

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)

CIVIL SUIT NO. 373 OF 1998

EDWARD MUSISIAPPLICANT

VERSUS

VASHIELA ENTERPRISES LTD..... RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE JAMES OGOOLA

JUDGMENT

This is an appeal against the decision of the Taxmaster in HCCS No. 373/98. The Taxmaster based her decision on the value of the Appellant's mortgaged property (namely Shs. 300m/-). Respondent contended that the resulting fees of Shs.4,187,500/- was excessive, and that, at worst, the taxation should have been based on the amount of the loan (i.e. Shs.50m1-), which was secured by the suit property.

For the reasons set out below, I am unable to agree with the Appellant's contentions:

(1) A Judge will not interfere with the quantum allowed by the Taxmaster as instruction fees upon taxation, unless it is manifestly so high or so low that it calls for interference. While the Applicant challenged the figure of Shs.300m/-, he himself did not indicate what the right figure was; nor did he give any alternative value for that property. Accordingly, Court has absolutely nothing to compare Respondent's figure with.

(2) I am satisfied that at the heart of suit No. 373/98 was not the underlying loan of Shs.50m1-, nor indeed the remedies of injunction, declarations, etc sought by Plaintiff. Rather, at the heart of that suit was the claim regarding the mortgaged property — whose uncontroverted value is Shs. 300m/-.

(3) I am also satisfied that the Taxmaster in reaching her decision, did adhere to the scale of fees that is set by the Sixth Schedule to the Advocates (Remuneration and Taxation Costs) Rules.

(4) I do not believe Appellant's denial to the effect that he had no knowledge of the existence of a professional valuation report on the suit property (see paragraph 4 of the affidavit- in-rejoinder deponed by the Applicant, Edward Musisi, dated 29/11/01). That paragraph of denial is directly contradicted by paragraph 6 of the same affidavit to the effect that if his lawyer had been present at the hearing, "he would have opposed the figure of Shs.300 million". The essence of this paragraph 6 is to concede that indeed the Taxmaster did base her decision on the figure of Shs.300m/-. She could not have done so unless that figure was presented before her at that time. The valuation report, the existence of which Mr. Musisi now purports to deny, is dated 18/09/97, well before the time of the Taxmaster's decision. Moreover, the report is addressed to Mr. Musisi himself. In these circumstances, it is not possible that Mr. Musisi had no knowledge of the existence of the valuation report.

In the premises, I find no reason to interfere with the decision of the Taxmaster. I am satisfied that the Taxmaster reached her decision through application of the correct principles; and exercised her discretion judicially.

Accordingly, the instant appeal is dismissed, with costs to the Respondents.

Ordered accordingly.

James Ogoola

JUDGE

17/07/02

DELIVERED IN OPEN COURT, BEFORE:

Owaraga, Esq. — Counsel for the Respondents

J.M. Egetu — Court Clerk

James Ogoola

JUDGE

17/07/02