty of the case
- iv. The interest of the parties
- v. The other costs to be allowed
- vi. The general conduct of the proceedings
- 30 vii. The fund or person to bear the costs
- viii. Any other relevant circumstances

I have perused the record and found that there is nothing extraordinary about this appeal. As noted by the learned Justices of Appeal in **Election Petition Appeal Number 7 of 2012**, this election petition appeal was straightforward and the cross appeal was not complicated. In substance, the issues for determination were on matters of mandatory recount and inadmissible evidence which are not complicated. Naturally, election petitions involve voluminous records and numerous affidavits but award of costs should not be exorbitant only for this reason.

As suggested by Hon. Justice Kakuru, JA in *Lanyero Sarah (Supra)* costs in election petition should not be used as a weapon against political opponents. That would undermine the development of democratic governance.

10 Court should therefore balance the remuneration of advocates and successful litigant with the need to develop democratic principles which empower and encourage active political participation of citizens in good governance.

15 For the above reasons I find that the instruction fees award for both the appeal and cross appeal, are manifestly excessive in the circumstances of this case. The costs are hereby reduced and awarded at Ug Shs 15,000,000/= (Fifteen Million) for the appeal and Ug Shs 10,000,000/= for the cross appeal.

Ground 2 of this reference concerns costs of attendance, drawing, filing, service and transport as being improperly allowed.

20 Counsel for the appellant relied on Rules 10 and 13 of the Third Schedule to the Rules of this Court to advance the argument that the learned Registrar erred in taxing fees for pleadings separately from preparation of all copies required. Counsel further submitted that the fees for drawing documents included any requisite copies and since there was only one respondent in this election petition. Therefore, he prayed for items 10 to 21 of the Respondent's Bill of costs should be disallowed. He supported his arguments on this point with the case of **Lanyero Sarah Ochieng & Anor v Lanyero Molly, Court of Appeal Civil Reference No. 225 of 2013**

25 Counsel for the respondent submitted that this ground was misplaced as those claims are absent from the Bill of Costs and only apply to the decree and bill of costs, which are items after the appeal allowable on taxation by virtue of **Rule 9 (3) of the Third Schedule to the Rules of this Court.**

30 The respondent's instruction fees before taxation amounted to Ug shs 100 million on appeal and Ug shs 90 million for the cross appeal respectively. The taxing officer considered these amounts excessive and instead awarded Ug shs 60million for both cases. The total Bill of costs after taxation amounted to Ugshs. 90,267,800/= million from Ug shs 230,944,700/= claimed by the respondent. On the authority of **Lanyero Sarah (supra)** which decision I agree with, it was held that:

“Having taxed off more than one third of the bill of costs the taxing officer should have disallowed all the costs for drawing, filing and serving and attending taxation of the Bill of Costs as required by Schedule three of the Rules of this Court.”

Indeed, **Rule 13** of the Third Schedule to the Rules of this Court provides that:

5 **“13. Excessive claims**

If more than one quarter of the profit costs claimed is disallowed on taxation, the costs of drawing, filing and serving the bill and of attending taxation shall be disallowed”

10 In the premises, the learned Registrar had taxed over a third of the Respondent’s Bill of Costs, the costs of drawing, filing and serving the bill and of attending taxation should have been disallowed and therefore it is my finding that items 11, 16, 18 should be disallowed. The copies for the pleadings should not have been taxed separately considering there was only one respondent to be served.

In the result this application is accordingly granted and the final costs are allowed at Twenty Five Million Shillings (25,000,000/=). Parties to bear their own costs.

15 I so Order

Dated at Kampala this 17TH day of MARCH 2015

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**HON. JUSTICE RUBBY AWERI OPIO
JUSTICE OF APPEAL**