THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL REFERENCE NO. 27 OF 2013

(Arising from Constitutional Petition No 47 of 2011)

TWINOBUSIGYE SEVERINO..... PETITIONER

VERSUS

THE ATTORNEY GENERAL .....RESPONDENT

CORAM: Hon. Mr. Justice Kenneth Kakuru

Single Justice of Appeal

TAXATION REFERENCE RULING

The respondent herein was also the respondent in Constitutional Petition No. 47 of 2011 wherein, the petitioner was the successful party. The petitioner was awarded $^{2}/_{3}$ of the costs with a certificate for two Counsel. The Judgment of the Court is dated 21st February 2012. On 24th April 2012 the petitioner through his advocates M/S. Mugisha & Co. Advocates and M.S Bakiza & Co. Advocates filed a bill of costs at this Court, seeking to recover from the respondent professional fees and disbursements totaling Shs. 23,625,759,940/= out of the above total, shs. Shs.12,003,500/= was claimed as disbursements while Shs. 11,658,000/= was claimed as profession fees in respect of attendances, perusals and

preparation of Court documents. The petitioner also sought to recover Shs. 3,602,098,440/= being value added tax (VAT).

On 24th May 2012, the parties appeared before the Registrar of this Court at the time His Worship Elias Kisawuzi for taxation of the bill of costs. After a full hearing , the Registrar delivered his Ruling on 24th December 2012, in which he allowed the bill at Shs. 12,992, 003, 500/=.

The respondent being dissatisfied with the decision of Registrar/Taxing Master preferred a reference to a single justice of this Court as provided for under *Rule 110* of the Rules of this Court. This Ruling is in respect of that reference.

When this reference came up for hearing *Mr. John Mary Mugisha* learned Counsel appeared for the petitioner while *Mr. George Kalemera* learned Principal State Attorney appeared for the respondent. The petitioner was absent.

The Respondent's case

It was submitted for the respondent by Mr. Kalemera that:-

The award of Shs. 12,992, 003, 500/= to the petitioner as costs by the learned Registrar offended the principles of law regarding taxation of costs, specifically the award of advocates instruction fees. Further that, the award was manifestly excessive and therefore contrary to *Rule 110 (3)* of the Rules of this Court.

He submitted further that, the 3rd schedule of the Rules of this Court specifically *Rule 9 (2)* states that, 'the fees allowed for instructions to

oppose or pursue an appeal shall be an amount that is considered reasonable having regard to the nature, importance, difficulty of the matter, the general conduct of the proceedings and the fund or person to bear the costs in the matter'.

He argued that, this was a Constitutional Petition wherein, the petitioner was challenging resolutions of Parliament. The petition was filed, setting out four main grounds, the respondent in his answer to the petition conceded to two of those grounds. The petition therefore, did not involve any difficulty as contended by the petitioner since only two grounds were argued and eventually determined. The importance of the petition is conceded.

Counsel then referred to *Attorney General –vs- Hon. Theodore Sekikubo and 4 others, Supreme Court Civil Reference No. 13 of 2016* wherein *Opio Aweri JSC* while determining a taxation Reference emphasized the reasonableness of the amount awarded.

He went on to submit that, the learned Registrar did not take into account the fact the petition had no monetary value attached to it, and the fact that, the award would have to be paid from the consolidated fund. He submitted that, the issue to be determined in this reference is whether or not the award in respect of professional fees was manifestly excessive.

Finally he submitted that, the award was very much over and above the ordinary awards in Constitutional Petitions and if it is upheld it will have the effect of locking out potential litigants. In this regard Counsel,

referred to the decision of the Court of Appeal in *Lanyero Sarah vs Electoral Commission* and *Lanyero Molly, Court of Appeal Civil Reference No. 225 of 2013,* where it was held that, costs that are manifestly excessive in election petitions have a chilling effect on all persons present and future who have an interest standing for an elective office. This in turn would have a negative impact on the whole democratization process in this country, he argued.

He referred to *Ssekikubo case* (supra) in which the learned Justice of the Supreme Court set aside an award of shs. 250 million on instruction fees and substituted it with one of Shs. 130 million. He prayed that, in the circumstances of this case the professional fees awarded herein should be reduced to Shs. 30 million for senior counsel and Shs. 15 million for the assisting Counsel.

The Petitioner's reply

Mr. J.M Mugisha for the petitioner in his response submitted that:-

The award had been arrived at by the learned Registrar in accordance with the law. He adopted the submissions he had made earlier before the Registrar in respect of the principles of law in taxation of costs, as set out in the *Lanyero vs Electoral Commission and Another* (Supra) that;-

1. The costs must not be too high
2. A successful litigant should be fairy reimbursed
3. General level of remuneration must not leave out young lawyers.

4. The need for consistency in awarding costs
5. There is no mathematical formula for determination of professional fees
6. Instruction fees should cover all the work
7. Fees awarded must be appropriate

Applying the above principles to facts of this case Counsel submitted that, the petition involved physical and electronic research on national and international jurisprudence. The subject matter involved invariable but highly intricate and tantalizing constitutional issues relating to high personalities in government. The matter was quiet complex and it entailed perusal of Hansards of Parliament, hundreds of video recorded matters spanning for several hours and the conduct of the proceedings was tedious.

Further that, the proceedings of that day took about four hours. The matter generated a lot of anxiety. Some issues were new, such as a grant of injunction by Court against Parliament. Although this was a public interest matter the Court went ahead to award costs. In addition Court issued a certificate for two Counsel confirming that the Court considered it just and equitable that the successful party be reimbursed for the costs incurred in the prosecution of the petition the existing practice of not granting costs in public interest ligation notwithstanding.

Counsel asked Court to confirm the award and dismiss the reference.

Resolution by Court

This matter comes to me as a single Justice of this Court by way of reference from the decision of the Registrar as Taxing Master under *Rule 110 (1)* and *(3)* of the Court of Appeal Rules. While taxing a bill of costs the Registrar of this Court exercises the Power of the Court. A party that is dissatisfied with the decision of the Registrar may require the bill to be referred to a single Justice of this Court for consideration.

A reference therefore is not strictly an appeal. The Judge is required to determine the matter as the justice of the case may require, making such deductions and/or additions as will render the bill reasonable. Such a reference may be made informally to the Judge or by writing to the Registrar with seven days of his decision.

I have regarded it pertinent to set out the law regarding references from the decision of the Registrar at this Court. There has been a tendency to consider a reference as an 'appeal'. There is no law to justify this practice. There is no requirement for a formal motion or appeal by way of memorandum and grounds of appeal. All that is required is for the party being dissatisfied with the decision of the registrar to indicate his/her dissatisfaction orally or in writing within 7 (Seven) days and thereafter the Registrar is required to forward the file to the Judge. There is neither an 'appellant' nor a 'respondent' in reference proceedings. The parties retain their respective status at the trial or appeal from which the reference emanates. That is why in this reference, although The Attorney General is the aggrieved party, he remains a

respondent while Mr. Twinobusigye the successful party remains the petitioner.

In these proceedings therefore I am required to take a fresh look at the bill of costs as a whole and determine the matter as the justice of the case requires.

The law applicable in the taxation of costs in the Constitutional Court is the same as that applicable at the Court of Appeal. It is set out in the Third Schedule of the Rules, and it arises from *Rule 109 (2)* of the same Rules. Paragraph 9 (1) of the 3rd schedule provides as follows:-

> *9. "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.*
>
> *(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 and all other relevant circumstances.*

(3) The sum allowed under sub Paragraph (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

(4) Other costs shall, subject to paragraphs 10, 11 and 12 of this schedule to allowed 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."

See:- *Bank of Uganda vs Banco Arab Espanol, Supreme Court Civil Application No. 23 of 1999* and *Attorney General vs Theodore Sekikubo & 4 other Supreme Court Civil Appeal No. 13 of 2016* (Per Opio –Aweri JSC).

In the application of the above law, a number of principles have evolved over time. They include the following:-

1. *Costs must not be allowed to rise to such a level so as to confine access to courts only to the rich.*

2. *A successful litigant ought to be fairly reimbursed for costs he or she has to incur.*

3. *The general level of remuneration of advocates must be such so as to attract recruits to the profession.*

4. *As far as possible there should be some consistency in the award of costs.*

5. *There is no mathematical or magical formula used by a taxing master to arrive at a precise figure. Each case has to be decided on its own merits and circumstances.*

6. *Instructions fee should cover the advocate's work, including taking instructions as well as other work necessary for presenting the case for trial or appeal as the case may be.*

7. *The taxing master should find the appropriate scale to the schedule and then consider whether the basic fee should be increased or reduced by considering the value upon the work and the responsibilities involved.*

1. See:- *Akisoferi Michael Ogola -Vs- Akika Othieno Emmanuel & Another Court Of Appeal No. 18 of 1999 .*

2. *Obiga Kania -Vs- Wadri Kassiano Ezati & Ano. C.A. Civil Reference No. 32 of 2004 .*

3. *Ngoma Ngime -Vs- Electoral Commission & Hon. Winnie Byanyima Election Petition Appeal No. 11 of 2002.*

4. *Lanyero Sarah vs Electoral Commission and Lanyero Molly, Court of Appeal Civil Reference No. 225 of 2013.*

5. *Zachay Olum & Another vs Attorney General Court of Appeal Civil Appeal No. 1 of 2004.*

6. *Attorney General Vs Uganda Blanket Manufactures, Supreme Court Civil Appeal No. 17 of 1993.*

I am now required to apply the above principles to the peculiar facts of the matter before me.

In the petition, the petitioner describes himself and his motive for bringing the petition as follows:-

1. *THAT your Petitioner,* ***TWINOBUSINGYE SEVERINO*** *is an adult male Ugandan citizen of sound mind, an Advocate of the High Court of Uganda and all courts subordinate thereto and an ardent believer in the rule of law and constitutionalism.*

2. *THAT your Petitioner is a person having an interest in or is aggrieved by the following matters being inconsistent with the Constitution of the Republic of Uganda whereby your petitioner contends that on* ***10th and 11th October 2011,*** *Parliament of the Republic of Uganda passed the following Resolutions, namely.*

(i) *Resolution 9 (a) that an Ad-hoc Committee of Parliament be set up to investigate claims and allegations of bribery in the oil sector and report back to Parliament within three months is inconsistent with or in contravention of Articles 2, 28 (1) (3) (c) (g), 4, 44 (c) and 79 (3) of the Constitution.*

(ii) *Resolution 9 (b) that members to be named on the Ad-hoc Committee observe high moral standards while considering the above assignment is inconsistent with or in contravention of Articles 2, 28 (1) (3) (c) (g), 42, 44(c) and 79 (3) of the Constitution.*

(iii) *Resolution 9(c) that the government ministers (sic) namely; The Rt. Hon. Amama Mbabazi, Prime Minister of Uganda, Hon Sam K. Kutesa, The Minister of Foreign Affairs and Hon. Hillary Onek, The Minister of Internal Affairs who were named during the debate step aside from their offices with immediate effect, pending investigations and report by the Ad-hoc Committee to Parliament is inconsistent with or in contravention of Articles 2, 28(1) (3) (c) (g), 42, 44(c) and 79(3) of the Constitution.*

(iv) *That Resolution 9(c) in as far as it entails Rt. Hon. Amama Mbabazi, the Prime Minister of Uganda to step aside from his office is inconsistent with or in contravention of Articles 2 and 108A of the Constitution.*

Cleary the petition is brought in Public Interest. In which case the petitioner does not have any special interest in the matter raised in the petition beyond the interest of any other ordinary Ugandan interested in the Rule of law and Constitutionalism in this Country.

The principles of taxation enumerated above do not strictly apply to the facts of this petition, which is brought in Public Interest. The question of costs in Public Interest suits was discussed by the Constitutional Court in *Advocates For Natural Resources Governance & 2 Others Vs Attorney General & Another, Constitutional Petition Number 40 of 2012, (Un reported) as follows:-*

> *"As to costs, a practice has evolved in this and other courts that parties who seek to enforce in courts of law fundamental human rights enshrined in the bill of rights in this country's Constitution should not seek legal costs. This is a good practice that was adopted in this very petition.*
>
> *The rationale for this is that no one should be seen to be profiting from a matter in which he or she has no interest beyond that of other members of the public.*
>
> *Secondly in every constitutional petition or reference, the Attorney General is a statutory respondent, representing a Government elected by the people. Whenever costs are awarded against the Attorney*

General they are paid out of public funds. A person who brings a public interest action would then be requiring the same public to pay him or her costs. In the event that a public interest petitioner or litigant is unsuccessful and is condemned to pay costs, that too would be unfair. One individual would have to pay costs in a matter that he or she has no interest beyond that of the other members of the public. This would create a chilling effect and stifle the enforcement of rights and the growth of constitutionalism.

Articles 50 and 137 of the Constitution threw open Court doors for public interest litigation. The courts ought not to close them by condemning parties to costs except where circumstances dictate that a Court in the exercise of its discretion awards costs to a party against another for the sake of advancing the cause of Justice. In our humble view awarding costs in public interest litigation would be against the spirit of the Constitution as enshrined in Articles 50, 126 and 137.

Even in some matters where litigants have had personal interest courts have declined to grant costs on account of the public interest of the matter.

This issue of costs was discussed by the Supreme court in Presidential Election Petition No. 1 of 2001, Col (RTD)

Besigye Kizza versus Museveni Yoweri Kaguta and Electoral Commission, where it was unanimously agreed that each party bears its own costs.

In that petition Odoki (CJ) (as he then was) stated as follows:

> *"It is well settled that costs follow the event unless the court orders otherwise for good reason. The discretion accorded to the court to deny a successful party costs of litigation must be exercised judicially and for good cause. Costs are an indemnity to compensate the successful litigant the expenses incurred during the litigation. Costs are not intended to be punitive but a successful litigant may be deprived of his costs only in exceptional circumstances. See Wambugu vs. Public Service Commission [1972 (E.A. 296)].*
>
> *In awarding costs, the courts must balance the principle that justice must take its course by compensating the successful litigant against the principle of not preventing poor litigants from accessing justice through award of exorbitant costs.*
>
> *In the present petition, I am of the considered opinion that the interest of justice require that the Court exercise its discretion not to award the costs to the Respondents. I agree with Mr. Balikuddembe that this was a historic and unprecedented case in which a*

presidential candidate who is a serving President was taken to court to challenge his election. The petition raises important legal issues, which are crucial to the political and constitutional development of the country. In a sense, it can be looked at as public interest litigation. It promotes culture of peaceful resolution of disputes.....

In several cases of significant political and constitutional nature, this Court has ordered each party to bear its own costs. This was done in the case of Prince J. Mpuga Rukidi v Prince Solomon Iguru and others – C.A. 18/94 (SC) where right of the King of Bunyoro to succeed to the throne was unsuccessfully challenged. In the case of Attorney General vs. Major Gen. David Tinyefuza, 51. App. No. 1 of 1997 (SC) the court agreed that each party bears their costs.

Hon. Justice A. Karokora (JSC) had this to say:

"In order to encourage people like the petitioner to come to court and help in the development of our legal, historical and Constitutional development in Uganda such people should be encouraged. Costs should not be awarded by way of penalizing them so that they should get scared from coming to Court"

And Justice Mulenga (JSC) held as follows:

> *"In the case of Major Gen. D. Tinyefuza Constitutional Appeal No. 1 of 1997 (SCU) (unreported) this court ordered each party to bear its costs although the appeal was dismissed. The court reasons for doing so, were that in order to encourage constitutional litigation parties who go to court should not be saddled with the opposite party's costs if they lose. If potential litigants know that they would face prohibitive costs of litigation, they would think twice before taking constitutional issues to court. Such discouragement would have adverse effect on development of the exercise of the court's jurisdiction of judicial-review of the conduct of authorities or individuals, which are unconstitutional. It would also stifle the growth of our Constitutional jurisprudence. The culture of constitutionalism should be nurtured, not stunted in this Country, which prohibitive litigation costs would do if left to grow unchecked. I agree with the principles in the decision. In my view they should equally apply to the instant Petition.*
>
> *The above is the correct proposition of the law in this regard and in our view it ought to be respected and followed.*

Wherein public interest petitions cases and costs are awarded, the actual amounts taxed and allowed should be nominal in respect of professional fees, the rest should simply be awarded only in respect of disbursements."

I find no reason whatsoever to depart for the decision. I have reproduced it here in *extenso* as I find no reason to repeat what the Constitutional Court has already pronounced itself upon.

Jurisprudence has evolved in other jurisdictions notably USA, Canada and Australia, that, costs in Public Interest litigation maybe awarded to a Public litigant but not against him or her. Whichever is the case, the principles to be followed regarding award of costs in Public Interest matters slightly differ from those in ordinary suits or appeals.

While considering the same question the Supreme Court in *Kwizera vs Attorney General, Supreme Court Constitution Appeal No of 2008*, (unreported) *Arach Amoko JSC* observed that;-

"In Constitutional matters brought in Public Interest the Court has discretion to award or not to award costs against the unsuccessful party."

In *Iyamulema David vs Attorney General Supreme Court Civil Appeal No. 4 of 2013*, Odoki Ag. JSC stated the position of the law in regard to costs as follows:-

> *"While it is trite law that the award of costs in the discretion of the Court, the award of costs must follow the event unless the Court for good reason orders otherwise according to Section 27 of the Civil Procedure Act."*

It is this position of the law that creates a chilling effect in all potential Public Interest litigants. The possibility of the Court awarding costs against them in the event that there are unsuccessful. Public Interest ligation, is an important tool in the democratization process and in the enforcement of the fundamental rights and freedoms.

The 1995 Constitution under *Article 50* and *137* abolished the archaic Rule of *Locus standi* replacing it with a progressive and liberal law that permits any person to have a standing in Court in the enforcement of human Rights and or the interpretation of the Constitution. In that regard, Article 50 of the Constitution stipulates as follows:-

> *50. Enforcement of rights and freedoms by courts.*
>
> *(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation.*

(2) Any person or organisation may bring an action against the violation of another person's or group's human rights.

(3) Any person aggrieved by any decision of the court may appeal to the appropriate court.

(4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter.

Article 137 too is couched in similar language granting standing to 'any person' to appear before the Constitutional Court.

Section 27 of the Civil Procedure Act, which is brought into play by *Rule 23* of Statutory Instrument No. 91 of 2005 and which was alluded to stipulates in part as follows:-

'The costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order."

The importance of this law is that, the Court must always grant costs to the successful party unless there is a good reason not to do so. A party or any person who brings or defends an action under *Article 50* or *137* is exposed to the risk of paying costs at the trial or on appeal.

In my humble view *Section 27* of Civil Procedure Act, is relevant to civil suits in which the Court is adjudicating upon private interests. The Civil Procedure Act is a vintage statute of 1929 which must be construed in

such a way as to bring it into conformity with the Constitution under *Article 274*. In my humble view *Section 27* of the Civil Procedure Act is no longer mandatory but is now regulatory.

I have to consider a situation in which a public interest litigant is the unsuccessful party in a constitutional petition whether as a petitioner or respondent. The possibility of having to pay exorbitant costs creates a chilling effect on each and every Ugandan citizen or organization. In my humble view this effectively abridges the rights and or obligations of citizens set out in *Articles 50* and *137* of the Constitution. Any law or act that effectively abridges any provision of the Constitution, is inconsistent with it, and is void to the extent of the inconsistency or abridgment, under *Article 2 (2)* of the Constitution.

In this regard therefore, *Section 27* of Civil Procedure Act must be applied to Constitutional petitions and references brought under *Articles 137* and other actions brought under *Article 50* in a way that ensures that, its application is in consonance with the Constitution.

The Courts in this Country have endeavored to do so as already set out in the above cited authorities. Except in a few instances, costs have not been awarded to or against any party in a Public Interest case. In other matters which Courts have considered to be of great Public importance notwithstanding the fact that they had not been brought in public no costs have been awarded to any of the parties. Such cases include Presidential Election Petitions, *Tinyefunza Vs Attorney General,*

Constitution Petition No 1 of 1997 (Supra), *Prince Mpuga Rukidi Vs Prince Simon Iguru & Others* (Supra) among others.

That is why in the Constitutional Court in *Advocates for Natural Resources and another vs Attorney General (Supra)* held that, wherever costs are awarded in Public Interest ligation, they ought to be nominal. This in my humble view creates a balance. On one hand the successful ligation is reimbursed to certain extent, at the same time the award is such that, it does not create a chilling effect on potential public interest litigants.

The decision in *Advocates for Natural Resources petition (Supra)* received approval of the Supreme Court in *Kwizera Eddie Vs Attorney General (Supra)* wherein *Tibatemwa- Ekirikubinza, JSC stated as follows:-.*

> *An attendant question that suffices to be answered from the foregoing analysis is: Whether costs should never be awarded in Public Interest Litigation cases. In Advocates for Natural Resources Governance and Development and two others vs. Attorney General Constitutional Petition No.40 of 2013, the Constitutional Court referred to Kizza Besigye vs. Yoweri Museveni*

(Supra);Prince J Mpuga Rukidi vs. Prince Solomon Iguru (Supra)and Attorney General vs. Major Gen. David Tinyefuza (Supra).

The brief facts in Advocates for Natural Resources Governance and Development (supra) were that a Public Interest Litigation petition was brought under Article 137 of the Constitution. The petitioner(s) contended that the respondents' act of taking over and acquiring land prior to payment of compensation was in contravention of the right to property enshrined in ***Article 26 of the Constitution. . . .***

The court concluded that where in Public Interest cases, costs are awarded, the actual amounts taxed and allowed should be nominal in respect of professional fees, and the rest should simply be awarded only in respect of disbursements.

It is clear that while accepting that the principles inherent in Section 27 of the Civil Procedure Act apply to Public Interest Litigation cases, the above authorities emphasized that costs in Public Interest Litigation cases should only be awarded in rare cases; that a court must balance the need to compensate the successful litigant and the value (s) underlying Public

Interest Litigation such as growth of constitutional jurisprudence which would be stifled if potential litigants know that there is a possibility of being saddled with costs in the event of the case being dismissed.

In other words, in Public Interest Litigation, a court should exercise its discretion to award exorbitant costs infrequently. Thus, where costs are awarded in Public Interest Litigation cases, the award should be nominal."(Emphasis added).

This is the current position of the law regarding costs in public interest litigation.

With the above background I now proceed to determine the quantum of costs in this matter.

The petition is five pages and is supported by one affidavit of six pages. It has also a summary of evidence and list of annextures covering two pages. It has 4 annextures A-D with a total of 48 pages.

The petitioner filed 10 authorities, with a total of 111 pages. There is a bundle entitled 'supplementary affidavit in support of the petition'. It has a total of 211 pages. The respondent's list of authorities are only 5, with a total of 35 pages.

According to Mr. Mugisha, the oral presentations in Court took a total of four hours. I have found nothing extra-ordinary about this matter. It appears to be a rather brief petition. It is neither voluminous nor complicated in anyway. The Judgment of the Court is only 28 pages long. I have failed to understand the basis upon which such a high award of instruction fees was made.

Faced with similar facts Odoki JSC (as he then was) in *Attorney General vs Uganda Blanket Manufactures* had this to say at page 7 of his Ruling:-

> *"It is not clear on what basis such a high award of instruction fees was made. Even if the appeal involved difficult points of law or the value of the subject matter was large, it is difficult to imagine that reasonably competent Advocate would demand Shs. 200 million to handle the present appeal. Moreover public interest requires that costs be kept to a reasonable level so as not to keep poor litigants out of Courts."*

I entirely associate myself with the sentiments and the spirit of the law expressed by the learned Justice. They are applicable in this case.

The question I have to ask myself is:-
"What would the petitioner have done had the award he obtained of 20 billion shillings on instructions fees been awarded against him?" Twenty billion is a lot of money. The Chief Justice of this Country has just had

his monthly salary increased to about 20 million shillings per month. I take judicial notice of this notorious fact. This means the Chief Justice would have to work for 1000 months which translates to slightly more than 83 years to pay such a bill of costs. I was unable to ascertain how much the petitioner earns, but certainly he does not earn 100 million per month and if he does it was not proved. This money if far beyond the means of any ordinary Ugandan.

I find the award of Shs. 20,000,000,000/= (Twenty billion shillings) approximately 5.7 million United States Dollars on instruction fees unjustified and ridiculous to say the least. I hereby set it aside, this sum of money should never ever have been awarded as costs in a Constitutional petition. I substitute the same with an award of Shs. 20,000,000/= for lead Counsel and Shs. 10,000,000/= for assisting Counsel.

It was submitted for the respondent that, he has no objection to the rest of the items on bill of costs. I have perused the bill of costs and ascertained that certain items were allowed in contravention of the law. I cannot shut my eyes to an illegality. This Court cannot permit a party to benefit from an illegality See:- *Makula International vs His Eminence* Cardinal *Emmanuel Nsubuga, Court of Appeal Civil Appeal No. 4 Of 1981* and *Nipun Norattam Bhatia Vs Crane Bank Limited, Court Of Appeal Civil Appeal No. 75 Of 2006.*

I will therefore proceed to consider those items.

Paragraph 10 of 3rd schedule, of the Court of Appeal Rules. It provides that:-

> *"The fee for drawing a document shall include the preparation of all copies for the use of the party drawing it and for filing and service when only one other party or one advocate for other parties has to be served; but where there are additional parties, fees may be charged for making the necessary additional copies."*

There was only one respondent to this petition, the Attorney General.

In this regard item 2 drawing a petition I would allow shs. 6000/= only. There was no basis of allowing Shs.50,000/= on this item.
Item 3 making copies of the petition, would be disallowed.
Item 4 drawing affidavits, only two were drawn I would allow Shs.20,000/=.
I would disallow item 5 making copies affidavits.
I would disallow item 5 making copies of affidavits.
I would disallow item 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21.
I would allow Shs.10,000/= on item 22.
I would disallow item 23, 24, 25, 26, 27, 28, 29,
I would allow Shs.10,000/= on item 30,
I would disallow its item 31 I would allow shs, Shs.10,000/= on item 32,
I would disallow items 3, 34.

I would disallow the claim for VAT as no proof was provided that the law firms involved in this matter were V.A.T registered. Their V.A.T registration certificate was not attached.

Therefore in respect of professional fees attendances and drafting of documents I would allow a total of :-

Lead Counsel	20,000,000
Assisting Counsel	12,000,000
Item 2	6,000
Item 21	10,000
Item 30	10,000
Item 32	10,000
Total	**32,360,000**

In respect of disbursements, I would disallow item 35 in respect of perusal of Hansards as this is not a disbursement. Item 36 I would allow at shs. 50,000/= for commissioning of two affidavits. Item 37 I would allow Court fees at Shs. 10,500/=. I would disallow item 38 & 41. I would allow 200,000/= on item 46. I would leave intact item 5, 47, 48, 49, 50, 51, 52. I would disallow item 53, under paragraph 13 of the 3rd schedule having taxed off more than one quarter of the costs.

The total allowed as disbursements is Shs. 356,500/=.

All in all I would allow a total of Shs. 32,360,000/= on professional fees and Shs.356,000/= on disbursements making a total of Shs.32,716,500/=.

Considering that the Court awarded $^{2}/_{3}$ of the costs, I would reduce the above award by $^{1}/_{3}$ of the total that is Shs. 10,905,500/= which I now deduct from the total award of Shs.32,716,500/=.The total amount allowed therefore is Shs. 21,811,000/=.

This is what I consider fair, just and reasonable in the circumstances of this case.

I make no order as to costs in these proceedings.

Dated at **Kampala** this ...20th... day of .....April..... 2018.

Hon. Justice Kenneth Kakuru

JUSTICE OF APPEAL