

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT HOLDEN AT KAMPALA
MISC. APPLICATION NO. 153 OF 2020
(ARISING FROM LDC. 176 /2015)

HON. BALYEKU MOSES GRACE.....CLAIMANT

VERSUS

ALI BUK BEN.....RESPONDENT

RULING

BEFORE

1. Hon. Head Judge, Ruhinda Asaph Ntengye

PANNELLISTS:

- 1.Ms. Kagoye Robinah
2. Mr.Musimbi Jimy
3. Mr.Lapenga Can Amos

This Ruling arises from a taxation ruling by the Registrar of this court. Briefly the facts are that the respondent filed a memorandum of claim in this court claiming for 11,334,000/= as special damages, general and exemplary damages, interest at 35% and costs of the suit. The case was called for the first time in open court on 17/3/2017 and thereafter several adjournments were occasioned until 25/09/2018 when by consent of both parties an Award for 7,000,000/= was entered on the record with costs to be discussed between the parties. It seems the parties either did not discuss the costs or they disagreed and the matter came before the Registrar for taxation and the registrar granted costs of 17,270,000/= as reflected in the certificate of taxation signed on 28/10/2020. The applicant was not satisfied with the Registrar's ruling and hence this application.

On 17/5/2021 Mr. Julius Galisonga appeared for the applicant while Mr. Ogwal Smith on brief for Ms. Nyakecho appeared for the respondent. The court gave times for filing written submissions and while Mr. Wesonga filed submissions on the due date of 25/05/2021, the respondent never filed any submissions.

An affidavit of service filed on 31/05/2021 is clear that counsel for the respondent was served with the submissions on 27/05/2021 and that they were received in protest for being late (instead of 24/5/2021). Because the respondent was served, we shall go ahead to deliver the ruling without submissions of the respondent.

SUBMISSIONS

Counsel for the applicant submitted that given the provisions of **Rule 1(d) of the sixth schedule of the Advocates (remuneration and taxation of costs) Regulations S1 123 as amended in 2018**, the instruction fees should have been allowed at 1,480,000/=. Counsel argued that the registrar taxed items 3, 4, 5, 7, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27 without following **Rule 10(3) of the sixth schedule** of the taxation regulations by allowing 4,820,000/= instead of 1,670,000/.

He submitted that item 8 should have been allowed at 140,000/= instead of the 340,000/= as per **Rule 11(1) & (2) of the Taxation Regulations**. He contended that items regarding attendances were exaggerated and that the award of disbursements was not justified.

DECISION OF COURT

We have perused carefully the Chamber Summons together with the affidavit in support of the same. We have also carefully perused the affidavit in reply. There is no doubt that Mr. Wesonga, counsel for the applicant was not counsel before the registrar on 28/10/2020 when the taxation took place. The record reveals that one Nasasira Hadijat and one Namwonge appeared for the respondent (judgement debtor) and one Nyakecho Racheal appeared for the applicant (judgement creditor). The record further reveals that both counsel agreed on items 3-86 as indicated on the Bill of costs and agreed to tax off items 9, 11, 13, 15, 17, 19, 21, 23 and 25. The registrar did what was agreed and only decided on her own the issue of instruction fees. However, we must state that even when the parties or counsel agree, what they agree on must be within the law. Therefore, we shall look at the agreed items to ascertain whether they were in conformity with the taxation rules

Items 3, 4, 5, 7, 10, 12, 14, 16, 18, 20, 22, 24, 26, 27 were all about drawing documents. **Rule 10(3) of the sixth schedule of the Advocates (remuneration and taxation of costs (amendment) Regulations 2018** provides:

“10. Drawing court papers –

(1) ...

(2) ...

(3) For decrees, orders, and all other necessary court documents, 50,000/= shillings and 20,000/= for each extra copy made.

In our considered opinion an affidavit of service, a witness statement, a scheduling memorandum, a hearing notice fall under the category of documents mentioned in rule 10(3) above mentioned. We form the opinion that an affidavit of service for purposes of taxation does not fall under Rule 10(2).

Accordingly, item 3 should have been allowed at 50,000/= for drawing and 60,000/= for the three copies. The same applies to item 5 which should have been allowed at 50,000/= and 160,000/= for 08 copies.

Items 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 should have each been allowed at 50,000/= for drawing and 60,000/= for three copies.

Items 5 and 7, should have been allowed at 50,000 for drawing and 160,000/= for eight copies each.

Item 8 according to Rule 11(1) should have been allowed at 100,000/= drawing and 40,000/= for two copies.

Drawing a memorandum of claim, a summary of evidence and list of authorities as well as a trial bundle, in our considered opinion fall under the category of documents in rule 10(1) which states

“10 drawing court papers

(1) For drawing a plaint, statement of claim, complaint, petition, memorandum of Appeal written statement of defence, reply and similar pleadings, 300,000/= and 50,000/= for each extra copy.”

Therefore, item 2 was properly taxed because a summary of evidence and a list of authorities are part of the memorandum of claim and are not charged differently. Item 4 was also properly allowed by the Registrar.

Rule 12 under the sixth schedule of the Taxation Regulations (2018) provides for attendance and payment is provided for per hour. The taxing officer is normally not present during court proceedings and therefore the best he/she can do is to estimate the time spent in court. Without pointing out how the figures related to attendance allowed by the Registrar were exaggerated, counsel just made a flat statement that the registrar exaggerated the items. Without any submission as to the extent of exaggeration, we find no reason to disturb the attendances as allowed by the Registrar.

It was the submission of counsel that disbursements were not justified and were not provided for under the Taxation Regulations. Although disbursements are not covered under the **Advocates (Remuneration and Taxation of costs) Regulations 2018**, we have no doubt in our minds that the advocates costs are only part of the bill of costs incurred by a successful party in the suit. Disbursements therefore are costs that are incurred by the litigant in the course of litigation. They include transport and accommodation expenses while the litigant travels to and from court. They also include any other expenses legitimately and reasonably expended by the litigant in the course of litigation. There was therefore no error committed by the Taxing Master in allowing disbursements in a bill of costs. Since counsel did not make any submissions as to how much disbursements should have been allowed by the registrar, we have no reason to disturb the allowed disbursements.

It is not true that the registrar allowed 5,000,000/= as instruction fees. Rather she taxed off 5,000,000/= thereby allowing 2,000,000/=. **Rule 1(d) of the sixth schedule to the Taxation Rules** provides for 10% of the amount exceeding 10,000,000/= consequently instruction fees should have been allowed at 10% of the 11,334,000/= claim which is 1,133,400/.

In conclusion the taxation ruling of the registrar is hereby set aside and instead the bill is taxed as follows:

Item 1	-	1,133,400/=
Item 2	-	700,000/=
Item 3, 6, and 9-26 at 110,000 each	-	2,200,000/=
Item 4	-	700,000/=
Item 5 and 7	-	420,000/=
Item 8	-	140,000/=
Item 27	-	400,000/=
Attendances are allowed at	-	2,760,000/=
Disbursements are allowed at	-	<u>950,000/=</u>
		<u>9,403,400/=</u>

The total bill of costs allowed is 9,403,400/= (nine million four hundred three thousand four only).

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye.....

PANELLISTS

1. Ms. Kagoye Robinah.....
2. Mr. Musimbi Jimmy.....
3. Mr. Lapenga Can Amos.....

DATED 22/10/2021

