THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL APPEAL NO. 024 OF 2010

{ARISING FROM CIVIL SUIT NO. 300 OF 2009}

SHUMUK INVESTMENTS LTD. ::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

1. **NOBLE BUILDERS (U) LTD }**
2. **SUNBURY INVESTMENTS LTD }::::::::::::::::::RESPONDENTS**
3. **BARCLAYS BANK (U) LTD }**

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

RULING

The applicant (hereinafter referred to as "the appellant") brought this appeal under the provisions of s.62 (1) of the Advocates Act and s.98 of the Civil Procedure Rules. She sought for an order to set aside the orders of the Deputy Registrar of this court in the taxation of the bills of costs of the 2nd and 3rd respondents awarding them shs 78,020,250/= and shs 64,338,500/=, respectively. The appellant also prayed that the two bills of costs be taxed anew, using the proper scale of the Advocates (Remuneration & Taxation of Costs) Rules ("the Advocates Remuneration Rules") and that the respondents be ordered to pay the costs of this appeal.

The grounds of the appeal were that the Deputy Registrar's taxation of the bills was based on the wrong principles and that she totally ignored the Advocates Remuneration Rules. It was contended in particular that the proper value of the subject matter in the suit was 5% of US$ 2,900,000 which was the amount stated to be commission due to the applicant by virtue of a Joint Venture Agreement (JVA) between the applicant and the 2nd respondent, and not US$ 2,900,000 which was indicated in the 2nd and 3rd respondent's bills of costs. That the statement of the wrong value of the subject matter in the bills of costs led the Deputy Registrar to an erroneous finding as to the instructions fees for each of the respondents, which was excessive, highly unconscionable, oppressive, and penal. The final ground stated was that the Dy. Registrar did not read the pleadings in the suit and that if she had she would not have made such an obvious error.

The appeal was supported by the affidavit of Mukesh Shukla, the Managing Director of the appellant company in which he averred that the awards of costs to the 2nd and 3rd respondents were severely prejudicial to the appellant company. He further averred that in the company's prayers in the amended plaint, the company sought for specific performance of the JVA by the 1st respondents after selling the suit property on which they operated their business with the 1st respondent company (Plot M.418 at Nakawa Industrial Area). That the appellant required the 1st respondent to pay over to her 5% of the proceeds of the price of US$ 2,900,000 for which the appellant offered to buy the suit property from the 1st respondent (i.e. US$ 145,000), not the actual price (i.e. US$ 2,262,000) at which the 1st respondent sold the property to the 2nd respondent. Further that this court ought to set aside the awards based on the figure of US$ 2,900,000 and replace them with realistic awards to reflect the true fees earned by the 2nd and 3rd respondents.

The 2nd and 3rd respondents opposed the appeal and filed affidavits in reply to that of Mr. Shukla. The 2nd respondent's affidavit in reply was deposed by Christine Nabirye, an advocate with the firm of Nangwala, Rezida & Co. Advocates, who represented the 2nd respondent. She averred that she drew up the bill of costs for the firm and was familiar with the pleadings in the suit. She further averred that in the suit between the appellant and the respondents, the appellant sought for the annulment of the contract of sale between the 2nd and 3rd respondent, of the property known as Plot M.418 at Nakawa. Further that the appellant also sought for an order that the said property be sold to her as was reflected in paragraphs 5 (d) and 11, as well as the prayers in the plaint. That in addition to that, the appellant sought for a permanent injunction to restrain the respondents from ever getting possession of the suit property.

Ms. Nabirye further averred that the recovery of 5% of the purchase price of the property was only in addition to the claims above, and that in paragraph 6 of the plaint the appellant gave the value of the property in dispute as US$ 2,900,000. That according to the exchange rates published in the New Vision newspaper on 9/11/2010, the amount of US$ 2,900,000 translated into UShs 6,617,800,000/=. That subsequently, the appellants filed an amended plaint, copy of which was annexed to Mr. Shukla's affidavit in this appeal, but the same was misleading because after that amendment the 2nd respondent was no longer a party to the suit because the appellant had by then withdrawn the suit against the 2nd and 3rd respondents, with costs. That the parties to the suit where the appellant claimed

5% as commission on account of the sale therefore excluded the 2nd respondent. Further that in her calculations the Deputy Registrar based the instruction fee for the 2nd respondent on a lesser sum (i.e. US$ 2,900,000 only), excluding the commission of 5% of the purchase price claimed from the 1st respondent.

In an affidavit in reply that the 3rd respondent filed, Mr. Noah Wasige, of Masembe, Makubuya, Adriko, Karugaba & Ssekatawa, Advocates (MMAKS Advocates), stated that the appellant filed HCCS No. 300 of 2009 against the respondents seeking a declaration that the sale and transfer of the suit property to the 2nd respondent by 1st and 3rd respondent was null and void. Further that the appellant sought for an order for specific performance of a JVA by sale of the suit property to her at the price of US$ 2,262,000, in addition to 5% of that price as goodwill for the business operated by the appellant and the 1st respondent.

Mr. Wasige further averred that the appellant later withdrew its suit together witn an application for a temporary injunction by a letter dated 18/09/2009. Further that by the date of withdrawal of the suit, the value of the subject matter of the suit, as could be deduced from the pleadings, was US$ 2,900,000. That as a result, the Dy Registrar was justified in using the sum of US$ 2,900,000 as the basis for awarding an instruction fee to the 3rd respondent. Finally that the appellant's reference to an amended plaint filed later on 18/12/2009 was misleading because the parties thereto did not include the 3rd respondent. That because of that this appeal was an abuse of the court process, misconceived, without merit or justification and that it should be dismissed with costs.

In rejoinder, Mr. Patrick Muheirwoha, a director in the appellant company deposed two affidavits on 12/12/2010. In the first affidavit, he averred that the appellant's cause of action in the suit was the recovery of 5% of the amount of US$ 2,262,000, the price that the 2nd respondent paid to the 1st respondent for the suit property. Further that the price of US$ 2,900,000 that the appellants offered as the purchase price was an oral offer made to the 1st respondent, and which was ignored. That as a result, it could not be the value of the suit property and the basis for the registrar's taxation of the bill of costs. Further, that in addition, the purchase price of US$ 2,262,000 could only translate into Uganda shillings based on the ruling dollar rate on 27/07/2009, not the date of taxing the bills of costs.

Mr. Muheirwoha further averred that the appellant's prayers in the plaint were for an injunction to prevent eviction from the suit property and the recovery of 5% of the purchase price of US$ 2,262,000, which is what the taxing officer ought to have taken into account in arriving at the figure for instruction fees. Further, that there was no evidence from the plaint, Annexure "CN1" to the affidavit of Nabirye Christine to show that the value of the subject matter was US$ 2,900,000, a speculative amount that the appellants offered to purchase the property.

In his second affidavit in rejoinder, Mr., Muheirwoha averred that contrary to what Christine Nabirye deposed in her affidavit, the appellants filed an amended plaint while the 2nd and 3rd respondents were still parties to the suit, on the 20/08/2009. That in the amended plaint, which M/s Nangumya & Co. Advocates filed on their behalf, the appellant's claim in the suit was for a commission of 5% of the purchase price of US$ 2, 262,000 which the 2nd respondent paid to purchase the suit property (i.e. the sum of about US$ 113,000).

When the appeal was called on for hearing, Mr. Odokel Opolot for the appellants submitted that the awards of shs. 78,020,259/= and shs. 64,338,500/= awarded to the 2nd and 3rd respondents, respectively, were excessive, unconscionable and oppressive. That the suit which was for specific performance was withdrawn against the 2nd and 3rd respondents and is still pending against the 1st respondent. He argued that the appellant's claim against the 1st respondent was for the payment of 5% of the purchase price of US$ 2,262,000 paid to her by the 2nd respondent, and the suit is still pending hearing before this court.

Mr. Odokel further submitted that it was erroneous of the Deputy Registrar to base her calculation of the instruction fees on the sum of US$ 2,900,000 because the purchase price as established from the sale agreement between the 1st and 2nd respondents was eventually US$ 2,262,000. He further submitted that there was a difference of US$ 700,000 between the two values; and that the starting point for the calculation of instruction fees by the registrar should have been US$ 2,262,000.

He went on to argue that the according to s.91 and 92 of the Evidence Act, written evidence excludes oral evidence. That as a result, the registrar's reliance on the oral evidence that the value of the subject matter was US$ 2,900,000 instead of US$ 2,262,000 which was stated in the agreement between the 1st and 2nd respondents was erroneous. He further submitted that the appellant dropped

the claim that the 1st respondent should sell the suit property to her when the plaint was amended, in preference for a claim of a commission of 5% of the purchase price. He cited the decision in the case of **Collins Architects v. Uganda Telecom HCMA 1017/2000** for the submission that the value of the subject matter may involve the value of the property but that each case should be decided on its own merits. He concluded that the Taxing Officer exercised her jurisdiction whimsically when she took into consideration irrelevant matters that were not on the record. That as a result she arrived at instruction fees that were harsh and excessive. He relied on the decision in **Alexander Jo Okello v. Kayondo & Co. Advocates, SCCA No. 1/97,** for the submission that the Taxing Officer had a particular figure in mind and did not follow the rules.

For the 2nd and 3rd respondents, Mr. James Nangwala argued that the pleadings in the suit showed that the value of the subject matter that the appellants claimed was US$ 2,900,000. He drew court's attention to the principles of taxation laid out in **Jobbing Field Properties Ltd. v. Lumonya & Bushara, Advocates, UCCLR 60**. He went on to argue that interference with the decision of a taxing officer is only called for when there has been an error in the principles applied; it is not solely based on the quantum of costs awarded. He further submitted that this is done only in exceptional cases and relied on the decision in **Makula International v. Cardinal Nsubuga [1982] HCB 11**.

Mr. Nagwala further contended that the plaint annexed to the affidavit of Mr. Shukla was irrelevant and that the correct plaint should have been that which was annexed to the affidavit of Christine Nabirye, and paragraphs 5 and 6 thereof. He contended that in the suit, the 2nd respondent was defending a claim that would have resulted in her losing a valuable property, while the applicant sought the nullification of the sale of that property so as to purchase it. In his view therefore, the appellant's claim was not one for money. He further advanced the argument that the purchase price of a property is not necessarily its value.

Mr. Nangwala added that the suit involved a lot of issues, such as fraud and the interpretation of agreements, as well as other issues. He thus submitted that the respondents were entitled to claim an instruction fee based on a higher value than that which appeared in the plaint. Further that because the sale was the result of foreclosure by the 3rd respondent, the property was not sold at the market value, but merely at a reasonable price. That as a result, to base the instruction fee on the purchase price would be to base the instruction fees erroneously on the quantum, and not the thought process

that was referred to by Mulenga, JSC (as he then was) in **Alexander Jo Okello v. Kayondo & Co. Advocates** (supra). That it was because of this that the D/Registrar allowed for the instruction fee claimed in the bill of costs instead of the quantum of shs. 61,212,000/= which would have been the fee arrived at using the calculations given in the Advocates Remuneration Rules. He therefore prayed that the court not interfere with the amount that was awarded by the D/Registrar to both the 2nd and the 3rd respondents.

Mr. Nangwala further argued that court should not interfere with the award because the appellants did not prove that the D/Registrar applied a wrong principle of taxation. Regarding the quantum of work that the 2nd and 3rd respondents' advocates did in the suit, he argued that an advocate does his/her work before filing pleadings. That he/she must know the entire evidence and make a summary thereof, which means that he/she must interview all the witnesses and be conversant with all documents in his/her client's case. He concluded that for those reasons, the instruction fee is chargeable before the pleadings are drawn and filed.

In rejoinder, Mr. Odokel argued that the suit did not go to trial and or scheduling. That as a result, the amounts that the registrar awarded to the 2nd and 3rd respondents were not justifiable.

From the pleadings filed and the submissions of the advocates, it appears to me that the questions that have to be answered in this appeal are the following:-

i) What was the value of the subject matter in the suit?

ii) Was it proper for the learned Deputy Registrar to base her calculation of the instruction fee on that value?

iii) Whether the instruction fees awarded to the 2nd and 3rd respondents were excessive within the meaning of the Advocates Act and Advocates Remuneration Rules.

iv) Remedies.

Regarding the first question, Schedule VI of the Advocates Remuneration Rules provides that the value of the subject matter may be considered during taxation. The appellant's contention here is that

the taxing officer relied on an erroneous figure as the value of the subject matter. I reviewed the pleadings in the suit and found that there were two amendments of the plaint, which substantially altered the appellant's claims in the original plaint.

In the original plaint, the appellants sued the 1st respondent (Noble Builders (U) Ltd. alone. They sought for specific performance of a JVA by which they were entitled to the right of first refusal to purchase the suit property at the price of US$ 2,190,000, which they claimed had been offered by a third party. The appellants also claimed that they had offered US$ 2,900,000 to the 1st respondent for the same property but that she declined and instead offered to pay to them US$ 500,000 *"having taken into consideration (their) good will and rights upon termination of the agreement."* They further claimed that in the absence of a sale of the property to them, they would be entitled to the good will of US$ 500,000, as well as 5% of the purchase price of US$ 2,190,000 offered by the third party.

The first amended plaint was dated 18/08/2009 and filed on 20/08/2009. It is by that amended plaint that the 2nd and 3rd defendants/respondents became parties to the suit. According to paragraph 13 of that plaint, the appellant prayed for judgment in the suit against the defendants, jointly and severally for:-

a) Specific performance of the joint venture agreement by the 1st, 2nd and 3rd defendants selling the suit property comprised in LRV 2536 Folio 6 Plot M418 Nakawa Industrial Area, Kampala at the price offered by the 1st defendant.

b) A declaration that the joint venture agreement dated 1st June 2000 between the parties herein was invalid and that the plaintiff is entitled to 5% of the purchase price offered to the 2nd defendant by the 1st and 2nd defendants.

c) A declaration that the plaintiff has the first right of refusal to purchase the property comprised in LRV 2536 Folio 6 Plot M 418 Nakawa Industrial Area, Kampala, under the joint venture agreement.

d) A permanent injunction restraining the 1st, 2nd and 3rd defendants, their agents, servants and or transferees/successors in title from evicting the plaintiff from possession of the suit

property and from transferring the suit property to any other third party and from further breach of the joint venture agreement.

It is important to note that the appellant's claims above were confusing. They sought to recover the commission amounting to 5% of the purchase price paid for the property but it was not given as an alternative to their claims for specific performance of the JVA and the injunction to restrain the sale to a third party.

The 3rd amended plaint was dated the 15/12/2009 and it was filed in court on the 16/12/2009. At the time there was only one defendant left in the suit, the 1st respondent. It was in that 3rd amended plaint that the appellant prayed for special damages of US$ 113,000, general damages for breach of contract, with interest, and the costs of the suit.

It was therefore erroneous of counsel for the appellant to argue that the only claims that the appellants made against the 2nd and 3rd respondents were for an injunction to restrain them from evicting the appellants from the premises and the commission of US$ 113,000. The argument defeats my understanding because it is clear that the commission of US$ 113,000 was not due from the 2nd and 3rd respondents but only from the 1st respondent. It therefore becomes obvious from the first amended plaint that the appellants were in pursuit of the purchase of Plot M418 at Nakawa. Ultimately, their desire was to prevent the 3rd respondent from selling it to the 2nd respondent so that they could purchase it at the price of US$ 2,190,000 which they claimed the 2nd respondent had offered for it, in spite of their own offer of US$ 2,900,000 named in the original plaint. It was therefore not true, as counsel for the appellants argued that the value of US$ 2,900,000 assigned to the property by the Deputy Registrar was based on oral evidence because there has, so far, been no such evidence in the suit.

Given the diverse figures that the appellant named in her pleadings, what would be the acceptable value of the suit property? The appellant named US$ 2,900,000 as the value that her directors attached to the suit property. The appellant complained that in spite of that, the 2nd respondent considered the lower figure of US$ 2,190,000 and finally accepted US$ 2,262,000. In his submissions on taxation, counsel for the appellant tried to challenge the figure of US$2.9 as the value of the property. He argued that the value of the subject matter should have been US$ 2,262,000 as stated in paragraph 7(1) of the 2nd amended plaint (dated 16/12/2009) and not USD 2.9m. He went

on to submit that the amount of US$ 2.9m which the 2nd and 3rd respondents sought to rely on was superfluous. He asserted that the actual claim made by the applicant in the suit was for 5% of the purchase price paid by the 2nd respondent.

In **Alexander Jo Okello v. Kayondo & Co. Advocates** (supra), a similar dispute occurred between an advocate and his client over the value to be assigned to the subject matter in the suit for purposes of taxation. The brief facts were that Mr. Okello, the client had given the value of the property that he sought to recover to the advocates as US$ 7,000,000. On appeal against the award of costs between advocate and client, he sought to challenge that figure and replace it with US$ 2,000,000, based on a valuation report presented on appeal against the decision of the taxing officer. Mulenga, JSC, found that the value as given to the advocate for purposes of filing the initial pleadings was more reliable than that which the valuers had given. He upheld the decision of the taxing officer, and the Judge after him, that the value of the suit property was US$ 7m, as was initially stated by the client.

The rational for that decision was to be found in the principles of justice and equity. Court emphasised the principle that when a man has led another by his words or conduct to believe that he may safely act on the faith of them and that other does act on them, he will not be allowed to go back on what he has said or done when it would be unjust or inequitable for him to do so. Since the appellant company named the value of the property in dispute in the original plaint as US$ 2.9 million, I have no alternative but to hold that the Deputy Registrar was justified when she based her calculation of instruction fees due to the 2nd and 3rd respondents on that amount.

I will next address the question whether the resultant instruction fees awarded to the 2nd and 3rd respondents were excessive within the meaning of the Advocates Act and Advocates Remuneration Rules. The principles of taxation of advocates bills were set down by the Court of Appeal for Eastern Africa in **Premchand Raichand Ltd. & Another v. Quarry Services of East Africa Ltd & Others (No. 3) [1972] 1 EA 162** where it was held as follows:

a) costs should not be allowed to rise to such a level as to confine access to the courts to the wealthy;
b) a successful litigant ought to be fairly reimbursed for the costs the he has had to incur;

c) the general level of remuneration of advocates must be such as to attract recruits to the profession; and
d) so far as practicable there should be consistency in the awards made.

The court also held that the on appeal, courts will only interfere when the award of a taxing officer is so high or so low as to amount to an injustice to one party.

The Court of Appeal of Uganda more or less reiterated the principles above in **Makula International v. Cardinal Nsubuga & Another** (supra). Court also laid down some principles that a taxing officer should apply when determining the instruction fee as follows:

> *"The taxing officer should, in taxing a bill, first find the appropriate scale fee in schedule VI, and then consider whether the basic fee should be increased or reduced. He must give reasons for deciding that the basic fee should be increased or decreased. When he has decided that the scale should be exceeded, he does not arrive at a figure which he awards by multiplying the scale fee by a multiplication factor, but places what he considers a fair value upon the work or responsibility involved. Lastly, he taxes the instruction fee, either by awarding the basic fee or by increasing or decreasing it."*

The Supreme Court (Mulenga, JSC) considered the principles above in **Alexander Jo Okello v. Kayondo & Co. Advocates** (supra) and approved of them as *"what should be the thought process"* in arriving at the quantum of instruction fees. However, the court added that it was not the intention of the Court of Appeal for Eastern Africa to prescribe a format for writing out a decision on awarding instruction fees. Court then concluded that where it is clear from his decision that the taxing officer had the basic fee in mind, and that the reasons given for increasing or reducing the fee are considerations permitted by the Rules, his assessment should be upheld on appeal.

Mr. Nangwala for the 2nd and 3rd respondents argued that the registrar demonstrated the thought process that she went through before she arrived at the instruction fees awarded in both bills of costs in the calculations that appeared therein. Further, that she demonstrated this by quoting the provisions of the Advocates Remuneration Rules which she relied on to arrive at the amounts that

she awarded. Finally, that because the appellant did not prove that a wrong scale was used, she had also not proved that the learned registrar applied any wrong principle in taxation.

I do agree with the submission that the registrar demonstrated how she arrived at the basic fee in both bills of costs. However, apart from that, she did not demonstrate that she considered any of the principles that were expounded in previous authorities on taxation. In her quite explicit decision in the matter the learned registrar held:-

> *"After listening to the argument of both parties, perusing the pleadings and studying the related court records;* ***I have in strict compliance with the 6th schedule to the Advocates (Remuneration and Taxation of Costs) Regulations*** *taxed and allowed the 2nd Defendant (Sunbury Investments (U) Ltd) shs. 78,020,250/= only; while allowed shs. 64,338,500/= only for the 3rd Defendant (Barclays Bank of Uganda Ltd)."*
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> ***{My emphasis}]***

That being the whole of the registrar's decision on the matter, I am inclined to agree with Mr. Odokel's submission that the manner in which the registrar arrived at her award of costs appears to have been whimsical. Apart from the relevant rules that she cited in the bills beside each of the items that she passed, the registrar did not explain the principles upon which she relied to allow the whole of the basic fees charged by the 2nd and 3rd respondents in their bills of costs.

With due respect to the registrar, that is not all that is required of a taxing officer in awarding instruction fees. In his submissions before her, counsel for the appellant drew it to the registrar's attention that the suit did not go to full trial but was withdrawn even before the hearing commenced. He requested that court takes cognisance of that fact in taxing the bills presented. In spite of this, the registrar proceeded to award instruction fees as claimed in the bill without giving any reasons why she made that decision.

The criteria to be considered by taxing officers in exercising their discretion were laid down in some detail in **The Republic v. Minister for Agriculture Ex parte W'Njuguna & Others, [2006] 1 EA 356**. Ojwang, J. ruled that the correct perception of a discretion donated by law is that such

discretion is only duly exercised when it is guided by transparent, regular, reliable and just criteria. Further, that since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorising clause in the law, or a particularised justification of the mode of exercise of any discretion provided for. He pointed out that it is not enough for the taxing officer to set out by attributing to oneself discretion originating from legal provisions, and thereafter merely cite wonted rubrics under which that discretion may be exercised, as if these by themselves could permit of assignment of mystical figures of taxed costs. The Judge went ahead to name specific factors that ought to be considered by the taxing officer in the award of costs as follows:-

> *"Taxation of costs as a judicial function is to be conducted regularly, on the basis of rational criteria which are clearly expressed for the parties to perceive with ease. Regularity in this respect cannot be achieved without upholding fairness as between the parties; the taxing officer is to provide only for reasonable compensation for work done; the taxing officer should avoid the possibility for (sic) unjust enrichment for any party and ought to refuse any claim that tends to be usurious; so far as possible, the taxing officer should apply the test of comparability; the taxing officer should endeavour to achieve objectivity when considering ill-defined criteria such as public policy, interests affected, importance of matter to parties or importance of matter to the public; the taxing officer should clearly identify any elements of complexity in the issues before the court and in this regard should revert to the perception and mode of analysis and determination adopted by the trial judge; the taxing officer ought to describe accurately the nature of the responsibility which has fallen upon counsel; the taxing officer should state clearly the nature of any novel matter in the proceedings; the taxing officer should determine with a measure of accuracy the amount of time, research and skill entailed in the professional work of counsel."*

I was persuaded by the decision in the case cited above and I find that the learned deputy registrar erred when she omitted to show how she arrived at the quantum of instruction fees that she awarded to the 2nd and 3rd respondents in her ruling. She definitely did not demonstrate Mulenga JSC's *"thought process"* referred to in **Alexander Jo Okello** either.

The factors that are often considered as justifying the interference of a court in an award on taxation are that the award was arrived at by error or express application of wrong principle; or if there are exceptional circumstances such as when the fee is so manifestly excessive or manifestly low so as to indicate that it must have been arrived at injudiciously or on erroneous principles. In this case, although the registrar cited the correct items of the 6th Schedule to the Advocates Remuneration Rules which she relied on in taxing the two bills of costs, it was not shown in her ruling which taxation principles were considered before she arrived at the awards. The awards therefore cannot be allowed to stand because they appear to be mystical and are incapable of comprehension by the party that is supposed to pay.

As to whether the instruction fees were excessive or extortionate, an instruction fee is said to be manifestly excessive if it is out of proportion with the value and importance of the suit and work involved (see **Alexander Jo Okello v. Kayondo & Co Advocates** (supra). In this case, the scale fees were properly calculated as shs 61,217,500/= based on the value of the subject matter. But the suit did not go to trial. At the taxation hearing, counsel for the 2nd and 3rd respondents did not assist the taxing officer in coming to a finding about the amount of work that they had done in the suit. They simply submitted that the instruction fees should be awarded as claimed. The taxing officer obliged and awarded shs 59,187,500/= to both respondents. It is my opinion that the taxing officer should have, on her own motion, considered the volume of work and the responsibility that was attributable to the advocates in the case, time spent on it and the importance of the matter to the litigants and then come to a reasonable instruction fee for each of them. As stated in **Alexander Jo Okello** she then ought to have reduced the scale/basic fees because the suit did not go to full trial. Since she did not do so, I find that the instruction fees that she awarded to both the 2nd and 3rd respondents were no doubt excessive and should be reduced.

Having considered that the 2nd and 3rd respondents were engaged in the matter from the 20/08/2009 when the plaint was amended to include their clients, till 18/09/2009 when the suit was withdrawn against them. The advocates were therefore engaged in the matter for a period of slightly over one month. They did not attend court for any hearing, save for the interlocutory applications, since the main suit was withdrawn against their clients. There was a minimum amount of research involved because the matter was about a simple contract between the 1st respondent and the appellant for which the 1st respondent sought specific performance. There were therefore no novel questions of

law involved. The matter was of some significance to their clients, judging from the high value attributed to the suit property, but not so much as to warrant the high fees that were awarded to them.

In the circumstances, I would reduce the instruction fees awarded to both the 2nd and the 3rd respondents by taxing shs 34,187,500/= off the basic fees claimed and awarded to each of them and instead award an instruction fee of shs 25,000,000/= to each of them.

The rest of the items in both bills of costs were not contested but I am of the view that this was erroneous on the part of counsel for the appellant. In the often cited case of **Patrick Makumbi v. Sole Electrics (U) Ltd., S/C Civil Appeal No. 11 of 1994,** it was held that: -

> *"The principles governing taxation by a Taxing Master are well settled. First, the instruction fee should cover the Advocates work, including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be. …"*

The same principle was reiterated by Twinonomujuni, J.A, in the case of **Ishanga Ndyanabo Longino v. Bitahwa Nyine, C/A Civil Reference No. 16 of 2003;** it is therefore still good law. In the circumstances, I would go on to tax off the sum of shs 3,892,000/= that had been awarded to the 2nd respondent for items 2, 3, 6-16, 18, 19, and items 30-42 which should have been taken care of by the instruction fees for the suit, and Miscellaneous Applications 466 and 467 of 2009. I would likewise tax off the sum of shs 1,718,000/= that had been awarded to the 3rd respondent for items 2, 3, 6, 7, 8 and items 10-14, 16-19 and 24.

In the end result, shs 39,940,750/= is allowed for the 2nd respondent, while the 3rd respondent shall have shs 30,163,500/=. The appellant shall have one half of the costs of the appeal to be borne by the 2nd and 3rd respondents in equal proportions.

Irene Mulyagonja Kakooza
JUDGE

24/03/2011

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