

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

**HCT - 00 - CC - CA - 9 – 2008**

**IN THE MATTER OF A TAXATION APPEAL**

**BETWEEN**

**THE COMMISSIONER OF  
CUSTOMS, REVENUE AUTHORITY ::::::::::::::::::::::::::::::: APPELLANT**

**AND**

**KASIBO JOSHUA :: RESPONDENT**

**BEFORE: HON. JUSTICE GEOFFREY KIRYABWIRE**

**Ruling**

This is an appeal by way of chamber summons under Section 62(1) and (5) of The Advocates Act and Regulations 3(1) and (2) of The Advocates (Taxation of Costs) (Appeals and References) Regulation S.1. 267-5. The appeal seeks order that;

- “ 1. *Part of the taxation officer’s decision in Miscellaneous Cause No. 488 of 2007 which relates to Item 15 of the Respondent’s Bill of Costs be set aside and/or reviewed.*
2. *That execution on account of the taxed bill of costs in the above Miscellaneous Cause be stayed pending Appeal against the taxing officers decision ...”*

The ground of the appeal are that;

- i) *The learned taxing officer erred in law by awarding Shs.30,000,000/- to the Respondent under Item 15 of the Bill of Costs.*
- ii) *If execution is not stayed, it will defeat the purpose of the Appeal ...”*

The case for the Appellant is that; the Bill of Costs filed by the Respondent was acceptable to them apart from Item 15 thereof which was on instruction fees. The said Item 15 had been billed at Shs.82,000,000/- by the Respondent but was allowed at Shs.30,000,000/= by the tax master. Counsel for the Appellant submitted that the value of subject matter for the dispute was Shs.340,000,000/=. Therefore Counsel submitted that under paragraph 1(a) (vii) (B) of the sixth schedule to the taxation rules which applied to motions and chamber summons a figure of not less than Shs.150,000/= should have been allowed instead. However, even if the dispute was treated as an ordinary suit then applying paragraph 1(a) (iv) (E) of the same schedule, then the figure of Shs.4,700,000/= should have been allowed.

Counsel for the Appellant further submitted that the tax master erred in applying Reg. 6 of Advocates remuneration Regulations on the basis that the matter was complex yet no certificate of complexity had been given by the presiding Judge under para 1(a) (ix) of the sixth schedule.

Counsel for the Respondent in response submitted that; court had awarded costs to their client. He submitted that the matter before court involved an application for leave to bring a prerogative writ followed by a substantive application. He submitted that the minimum amount under paragraph 1(a) (vii) (B) was Shs.150,000/= and so the learned tax master was within his discretion to allow the sum of Shs.30,000,000/=.

Counsel for the Respondent submitted that; the taxed matter was not an ordinary suit but one seeking prerogative writs which need exceptional dispatch.

Counsel for the Respondent further submitted that there was no need for a certificate of complexity. He submitted that the learned tax master did not use complexity as a basis for his award but rather that a lot of research and organisation was put in the case. He submitted that this was a case of exceptional importance which is also provided for under Regulation 6 of The Taxation Regulations and in this regard the tax master could use this as a basis for his award.

I have addressed my mind to the chamber summons and affidavits for and against it. I have also addressed my mind to the submission of both counsel for which I am grateful.

The principles in determining appeals in matters of taxation of costs are well settled. In the case of **Jobbing Field Properties Ltd. V Lumonya Bushara & Co. Advocates** CA 11 of 2008, I discussed in some detail the available authorities on the matter. The first point is that; courts should interfere where there has been an error in principle but should not do so in question's solely of quantum as that is an area where the taxing officer is more experienced and therefore more apt to the job (**Nicholas Roussos V Gulam Hussein Habib Virani & anor** C.A. No. 6 of 1995).

Secondly, in determining an appeal in a taxation matter what is important is that; a taxing officer exercises the correct though process and once that has been exercised, the award will be upheld on appeal (**Alexander Okello V Kayondo and Co. Advocates** C.A. 1 of 1997).

In his ruling, the learned taxing officer provided the following reasons for his decision.

*“... The reason for the decision of Shs.30 million is, while counsel for the Respondent allowed up to Shs.4,700,000/= a figure that can be rounded up to 5 million, the court under rule (sic) 13 of the Advocates (Remuneration and Taxation of Costs) Regulations and also giving consideration to 6(1) and (2) of the same regulation, Shs.23,300,000/= is awarded ...”*

The Shs.5,000,000/= when added to the 23,300,000/= it gives a figure of Shs.30,300,000/= that appear to be how the Shs.30,000,000/= was reached.

Regulation 13 relates to the discretion of a taxing officer to allow costs charges and expenses that appear to have been necessary or proper for the attainment of justice or for defending the rights of any party. Regulation 6(1) and (2) relates to a fee for exceptional important and complexity.

The issue of awarding higher costs on the basis of complexity under the regulations has created some degree of confusion. The 6<sup>th</sup> schedule to the regulations in paragraph 1(a) (ix) provides that;

*“...where due to the complexity of a case, a higher figure is considered appropriate, the advocate for either party may apply to the presiding Judge or Magistrate, as the case maybe, for a certificate allowing him or her to claim a higher fee; the Judge or Magistrate shall then specify the fraction or percentage by which the instruction fee should be increased ...”*

In this case, there was no such certificate given, an increase of the fee without such a certificate was an error of principle. Further, the thought process of increasing the fee without a certificate of a presiding Judge is also wrong.

When it comes to regulation 13 in applying the discretion of a taxing officer, the guiding principles are well set out in the regulation itself. Such costs have to be allowed by the Regulations and are necessary or proper for the attainment of justice or defending the rights of any party.

Of course an application for judicial review involving prerogative orders is not the same an interlocutory application though both may be filed by motion. Regulation 13 could therefore be used to lift the minimum fees found in paragraph 1(a) (vii) (B) of “not less than Shs.150,000 ...” I however find that an increase on the basis of regulation 13 alone to Shs.30,000,000/= is excessive. Since the increase made by the taxing was on the rounded up figure of Shs.5,000,000/=, I find that a reasonable figure to allow under para 15 of the Bill of Costs would be Shs.10,000,000/= which I so award instead of Shs.30,000,000/=. Since the parties agreed to the rest of the items, the bill of costs is therefore taxed and allowed at Shs.23,359,000/=.

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**Geoffrey Kiryabwire**  
**JUDGE**

**Dated: 12/01/2011**

12/01/2011

9:38 a.m.

**Ruling read and signed in open court in the presence of;**

- Mr. Mulema Mukasa for Respondent
- Mr. Arike for Appellant
- Ruth Naisamula - Court Clerk.

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**Geoffrey Kiryabwire**  
**JUDGE**

**Date: 12/01/2011**