

5 **THE REPUBLIC OF UGANDA**

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

TAXATION REFERENCE NO. 313 OF 2019

(Arising from Election Petition Appeal No.0024 of 2016)

(Arising from Election Petition No. 004/2016)

10 **MUGISHA VICENT.....APPLICANT**

VERSUS

ASTON PETERSON KAJARA & 2 OTHERS.....RESPONDENT

RULING BY CHRISTOPHER GASHIRABAKE JA

15 **(SINGLE JUSTICE)**

Background

1] The Applicant being dissatisfied by the decision of Her Worship Agnes Nkonge in the taxed bill of costs made a reference to this Honourable Court. The complaints are captured in the Memorandum of Reference on record these are:

- 20
1. *The learned Taxing Officer erred in law when she awarded costs to advocates who did not possess valid practicing certificates at trial.*
 2. *The learned Taxing Officer erred in law when she awarded a manifestly excessive sum of UGX 14,000,000/= (Fourteen Million shillings only) as instruction fees.*
 - 25 3. *The learned Taxing Officer erred in law when she awarded a manifestly excessive sum of UGX 16,509,000/= (sixteen million five hundred and nine thousand shillings only).*

5 **Representation**

2] The Applicant was self-represented. The Respondent was represented by Mr. Wamok Conrad.

Submissions of counsel for the Applicant.

10 3] On ground one, the Applicant contended that the proceedings and bill of costs by the Deputy Registrar of the Court of Appeal were illegal. The Applicant argued that the Advocates Businge A. Victor of Ngaruye Ruhindi & Co. Advocates did not possess a valid practicing certificate at the time of filing the answer to the petition and affidavits in support of the petition which were used in the petition as well as appearing in Election Petition No. 004 of 2016
15 before the High Court of Uganda at Fort Portal. The Applicant cited section 69 of the Advocates Act Cap 267, which is to the effect that:

20 *“no costs shall be recoverable in any suit or proceeding or matter by any person in respect of doing anything done, the doing of which constitutes an offence under this Act whether or not any prosecution has been instituted in respect of the offence.”*

4] The Applicant stated that this was illegal, and once an illegality is brought to the attention of the Court it should not be condoned. See **Makula International Ltd Vs. His Eminence Cardinal Nsubuga & Anor, 1982 HCB, at page 20.**

25 5] The Applicant argued grounds two and three together. The Applicant argued that Ugx 14,000,000/= (Fourteen Million shillings only) and Ugx 16,509,000/= (sixteen million five hundred and nine thousand shillings only), was excessive considering the fact that the election petition appeal was dismissed on the technicality of serving the Notice of appeal out of time. The
30 Applicant cited Paragraph 9 sub paragraph 2 of the Third Schedule of the

Rules of this Court which is to the effect that the fee to be allowed for instructions to appeal or to oppose an appeal shall be a sum that the taxing officer considers reasonable, having regard to the amount involved in the appeal, its nature, importance, the interest of the parties and other costs to be allowed.

6] The Applicant acknowledged the fact that it is in exceptional circumstances that a Judge would interfere with the discretion of the Taxing Officer as was stated by the Supreme Court in the case of **Bank of Uganda Vs. Banco Arabe Espanol, Civil Application No. 23 of 1999** and **Thomas James Arthur Vs. Nyero Electricity Undertaking [1961] E.A 492**

Submissions of counsel for the Respondent.

7] Before delving into the main grounds of the reference, counsel raised two preliminary points of law namely;

1. Firstly, that at the time of hearing Election Appeal No. 24 of 2016 Cosma A Kateeba and Boniface Ngaruye Ruhindi were duly licensed to practice and were therefore entitled to practice at the time. Counsel argued that the illegality in the High Court cannot affect the taxation of costs in the election petition appeal.

2. Secondly the reference was filed out of time without leave of Court. That this offended Rule 110(5) of the Rules of this Court which requires that the reference is made within seven days after the decision of the Registrar.

8] In response to ground one counsel submitted that the application could not stand because the Costs objected to were in the High Court matter and do not concern the taxation of costs at the Court of Appeal. By the time the Appeal was heard counsel in personal conduct had a valid practicing certificate.



5 9] On grounds two and three, counsel submitted that the Taxing Officer took into consideration the principles enunciated under Rule 9 of the third schedule of the Court of Appeal Rules. Counsel cited the cases of **Lanyero & Another Vs. Lanyero, Reference No. 255 of 2013** and **Brenda Nabukenya Vs. Rebecca Nalwoga Balwana, Taxation Reference 208 of 2014**, where the
10 Court awarded Ugx 15,000,000/= (fifteen million) as instruction fees. Counsel submitted that the fee of Ugx 14 million shillings was not excessive in the circumstances of this case. Counsel argued that the total Ugx of 16, 509,000/= was reasonable considering that the Ugx 2,509,000/= was for attendance and disbursements.

15 **Rejoinder**

10] The Applicant retaliated the earlier submissions and stated that Counsel Businge A. Victor did not possess a valid practicing certificate at the time of answering the petition and all the supporting documents at the High Court. The Applicant cited the position of the law on Advocates without renewed
20 Practicing certificate in the case of **Prof. Syed Huq Vs. Islamic University in Uganda, SCCA No. 47 of 1995**. Counsel cited sections 15 and 69 of the Advocates Act, Cap 267.

11] The Applicant argued that even when the illegality was committed at the lower Court it affected the validity of the costs of the Court of Appeal because the proceedings at the lower Court are the foundation of the appeal.
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12] With regard to excessive award the Applicant submitted that the Taxing Officer awarded Ugx 18,000,000/= and also awarded Ugx 600,000 for drawing conferencing notes which was part of the instruction fee as the position of the law in **Patrick Makumbi and Anor Vs. Sole Electrics (U)
30 Ltd, SCCA 11/94**. It was also contended that the Taxing Officer also billed 3

5 counsel contrary to the order of the Court to bill for Two counsel. Counsel
prayed that this Court bills off the allocation of third counsel as was ordered
by the Court. It was prayed that this reference is allowed.

Consideration of Court.

13] It is trite law that a reference on taxation may be made to this Court on
10 two grounds i.e. a matter of law or principle or on the ground that the bill of
costs as taxed is manifestly excessive or manifestly low in the circumstances.
This is rooted in Rule 110(1) and (3) of the Rules of this Court which provides:

15 *"(1) Any person who is dissatisfied with a decision of the registrar
in his or her capacity as a taxing officer may require any matter of
law or principle to be referred to a judge for decision, and the judge
shall determine the matter as the justice of the case may require.*

20 *(3) Any person who contends that a bill of costs as taxed is, in all
the circumstances, manifestly excessive or manifestly inadequate
may require the bill to be referred to a judge; and the judge may
make such deduction or addition as will render the bill
reasonable."*

14] The circumstances under which a single Justice may interfere with the
discretion of the taxing officer while awarding costs were restated in the case
25 of **Bank of Uganda Vs. Banco Arabe Espanol, Civil Application No. 23 of
1999** (Mulenga JSC):

30 *"Save in exceptional cases, a judge does not interfere with the
assessment of what the taxing officer considers to be a reasonable fee.
This is because it is generally accepted that questions which are solely
of quantum of costs are matters with which the taxing officer is
particularly fitted to deal, and in which he has more experience than
the Judge. Consequently, a Judge will not alter a fee allowed by the
taxing officer, merely because in his opinion he should have allowed a*



5 *higher or lower amount. Secondly, an exceptional case is where it is*
shown expressly or by inference that in assessing and arriving at the
quantum of the fee allowed, the taxing officer exercised, or applied a
wrong principle. In this regard, the application of a wrong principle is
10 *capable of being inferred from an award of an amount which is*
excessive or manifestly low. Thirdly, even if it is shown that the taxing
officer erred on principle, the Judge should interfere only on being
satisfied that the error substantially affected the decision on quantum
and that upholding the amount would cause injustice to one of the
parties."

15 15] The Respondent raised two preliminary objections one being that at the
time the appeal was heard, counsel in personal conduct had a valid practicing
certificate. It is my opinion that this objection will be addressed in resolving
ground one. The second objection was with regard to the reference being filed
out of time thus offending Rule 110(5). I have noted that the reference was
20 made out of time, however, in the interest of justice, I will proceed to consider
the reference on its merits.

16] The Applicant's contention was that since the Advocate in the High
Court (Mr. Businge A. Victor) did not have a valid practicing certificate at the
time of filing the Election petition, this Court should not award Costs to Mr.
25 Cosma A Kateeba and Mr. Boniface Ngaruye Ruhindi for the Appeal.
However, Paragraph 2 of the Third Schedule of the Rules of this Court permits
the advocate for the party to whom costs were awarded to lodge his or her bill
with the taxing officer. The Rule provides thus:

"Lodging and service of the bill of costs.

30 *(1) Where costs are to be taxed, the advocate for the party to whom the costs*
were awarded shall lodge his or her bill with the taxing officer and shall,
before, or within seven days after, lodging it, serve a copy of it on the
advocate for the party liable to pay it."

5 17] The learned Registrar while taxing held that;
"this Court is handling taxation of the bill of costs in the Court of
Appeal which were awarded by the Hon. Justices. There is no
directive otherwise, in any case, by the time the matter came to the
Court of Appeal, the learned Counsel for Judgment Creditors had
10 valid Practicing Certificates."

18] It is not in contention that on appeal, the Advocate in the personal
conduct of this matter were Cosma A. Kateeba and Boniface Ngaruye
Ruhindi. They had valid practicing certificates. It is therefore not in order to
penalize an innocent party who has prepared properly to represent his clients.
15 I find that the learned Registrar properly found that the Advocates in personal
conduct had valid practicing certificates.

19] On whether the bill is manifestly excessive, the Applicant is authorized
to file a reference by virtue of Paragraph 110 (3) of the Third Schedule cited
above. The Taxing Officer is further guided by Paragraph 9 of the third
20 schedule of the Court of Appeal Rules, which provides that:

"Quantum of costs.

1. The fee to be allowed for instructions to make, support, or oppose any
application shall be a sum that the taxing officer considers reasonable
but shall not be less than one thousand shillings.
- 25 2. The fee to be allowed for instructions to appeal or to oppose an appeal
shall be a sum that the taxing officer considers reasonable, having
regard to the amount involved in the appeal, its nature, importance, and
difficulty, the interest of the parties, the other costs to be allowed, the
general conduct of the proceedings, the fund or person to bear the costs
30 and all other relevant circumstances.



5 3. The sum allowed under subparagraph (2) of this paragraph shall include all the work necessarily and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondences, perusals and consulting authorities. (emphasis mine)

10 4. Other costs shall, subject to paragraphs 10, 11 and 12 of this Schedule, be awarded in accordance with the scale set out in the following paragraphs or, in respect of any matter for which no provision is made in those scales, in accordance with the scales applicable in the High Court." (emphasis mine)

15 20] The learned Registrar was alive to the above principle of the law and she relied on the case of **Lanyero Sarah Taxation** (supra), where Hon. Justice Kenneth Kakuru (RIP) observed that:

- 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;
- 20 IV. The interest of the parties;
- V. The other costs to be allowed;
- VI. The general conduct of the proceedings;
- VII. The fund or person to bear the costs
- VIII. Any other relevant circumstances.

25 21] Having considered the above, the learned Registrar found the sum of Ugx 200,000,000/= (Two hundred million shillings) claimed excessive and found Ugx 14,000,000/= (Fourteen million shillings) appropriate.

30 22] In his submissions counsel for the Applicant alluded to Ugx 30,000,000/= (Thirty million shillings) on page 5 of the submissions and Ugx 20,000,000/= (Twenty million shillings). However, when I perused through the 1st Respondent's bill of costs, these figures were not there. The learned Registrar allowed Ugx. 14,000,000 /= (Fourteen million shillings only) as

instructions fee and Ugx 2,509,000/= (Two million five hundred and nine thousand shillings) as attendance and disbursements.

23] Instruction fees are the money paid to an advocate for the work done on a given case. The complexity of a case or the amount of work done by an advocate is one of the most important factors when assessing the quantum of instruction fees. See **Bank of Uganda Vs. Sudhir Ruparelia & Meera Investments Ltd, Supreme Court Taxation Reference No. 0001 of 2023**. In this same case, the Court noted that the appeal in issue was withdrawn before the hearing, therefore, not as much work was done by the advocates in the Court as would have been done if the appeal had been argued to its logical conclusion. The Court set aside an award of Ugx Shs. 45, 860,682, 730/= as instruction fees and substituted the same with an award of Ugx 5,000,000/= (Five million shillings only)

24] This appeal was dismissed on the grounds that the Notice of Appeal was filed out of time. All the Respondent's counsel did was file an application to strike out and did not demonstrate that this application was complicated. The law requires that the Taxing Officer shall be reasonable in the circumstances. Further, it is trite that the instruction fees should not be too excessive so as to discourage the public from accessing the Courts of law and not too low to demoralize new recruits to the profession. See **Makula International Vs. His Eminence Cardinal Nsubuga & Anor, Civil Appeal No.4 of 1981**.

25] I find that the cases referred to by Counsel for the Respondent are distinguishable from the facts of this case because, in those matters, the appeals were heard on several grounds to their logical conclusion, which is not the case in this matter. Here the appeal was struck out before the hearing. I therefore find that 14 million was excessive. I find the sum of 5 million



5 appropriate in the circumstances of the case for instructions. The Applicant
contended that the justices allowed a refund of the transportation of two
counsel and not three as the Taxing Officer had allowed. I, therefore, deduct
Ugx 800,000/= (eight hundred thousand shillings only) from Ugx 2,509,000/=
(Two million, five hundred and nine thousand shillings only) This makes the
10 total of transport and disbursement Ugx 1,709,000/= (One million, seven
hundred and nine thousand shillings only)

26] The application is allowed with the following Orders:

- 1) *The taxing officer's award of instruction fees of Ugx Shs. 14,000,000/= (Fourteen Million shillings only) is set aside.*
- 15 2) *The instruction fees are set at Ugx Shs. 5,000,000/= (Five million shillings only)*
- 3) *Transport and disbursement are set at Ugx. 1,709,000/= (One million, seven hundred and nine thousand shillings.*
- 4) *The total being Ugx Shs. 6,709,000/= (Twenty million, seven hundred*
20 *and nine thousand shillings only)*

27] In the premises, I am satisfied that the Taxing Officer did not exercise
the taxing powers judiciously. The taxation reference therefore succeeds as
indicated above.

28] Each party shall bear their costs regarding this taxation reference.

25 Dated this 19th day of January 2024


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C. GASHIRABAKE

JUSTICE OF APPEAL