

GITHUNGURI AND COLLINS ARCHITECTS

v

UGANDA COMMUNICATIONS COMMISSION

HIGH COURT OF UGANDA AT KAMPALA

HIGH COURT MISC. APPN. NO 1017 OF 2000
(ARISING FROM HIGH COURT CIVIL SUIT. NO 10 OF 1992)

BEFORE: HON. LADY JUSTICE M.S. ARACH-AMOKO.

2000

The parties in this case filed a consent judgment, wherein the Uganda Communications Commission was to pay US \$ 400,000 within 30 days from April 5, 2000. The judgment debtor failed and a warrant of execution was issued and the judgment Creditor appointed bailiffs *to recover the money*. The bailiffs who wrote a letter demanding the said payment together with their fees, costs and disbursements; which the judgment debtor paid the money on the same day. Thereafter the bailiffs filed a bill of costs in court totaling shs 29,194,000/= but were awarded shs. 8,800,000/= which included inter alia professional fees for attachment of property. The present appeal is made against this award on grounds that the amount awarded was excessive and contrary to the law.

Held:

- (i) In this case the Registrar relied on a wrong scale in reaching his decision regarding professional fees. The rate of 6% was based on the scale of fees provided in the 2nd schedule to the Court Bailiffs Rules of 1987 which have since been amended by Statutory Instrument. No. 15 of 1991.
- (ii) the 6% rate only applied to professional fees on attachment of movable property. In the instant case no attachment was carried out by the bailiffs and the suit property which were the subject matter of the warrant of attachment were not a movable property. Therefore the rate of 6% should not have been applied.
- (iii) Court set aside the taxation ruling and referred the bill of costs back to the Registrar for re taxation.

Cases referred to:

Patrick Makumbi and Awori v Sole Electric Supreme Court Civil Appeal No. 11 of 1994 (Unreported),
Alexander Okello v Kayondo and Co. Advocates Supreme Court Civil Appeal No 1 of 1997(Unreported)

Legislation referred to:
Court Bailiffs Rules S. I No. 64 of 1987 rule 15 of the

— JUDGMENT

ARACH AMOKO, J: This is an appeal against the taxation and ruling of the learned Registrar A.R. Ntengye in HCCS No 10/92 dated July 19, 2000. It is brought by Notice of motion under Order 46 rule 8 and Order 48 rules 1,2 and 3 of the *Civil Procedure Rules*. It is supported by affidavit of Ruth Mubiru dated July 26, 2000 the Orders sought are that:

1. The taxation of the learned Registrar be set aside. t
2. The court Bailiff's Bill of costs be re-taxed.
3. Costs of the appeal be provided for.

The grounds are:

1. The ruling was contrary to the law.
2. The costs awarded were manifestly excessive and contrary to the principles of taxation.
3. The ruling was against the weight of evidence before the learned Registrar.
4. It is just and equitable. T

The summary of the facts are agreed upon. They are that both parties agreed by consent that the judgment debtor pays the amount of US \$ 400,000 in one installment within 30 days from *April 5, 2000*. The judgment debtor failed and a warrant of execution was issued on *June 8, 2000* meanwhile there were negotiations between the parties. On the *7/6/2000* counsel for the judgment debtor giving seven days within which to pay up or execution would proceed. It appears the threat did not work, so the judgment Creditor resorted to their Bailiffs *MIS Kabu Auctioneers* and court Bailiffs who wrote a letter dated *June 15, 2000* to the judgment debtor demanding the said payment together with their fees, costs and disbursements; failure of which, the Bailiffs would proceed to attach, evict and advertise for sale the judgment debtor's property on the warrant of attachment. The judgment debtor paid the money on the same day the Bailiffs wrote the letter, that is *June 15, 2000*. Thereafter the Bailiffs filed a bill of costs in court totaling shs 29,194,000. The Bill of costs comprised of 8 items. From item No. which was professional fee of 6% of US \$ 300, 000 the Bailiffs claimed US \$ 18, 000 or Ug shs 28, 800,000. The learned taxing officer taxed off shs 20,800,000 allowing only 8,800,000. Item NO. is shs 50,000 transport to High Court several times while looking for the file. The learned taxing officer taxed off shs 40, 000 and allowed on shs 10,000. Item No.3 and No.4 of, shs 10,000 and shs 8,000 are transported to file warrant of attachment from the High court. The Bailiffs awarded them as they are. Item No.5 is shs 150,000 for survey costs to open the boundary of the property to be attached (plot 19-21 Port Bell Road). He taxed off 70,000 and allowed shs 80,000 only. Item No.6 is shs 36,000 for telephone costs. He taxed off 26,000 and allowed shs 10,000. He disallowed items 7 and 8 for stationary and miscellaneous costs. The taxed Bill of cost allowed totaled shs 8,118,000.

According to the affidavit of Ruth Mubiru, the amount awarded was excessive, arbitrary and in clear violation of the principles of taxation and contrary to the law. That the amount of work accomplished by the Bailiff in the execution warrant involved only writing a demand letter as the decretal sum was voluntarily paid by the parties by agreement as evidenced by the

communications and cheques between the parties attached thereto as 'D' and 'C'. that in the premises there was no complexity and or gravity in the matter to justify the award as the only work done by the Bailiff was out aiming a warrant and making a demand to the judgment Creditor. No other step was taken.

Mr. Paul Muhumbura, learned counsel for the Respondent on the other hand maintained time and effort taken by the Bailiff to establish the properties for attachment after the judgment Debtor defaulted upon the Court Order. That according to the information from Jona Kashaija, the Bailiff, their efforts did not only involve writing a demand letter, but involved enormous efforts and diligent search to establish the assets of the judgment Debtor liable for attachment to recover the sum of US \$ 300,000 prior to obtaining the warrant of attachment from court. The averments of Ruth Mubiru are therefore not correct as the matter was clearly complex in nature and required a lot of effort if the execution was to succeed. That the award of shs 8,118,000 was clearly within the requirements of the law and was exercised Judiciously by the learned Registrar in view of the Bailiffs Bill and ought not to be re-taxed. That the appeal is therefore incompetent, brought contrary to the law and is intended to delay the Bailiff from recovering his a fees and costs.

On the first ground that the ruling was contrary to the law, Mr. Sserwadda, learned counsel for the Appellant submitted that the of shs 8 million is contrary to the rule 15 of the court Bailiffs Rules S.I. 64/87 as amended S.I. No 15/91 which provides that:

"15. A court Bailiff, or any other Bailiff appointed under Rule 11 of these Rules shall be entitled to remuneration for his services in accordance with the scale of fees specified in the second schedule to these Rules".

That the correct the should have been shs 30,000 under item 1 B(ii) (b) for attachment of immovable property. That the court has no discretion in this matter since the word 'shall' is used. That even if the learned Registrar had a discretion he had no basis for allowing shs 8 million since there was no evidence availed to him as to what the Bailiff had done to merit the sum awarded. I respectfully do not share this view. The learned Registrar did address his mind to the court Bailiffs Rules. He did this in the 3rd paragraph on page 2 of his ruling where he said

"It is true that schedule 2 of S.I. 64/87 as amended by S.I. 15/91 item I(B) (ii) (b) thereof provides for fees of shs 30,000. But it is also true that in matters of taxation the rules are used as a guide and depending on the work and how difficult it may be to execute, the court has a discretion to grant either less or more than provided for in the Rules".

I respectfully agree with the submission of Mr. Muhimbura that the taxing officer should act Judiciously and must give reasons for the award. In the case of *Patrick Makumbi and Awori v Sole Electric* Supreme Court Civil Appeal No. 11 of 1994 (Unreported), MANYINDO DCJ, as he then was, held that in a variable degree, the amount of the subject matter involved may have a bearing on the award. There is no mathematical or magic formula to be used by the taxing master to arrive at a precise figure. Each case has to be decided on its own merit and circumstances. That taxing master has discretion in matters of taxation but he must exercise the discretion

judicially and not whimsically. That the Appellate court will not interfere with an assessment to costs by a Taxing Officer unless he has misdirected himself in a matter of principle, but if the quantum of assessment is manifestly extravagant, a misdirection on principle may be a necessary interference.

In the case of *Alexander Okello v Kayondo and Co. Advocates* Supreme Court Civil Appeal No 1 of 1997 (Unreported), MULENGA J.S.C held inter alia that

“where it is clear from his decision that the Taxing Officer had the basic fee in mind, and that the reasons he gave for increasing or reducing the fee are considerations permitted by the Remuneration Rules, his assessment will be upheld on appeal”.

In the case before me, I have already said that the learned Registrar did have the basic fees prescribed by the court Bailiffs Rules in mind when he taxed the Bill. He also gave reasons for increasing the fee on page 2 of his ruling where he said

"Given the subject matter of execution (i.e. 300,000 US Dollars and given that the Bailiff put some personal effort to search and get the property to attach. I consider 8,000,000/= as sufficient for his fees".

I however find that the learned Registrar relied on the wrong scale in reaching his decision with regard to item No.1, that is professional fees. He was misled right from the beginning by the Bailiff's Bill of costs. Item No.1 is based on professional fees of 6% of US \$ 300,000, that is amount the Bailiffs were to recover after the judgment debtor had paid US \$ 100,000. The 6% of the amount claimed was therefore US \$ 18,000 or U g. Shs 28,800,000 out of which the learned Registrar taxed off shs 20,800,000. This was wrong because the rate of 6% was based on the scale of fees provided in the 2nd schedule to the court Bailiffs Rules of 1987 which have since been amended by S.I. No. 15/91. Even then, under that schedule, the 6% rate only applied to professional fees on attachment of movable property. In the instant case no attachment was carried out by the Bailiffs and the property the subject of the warrant of attachment was not a movable property it was lease hold Register Volume 711 Folio 17 Plot 19-21 Port Bell Road at Nakawa, which is an immovable property.

Secondly, the scale in 1 (B) (ii) (b) of Section 1. 15/91 should not have been applied in this case. That scale clearly applies in cases of attachment of immovable property whose value exceeds shs 120,000. I have no problem with the value, the problem is that there was no attachment in the instant case. All that the Bailiffs did was to write one letter to the judgment debtor on the June 15, 2000. The correct scale in this case should have been 1A which applies to instances such as this one. It says:

"1. (A) When the sum for which execution has been issued is tendered to a Bailiff entrusted with the execution before or at the time of or within an hour after attaching the said property, whether movable or immovable, together with his legally recovered fees and expenses to that timeshs 9,000". (The underlining is mine, for emphasis)

In this case the money was paid on the same day.

On items 2,3 and 4, I am of the view that the learned Registrar acted judiciously. It is common knowledge that different tax's charge different rates in Kampala. It is also common knowledge that court files are not readily accessible. As regards the item on the survey costs, I am of the view that the learned Registrar needed some evidence to enable him to read a fair decision. There was no receipt indicating how much the Bailiffs had paid the surveyors to open the boundaries. This item should not therefore have been allowed. In the circumstances, all the four grounds of appeal succeed. I think it is only just and equitable to re-tax the bill using the correct scale and I accordingly set aside the taxation ruling of the learned Registrar and refer the bill of costs back the learned Registrar to be re taxed. Costs of the Appeal shall be borne by the Respondent.