THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA

AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPEAL NO 358 OF 2013

(Arising from miscellaneous cause No. 0 7 of 2013)

LION ASSURANCE COMPANY LTD}..... APPELLANT

VS

KASEKENDE, KYEYUNE AND LUTAAYA ADVOCATES}..... RESPONDENT

HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Appellant lodged an appeal under section 62 (1) of the Advocates Act and rules 3, 4 and 9 of the Advocates (Taxation of Costs) (Appeals and References) Rules against the taxation ruling of the Taxing Master in Miscellaneous Cause number 7 of 2013 dated 2nd of May 2013 and seeks for orders that the ruling in miscellaneous cause number 7 of 2013 is set aside, the bill of taxation is taxed according to the provisions of law and as the justice of the case demands and for costs of the appeal.

The grounds of the appeal are firstly that the Appellant is dissatisfied with the award of Uganda shillings 21,255,468/= made in favour of the Respondents on taxation by the Taxing Master. Secondly the Taxing Master did not exercise her discretion judicially. Thirdly the bill was not taxed according to the law because the Taxing Master allowed some items which were neither factual nor believable. Fourthly it is not just and equitable to pay costs that have not been incurred or which have been incurred unnecessary or which have not been judicially considered. Fifthly the Respondent's bill should be set aside and taxed according to law and judicially considered.

The appeal is supported by the affidavit of Newton Jazire the managing director of the Appellant company. The facts disposed to in the application are that the applicant company retained the services of the Respondent law firm to recover US$34,742 from DAMCO Logistics. Sometime later after mediation, the applicant discharged the Respondents from their services in the matter and the applicant has since retained the services of Yiga Advocates. The suit was never heard and it had been scheduled for a scheduling conference on the 22nd of May 2013. When the former Counsels served the Appellants with an excessive Bill of Costs, the Appellants requested them to apply for taxation before the High Court. This was made in miscellaneous application number 8 of 2013. The Appellant is dissatisfied with the award of Uganda shillings 12,083,000/= made by the Taxing Master. The Appellant asserts that the Taxing Master did not exercise her discretion judicially in reaching a decision in the taxation of the Bill of Costs. Secondly the bill was not taxed according to law because the Taxing Master allowed some items which were neither factual nor believable. The Appellants managing director maintains that it is not just

and equitable to pay costs that have not been incurred or which were incurred unnecessary or which have not been judicially considered.

The affidavit in reply is disposed to by George Kasekende, an advocate of the courts of judicature representing the Respondents Counsel. He deposes that the Respondents had successfully carried out the instructions which involved a lot of research and were in the final stages of recovering all the monies owed when instructions were withdrawn by the Appellant as a way of denying the Respondents remuneration for the services offered to the applicant.

He asserts that the Bill of Costs of the Respondents was taxed down from Uganda shillings 37,637,347/= which was a fair and equitable representation of the amount of work the Respondents had invested in the applicants complex instructions. The Appellant does not dispute the fact that monies are owed to the Respondents for services rendered to it in regard to the above matter and it was upon the applicant's insistence that the Bill of Costs was filed to ascertain the fees due to the Respondents. The Appellant has not paid the Respondent the taxed costs totalling Uganda shillings 21,255,468/= and has not shown any willingness to pay the Respondent any monies for the services rendered.

He asserts that the Taxing Master acted legally and in accordance with the Advocates (Remuneration and Taxation of Costs) Regulations and relevant authorities. Finally the Respondents Counsel asserts that the appeal is a gross abuse of court process and does not have any legal backing and should be dismissed with costs.

In rejoinder the Managing Director of the applicant avers that the Respondent's efforts invested in the suit are clearly outlined in the Bill of Costs and therefore the assertion that they put time and invested locally and internationally is intended to mislead the court. He reiterated that the Respondents did not perform any work beyond mediation and the filing of the plaint and scheduling notes filed by the Respondent and which have since been amended by the new lawyers. It was misleading to assert that the Respondents were in final stages of recovering all monies due to the applicant/Appellant. The Respondent's services were discharged by the applicant for failure to recover the money despite receiving instructions sometime in 2011.

Both Counsels agreed to file written submissions for and against the appeal. The Appellants were represented by Yiga Advocates while the Respondents are represented by Kasekende, Kyeyune and Lutaya Advocates.

The Appellants case is that the Respondent filed an Advocate/Client Bill of Costs in miscellaneous application number 7 of 2013 seeking for payment of Uganda shillings 37,637,347/=. At the hearing by the Taxing Master, the Appellants Counsel argued that items number 1 and 2 and items number 4 – 19 are work covered by the instruction fees according to the case of **Patrick Makumbi versus Sole Electric (U) Ltd, Civil Appeal Number 11 of 1994** where the Supreme Court held that instruction fees should cover the advocates work as well as other work necessary for presenting the case for trial. He further argued in the alternative that they should be taxed in accordance with the provisions of the law. The registrar ruled that is not true that once Counsel has the instruction fees, he cannot claim any other monies. The taxation rules provide for activity such as drafting court papers, attendances except that it caters separately for instruction fees. The registrar proceeded to tax the bill and awarded the Respondent **Uganda shillings 21,254,468/=** and the Appellant is aggrieved by this decision.

Counsel argued on the first ground that the taxing officer did not exercise her discretion judicially in reaching a decision. The guiding principle of law in relation to instruction fees in the taxation of costs has been clearly laid out in the case of **Patrick Makumbi versus Sole Electric (U) Ltd Supreme Court Civil Appeal number 11 of 1994** where it was held that instruction fees should cover the advocates work, including taking instructions as well as other necessary work for presenting the case for trial. This decision was followed in the case of **Ishanga Ndyanabo Longino vs. Bahatahwa Nyine civil appeal reference Number 16 of 2003** in the Court of Appeal; in the case of **Kabale Kwagala vs. Beatrice Ziraba Muzale Magola and another Miscellaneous Application Number 34 of 2010**. In the case of **Electoral Commission and honourable Kirunda Kivejinja vs. Hon Abdu Katuntu miscellaneous appeals numbers 001 of 2009 and 002 of 2010**, the court taxed off items numbers 2 – 165 because the court awarded instruction fees of 60,000,000/= which covered those items.

Counsel contends that instruction fees should account for work necessary for presenting the case. Consequently the registrar's decision disregarded the law and should be set aside. As far as the details are concerned, the Appellants Counsel set forth the following details:

The Registrar erred in law to award Uganda shillings 5,000,000/= in relation to item 15 for legal research conducted in addition to the instruction fees awarded. Secondly the registrar erred in law to award Uganda shillings 1,000,000/= in relation to item 18 for preparing scheduling notes in addition to instruction fees awarded. The registrar erred in law to collectively allow item 15 – 29 in her ruling and did not invoke her discretion judicially. The items included in the collective allowance was not taxed even though items 16, 17, 19, 20, 21, 22, 23, 24 and 29 were billed over and above the numerical provisions of the law under the Advocates (Remuneration and Taxation of Costs) Rules. The taxing officer's discretion is limited by the rules to allow all such costs, charges and expenses as are authorised under the rules or appear to have been necessary or proper. There was no justification for allowing the collective items.

On the second ground that the bill was not taxed according to the provisions of law because the Taxing Master allowed some items which were neither factual nor believable. Counsel submitted that the Taxing Master allowed **Uganda shillings 1,500,000/=** for items 1 and 2 for numerous meetings with the plaintiff and numerous meetings with the defendant respectively. Counsel reiterated submissions that meeting with the plaintiff or defendant was covered under the instruction fees. There is no provision for meeting with defendants as the defendants were at all material times represented by Messieurs Shonubi, Musoke and Company Advocates. He concluded that items number 1 and 2 were awarded in error.

On ground 3 Counsel submitted that the Bill of Costs should be taxed in accordance with the provisions of the law by this honourable court. Counsel reiterated earlier submissions that the failure to tax the Bill of Costs in accordance with the provisions of law occasioned injustice to the Appellants. His contention was that items 1 and 2 and items 4 – 19 were covered under instruction fees awarded. Thereafter the court should proceed to tax items number 20 – 31.

Counsel thereafter suggested that 25% of the instruction fees of Uganda shillings 2,700,000/= is a fair representation of the portion of work done by the Respondents. Consequently the court should award Uganda shillings 657,000/=. On item 4 there is no objection to the ruling of the Taxing Master. Items 5, 6, 7, and 8 should be allowed as presented by the Respondent. Item 9 should be taxed and allowed at Uganda shillings 7000/=. Item 10 should be taxed and allowed at Uganda shillings 7000/=. Item 11 where the registrar awarded Uganda shillings 335,000/= for perusal of the written statement of defence should

be taxed and allowed at Uganda shillings 150,000/= under paragraph 6 (A) of the Advocates (Remuneration and Taxation of Costs) Rules. Item 12 on attendance to mediation on 1 March 2012 was awarded at Uganda shillings 200,000/= for four hours but four hours was not the correct estimation and should be allowed at Uganda shillings 100,000/= for two hours. Item 13 was allowed at Uganda shillings 50,000/= and should be allowed at Uganda shillings 20,000/=. Item 14 on attendance of mediation for March 16 2012 should not be allowed at Uganda shillings 200,000/= for four hours but at Uganda shillings 100,000/= for two hours. Item number 15 which is a legal research is not provided for under the Advocates (Remuneration and Taxation of Costs) Rules and should be taxed off completely as its part of instruction fees. Item number 16 on several calls to opposing Counsel and not provided for in the rules. Item number 17 on e-mail correspondence with opposing Counsel are not provided for under the rules. Item number 18 for preparing scheduling notes is not provided for under the Advocates (Remuneration and Taxation of Costs) Rules was awarded Uganda shillings 1,000,000/= and should be taxed off in totality as part of instruction fees. Item number 19 should be allowed at Uganda shillings 20,000,000/=. Item number 20 should be allowed at Uganda shillings 20,000/= item number 21 should be allowed at Uganda shillings 5000/=. Item number 22 should be allowed at Uganda shillings 5000/= item number 23 should be allowed at Uganda shillings 5000/= item number 24 should be allowed at Uganda shillings 20,000/= Counsel does not object to item 25, 26, 27 and 28 as awarded by the registrar. Item number 29 was awarded at Uganda shillings 300,000/= and actual costs incurred should be awarded for travel costs. The argument is that the Respondent's office is located on Lumumba Avenue right behind the commercial court. The office of Lion Assurance Company is in Kololo and the Appellants Counsel's offices are next to Christ the King Church. All in all travel fees of 40,000/= would be reasonable fees. There is no objection to items 30 and 31.

In conclusion the Appellants Counsel prayed that the Taxing Master's ruling and award is set aside and the Appellant's bill is taxed according to the provisions of the law.

In reply the Respondents written submissions are as follows:

Counsel for the Respondent opposed the appeal. The Respondent was instructed by the Appellant to recover monies from DAMCO logistics (U) Ltd amounting to US$34,742 under a subrogation agreement executed between the Appellant and its insurers. The Respondent filed an action against the insurance company whereupon mediation between the parties failed and the Respondent's Counsels filed scheduling notes when the case was fixed for scheduling on 10 April 2013. It is shortly after this that the Appellant withdrew instructions. Subsequently the Respondent served a fee note on the Appellant on 22 February 2013 which they note was not honoured by the Appellant. The Appellant insisted that the fees are taxed by the court and the Respondent went ahead and filed a Bill of Costs which was taxed and allowed at Uganda shillings 21,255,468/=.

The Respondent subsequently served a certificate of taxation on the Appellant would be request for the Appellant to pay the amount stated therein within five days from the date of receipt. The Appellant did not pay whereupon the Respondent brought garnishee proceedings against the Appellant's bankers Messieurs Standard Chartered Bank (U) Ltd. The garnishee paid Uganda shillings 21,255,468/= in full settlement of the fees on 11 June 2013. The ruling of the Taxing Master was made on the 2nd of May 2013.

On the grounds of the appeal, it is the Respondent's that the Taxing Master properly exercised her discretion when she held that taxation rules provide for activities such as drawing court papers, and attendances on top of instruction fees. There was no error of law at all. The Sixth Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations and particularly regulations 2, 3, 4, 5 and 6 provides for work outside the instruction fees such as drawing court papers, which the Respondent did, making copies, letters, attendances, perusals and service which were all done by the Respondent. The Taxing Master exercised her judicial discretion by awarding fees for those items.

In the case of Patrick Makumbi versus Sole Electric (U) Ltd Supreme Court civil appeal number 11 of 1994 [1990 – 1994] EA 306, it was not the holding that once instruction fees are paid, then all items in the sixth schedule should not be allowed. Counsel in reply submitted that the Respondent carried out the services claimed in items 1 and 2. The Appellant knew about the meetings and it was for the Appellants benefit. Furthermore item number 3 is also an entitlement of an advocate from carrying out his instructions and that the Advocates (Remuneration and Taxation of Costs) Regulations. Item numbers 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 20, and 24 were taxed according to the Taxing Masters discretion.

Item number 15 involve the Respondent carrying out the necessary legal research in a bid to buttress the applicant's case. The taxing officer was justified in awarding costs of Uganda shillings 5,000,000/= owing to the amount of work carried out by the Respondents. The award is supported by item 1 (b) in the Sixth Schedule to the regulations. Instruction fees as between advocate and client as instruction fees allowed on taxation as between party to party increased by 1/3rd as held in the case of **Alexander Okello versus Kayondo and Company Advocates SCCA number 1 of 1997..**

Counsel submitted that the principles which guide court in appearance in matters of taxation are laid down in the cases of **C.C. Chandram versus Kengrow Industries Ltd, SCCA number 22 of 2002; A Kassam and 2 Others versus Habre International; and Bank of Uganda versus Banco Arabe Espanol SCCA number 8 of 1998**. Courts should not interfere with the award of a taxing officer unless there is an error in principle and should not do so on questions solely of quantum because the taxing officer is more experienced than the judge on matters of taxation. Furthermore, it has been held that there is no mathematical or magic formula to be used by the Taxing Master to arrive at a precise figure and each case has to be decided on its own merits and circumstances. (See case of **Premchand Raichand Ltd And Another versus Quarry Services of East Africa Ltd and others [1972] EA 162; Patrick Makumbi versus Sole Electric (U) Ltd** (supra)). Where the taxing officer has followed the correct principles, the award will be upheld on appeal. (See case of **Makula International Ltd versus Cardinal Nsubuga and another [1982] HCB** page 11).

In **Makula International Ltd versus Cardinal Nsubuga** the principles applied are that successful litigants ought to be fairly reimbursed for the costs incurred; the general level of remuneration of advocates must be such as to attract recruits to the legal profession; and there should be consistency in awards.

As far as item number 30 is concerned, the Respondent was faced with the problem of non-acknowledgement of receipt of court documents by the Appellant when the Respondent's clerk went to effect service on it. The Respondent was faced with the following up service thrice and also visiting the Appellant's legal Counsel to effect proper service. The Appellant has not demonstrated how the Taxing

Master erred on the matter of principle or failed to act judicially by taxing the Advocate/Client Bill of Costs. Unless an aggrieved party can prove to the court that the Taxing Master failed to exercise his or her discretion judicially, the court will not be compelled to interfere with the award. The Appellant failed to show how the Taxing Master failed to act within her discretion.

Finally the Respondents Counsel submitted that the award of Uganda shillings 21,255,468/= and the specific award of Uganda shillings 5,000,000/= were judicially arrived at by the Taxing Master and should not be interfered with.

In rejoinder the Appellants Counsel submitted that the case of **Patrick Makumbi versus Sole Electric (U) Ltd SCCA number 11 of 1994** considered principles for the award of instruction fees. It is to the effect that the instruction fee should cover the advocates work, including taking instruction as well as other necessary work for presenting the case for trial or appeal as the case may be.

As far as items 1 and 2 of the Bill of Costs are concerned, the Respondent did not particularise the dates and places where the meeting actually took place for the taxing officer to ascertain that the meetings actually took place.

Furthermore, the Appellants do not dispute that the Respondents are entitled to instruction fees for carrying out the instructions of the Appellant. The contention is that the instruction fees should be computed in proportion to the amount of work performed by the advocates.

Reference was made to the case of **Mayers and another versus Hamilton and others [1975] 1 EA at page 13** wherein the court observed that instruction fees are awarded in contemplation of an advocate completing the whole case and that an advocate is not entitled to the whole amount of instruction fees upon receiving instructions but rather the instruction fees grows as the matter proceeds. Counsel reiterated submissions that the Respondents involvement in the suit did not proceed beyond mediation and the filing of scheduling notes as directed by the courts but which scheduling notes were withdrawn.

In specific reply to item 15 concerning legal research, the Taxing Master awarded Uganda shillings 5,000,000/= and the Respondent had relied on rule 1 (b) of the Sixth Schedule of the Advocates (Remuneration and Taxation of Costs) Rules. However, there is no merit in relying on the said rule under the case of **Alexander Okello** (supra) because legal research and scheduling notes are not catered for under the rules. If there was any complexity, it had to be factored into the instruction fees pursuant to rule 1 (a) (ix) of the Sixth Schedule which was not done. The 1/3rd rule does not apply to the Respondent's case.

Appellants Counsel further agrees with the principles applied by the courts in the taxation of bills of costs. Further reiterates submissions that the Appellant has demonstrated in the main submissions that the taxing officer had erred on matters of principle.

On the question of item 30 (which is actually item 29 of the bill) on the question of the problem faced in the service of court documents upon the Appellant, the facts asserted are a total deception of the court and award of Uganda shillings 300,000/= is not warranted. Counsel relied on the affidavit of service dated 19th of April 2013. The affidavit clearly demonstrates that the Respondents went to the Appellant's office with a copy of proceedings in miscellaneous application number 7 of 2012 and duly served it and

thereafter informed the advocate's office of what transpired at the Appellant's office. There is no statement that the Respondent went to the Appellants offices thrice.

Judgment

I have duly considered the appeal, the record of proceedings and submissions of Counsel. I have also considered the principles for taxation of costs on presentation of Advocate/Client Bills of costs.

The starting point is the Advocates (Remuneration and Taxation of Costs) Regulations. Regulation 2 provides that the remuneration of an advocate of the High Court by his or her client in contentious and non-contentious matters shall be in accordance with the regulations. This is further supported by rule 57 of the Advocates (Remuneration and Taxation of Costs) Regulations which provides that in all causes and matters in the High Court and magistrates courts, an advocate shall be entitled to charge as against his or her client the fees prescribed by the Sixth Schedule to the regulations.

Secondly Counsels are in agreement that the general principles of taxation are as spelt out in the case of **Makumbi and another v Sole Electrics (U) Ltd [1990–1994] 1 EA 306.** That case involved a reference to a single judge of the Supreme Court on the award of costs of the appeal. It was decided by honourable Justice Manyindo DCJ, JSC as he then was and sets out the general principles of taxation between pages 310 – 311 of the law report. In that case, the Taxing Master taxed the fees and disbursements, including the Commercial Transaction Levy at Uganda shillings 13,854,000/=. At pages 310 – 311 Manyindo DCJ JCS said:

> *"The principles governing taxation of costs 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. Second, there is no legal requirement for awarding the Appellant a higher brief fee than the Respondent, but it would be proper to award the Appellant's Counsel a slightly higher fee since he or she has the responsibility to advise his or her client to challenge the decision. Third, 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. For example, a lengthy or complicated case involving lengthy preparations and research will attract high fees.*
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> *In a fourth, variable decree, the amount of the subject matter involved may have a bearing.*
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> *Fifth, the Taxing Master has discretion in the matter of taxation but he must exercise the discretion judicially and not whimsically. Sixth, while a successful litigant should be fairly reimbursed the costs he has incurred, the Taxing Master owes it to the public to ensure that costs do not rise above a reasonable level so as to deny the poor access to Court.*
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> *However, the level of remuneration must be such as to attract recruits to the profession. Seventh, so far as practicable there should be consistency in the awards made. (**See Raichand v Quarry Services of East Africa Limited and others [1972] EA 162, Nalumansi v Lule Supreme Court of Uganda civil application number 12 of 1992, Hashjam v Zanab [1957] EA 255 and Kabanda v Kananura Melvin Consulting Engineers Supreme Court civil application number 24 of 1993)"***

In the above case the Supreme Court was clearly dealing with the powers of a Taxing Master under the rules of the Supreme Court. In that case it was argued for the Appellant that the Taxing Master applied wrong principle in terms of rule 109(2) of the rules of the Supreme Court. In so far as general principles may be applied, the kind of discretionary powers of a Taxing Master of the High Court is specific and different from that conferred on a Taxing Master of the Supreme Court. Rule 109 (2) of the Judicature (Court of Appeal Rules) Directions provides that the costs shall be taxed in accordance with the rules and scale set out in the Third Schedule to the rules. Similarly the Judicature (Supreme Court Rules) Directions, rule 105 (2) thereof provides that costs shall be taxed in accordance with the rules and scale set out in the Third Schedule to the rules. Rule 9 (2) of the Judicature (Court of Appeal Rules) Directions which is in *pari materia* with the Supreme Court rules provides as follows:

> *"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."*

The rules are couched in the same words as that of rule 9 (2) of the Judicature (Supreme Court Rules) Directions. In either case the Court of Appeal Taxing Master or the Taxing Master of the Supreme Court have discretionary powers to take into account the matters set out in the above quoted rule before awarding instruction fees. The foundation of some of the principles as conferring discretionary powers on a Taxing Master of the Court of Appeal or the Supreme Court is very different from that of the High Court which is governed by the Sixth Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations. There is further one subtle difference between the rules of the three different courts which needs to be highlighted. The Court of Appeal and the Supreme Court rules of taxation apply to party to party taxation of costs. In the case of an Advocate/Client Bill of Costs, the Taxing Master of the Court of Appeal is required under rule 109 (3) in the case of an Advocate/Client Bill of Costs to subject it to taxation in the High Court in accordance with the rules and scales applicable to proceedings and taxation in the High Court. There is no similar provision for the application of the High Court rules in the taxation of an Advocate/Client Bill of Costs under rule 105 of the Judicature (Supreme Court Rules) Directions. These subtle differences imply that every applicable and particular rule or rules for the taxation of costs of a particular court (High Court, Court of Appeal or Supreme Court), except for the general principles of taxation, ought to be applied for the particular court and the cause or matter by a taxing officer. General principles should only be applied where there is or is no specific rule/s that deals with the particular item, cause or matter. Last but not least, the case of **Patrick Makumbi versus Sole Electric (U) Ltd** (supra) dealt with party to party taxation and not advocate/client taxation of costs. It is the principle of law and the tenet of the interpretation of statutes, founded under section 14 of the Judicature Act that the jurisdiction of the High Court shall be exercised in conformity with the written law (See section 14 (2) (a) of the Judicature Act). Furthermore the application of the common law and the doctrines of equity, any established and current custom or usage are subject to the written law (section 14 (2) (b) of the Judicature Act). General principles not specifically grounded on interpretation of the specific provision are common law, doctrines of equity or any established customs or usage. In the Kenyan High Court Decision in **Lall v Jeypee Investments Ltd [1972] 1 EA 512**, at page 516 Madan J held that:

> *"...each statute has to be interpreted on the basis of its own language for, as Viscount Simmonds said in* ***Attorney-General v. Prince Ernest Augustus of Hanover, [1957] A.C. 436 at p. 461*** *words derive their colour and content from their context; secondly, the object of the legislation is a paramount consideration."*

The words in any statutory provision speak for themselves. Unless the statute is not clear, or is ambiguous and capable of different kinds of interpretation is when the judicial interpretation becomes absolutely necessary to achieve the intention of legislature. In the case of **Attorney-General v HRH Prince Ernest Augustus of Hanover [1957] 1 All ER 49** Viscount Simonds referred to it as an elementary rule that one must first read the statutory provision before coming to a conclusion on whether it is clear and unambiguous. He said at page 53:

> *"It means only that the elementary rule must be observed that no one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so, he is not entitled to say that it, or any part of it, is clear and unambiguous....*
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> *So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use context in its widest sense which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy."*

Following the above principle it is necessary that each rule is interpreted on its own terms and in context. Therefore it is necessary to apply each particular rule to a specific item, cause or matter in the taxation of costs. General principles apply where there is no specific rule that is clear enough to be applied to the case or any particular matter, item or cause.

The starting point is therefore the broad premise that the appeal concerns the taxation of an Advocate/Client Bill of Costs and secondly the specific rules dealing with the broad principles of taxation under the rules to advocates/clients Bill of Costs and specific rules dealing with items in issue. The specific taxation commenced under miscellaneous cause number 7 of 2013 filed by the Respondent advocates against the Appellant client.

The ruling of the Taxing Master is dated 2nd of May 2013. The ruling can be found in Miscellaneous Application Number 8 of 2013 and particularly the last paragraph. The entire ruling of the Taxing Master is contained in one sentence and one line in the following words:

> *"Adopting the same reasoning on all items, I allow the bill at 21,255,468/=."*

The above sentence represents the entire ruling in miscellaneous application number 7 of 2013. The rest of the ruling is in Miscellaneous Application Number 8 of 2013 which deals with a different Bill of Costs. For the Respondent therein shows that it was argued that instruction fees covered items 1 – 3, and items 5 – 19. The Bill of Costs was not attached to the appeal. However the notice of motion for the taxation of an Advocate/Client Bill of Costs, miscellaneous application number 7 of 2012 shows that item 1 in the Respondent's in the bill claims for numerous meetings with Huadar Guangdong Chinese Company Ltd. The Respondents claim Uganda shillings 2,700,000 and were awarded Uganda shillings 1,500,000. Item

number 2 also dealt with numerous meetings with DAMCO Logistics Uganda Limited and again the Respondents claim Uganda shillings 2,700,000/= and where awarded Uganda shillings 1,500,000/=. Item number 3 dealt with instructions to recover US$34,742 from Messieurs DAMCO Logistics Uganda Limited. For this item the Respondent claimed Uganda shillings 2,530,057/= which was allowed. The principles for assessing instruction fees where the subject matter of the suit can be ascertained are exactly the same as in any party to party taxation. Item 1 (b) of the Sixth Schedule provides that as between advocate and client, the instruction fee to be allowed on taxation shall be the actual instruction fee allowed as between party and party increased by one third. The scale for the calculation of instruction fees is found under item 1 (a) (iv) of the Sixth Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations. This is where the value of the subject matter of the suit can be ascertained from the claim or from the judgement. In such cases, the taxing officer has no discretionary powers in the calculation of instruction fees. Where the subject matter of the suit cannot be ascertained, the applicable rule is item 1 (a) (v) or (vi) which give the basic fee as Uganda shillings 75,000/= and gives the Taxing Master discretionary powers to award a reasonable fee taking into account relevant factors.

For the first 2 items therefore the issue is whether there was a requirement to indicate the number of meetings and the duration of the meetings. The ruling of the Taxing Master is by inference this said ruling in miscellaneous application number 8 of 2013. The Taxing Master ruled as follows:

> *"Counsel for the applicant admitted having received instruction fees of 4,800,000/=, but as the rest of the items to be taxed.*
>
> *For the Respondent it was argued that the instruction fees cover items 1 –3, 5 – 19.*
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> *It is however, not true that once Counsel is paid instruction fees, he cannot claim any other monies. The taxation rules provide for activities such as growing court papers, attendances etc separately from instruction fees.*
>
> *Items 1 – 2 meetings.*
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> *Rule 5, (P) provides for all other necessary attendances, per 15 minutes or passed thereof, 12,000/=. Meeting with the client is a necessary activity and it attracts fees.*
>
> *The only problem is that Counsel did not indicate how long the meetings took. Recognising that Counsel meet their clients to get instructions as a matter of necessity, I award 1,500,000/= on each of items 1 and 2 i.e. 3,000,000/=."*

Item 5 (p) of the Sixth Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations provides that:

> "*for all other necessary attendances, 15 minutes or part thereof, 12,000 shillings,"*

The Taxing Master had no evidence of how long the meetings took. The Taxing Master also did not have any particulars in the Bill of Costs on how many meetings were held between the parties. In effect the award meant that each item had 1875 minutes or a batch of 125x15 min to arrive at the figure of Uganda shillings 1,500,000/= at the rate of 12,000 Uganda shillings for every 15 min. Obviously the finding was arbitrary and not supported by any evidence. Secondly it is doubtful whether attendances include

meetings. The previous paragraph to item 5 (P) provide for attendances before a court, before an arbitrator, on behalf for the petitioning creditor, receiver, etc. It is doing damage to the language of the legislature to read in the words "attendances" "meetings". For instance it is assumed that before an advocate gets instructions, he would have had a meeting with this client. However the term "necessary attendances" must be construed ejusdem generis to mean attending to the Registrar General, the Administrator General, before an arbitrator, before the registrar etc other than a hearing. For instance what were the meetings for? Why they for negotiations? Negotiations ought to be covered by the instruction fees. However, advocates are indeed entitled to charge for the number for hours taken in handling a client's matter. What if it is interviewing a witness? Is that an attendance? Last but not least item 5 (L) clearly indicates that at the meeting of creditors of the bankrupt, every 15 min or part thereof is charged at Uganda shillings 10,000/=. The conclusion is that items 1 and 2 concerning numerous meetings which are not particularised cannot attract arbitrary fees. The taxing officer therefore erred in law and on the matter of principle. In any case, the conclusion of how many minutes where expended in the meetings should be proved or agreed upon.

In item number 12 the Taxing Master rules that no time period for mediation was indicated and she used her discretion to allow four hours at Uganda shillings 200,000/=. Again, allowing 4 hours which was not claimed is arbitrary and based on guesswork. The rule applies to definite hours spent which have to be established to the satisfaction of the Taxing Master.

Item number 15, the Respondents claimed Uganda shillings 11,977,000/= for legal research. The Taxing Master allowed 5,000,000/= for legal research. At the same time item number 3 on instruction fees had been allowed as it is at Uganda shillings 2,430,057/=. It is not in dispute that the Respondents filed High Court civil suit number 4 of 2012 on behalf of the Appellants. However, it cannot be discerned how the Taxing Master arrived at a figure of Uganda shillings 5,000,000/= for legal research. For instance, what was the legal research for? Was it for handling the suit? In the case of Patrick Makumbi (supra) it was held that instruction fees covers necessary work to carry out the client's instructions. The honourable Taxing Master ruled in miscellaneous application number 8 and awarded Uganda shillings 5,000,000/= for legal research and preparation of scheduling notes. All in all I am satisfied that award of Uganda shillings 5,000,000/= separately for legal research and the preparation of scheduling notes is an error in principle. The preparation of scheduling notes ought to have been allowed under the drawing of necessary court papers which are specifically catered for under item 2 of the Sixth Schedule. Item 2 (e) provides that for the drawing of all necessary documents, Uganda shillings 8000/= per folio but not less than Uganda shillings 25,000/=. The preparation of scheduling notes or preparing for scheduling itself could have been covered both under instruction fees and the drawing of necessary papers for the court. There was consequently an error in principle.

Last but not least, it was strongly argued for the Appellant that because the Respondents did not pursue the Appellant’s suit to its logical conclusion and the Appellant withdrew instructions at the point where the case was going for scheduling, they should not be paid the entire instruction fees. The point gives rise to some difficulty because the current Advocates (Remuneration and Taxation of Costs) Regulations do not cater for paying a reduced instruction fee on the first reading of it. I was referred to the case of **Mayers and another versus Hamilton and others [1975] 1 EA at page 13** where the principle was stated that an advocate who has not pursued the suit until the end ought not to be paid the full amount of instruction fees. Apparently the power of the registrar or Taxing Master to reduce the instruction fees to a

reasonable level is found under the revoked statutory instrument 258 – 6, revoked by the Advocates (Remuneration and Taxation of Costs) Rules 1982. The case of **Mayers and another versus Hamilton and others [1975] 1 EA at page 13** specifically considers that proviso in the ruling that the Taxing Master ought to reduce the fees in such circumstances. It was a judgement of the East African Court of Appeal at Nairobi where Spry VP held at page 15 as follows:

> *"It would, in my view, be quite wrong if the Appellants were now to receive a full instruction fee, based on the total amount involved in the suit and all the complexities of the suit as a whole, and later, if they succeed against the second plaintiff company, receive a second instruction fee covering largely the same ground. It was said, in* ***Ellingsen v. Det Skandinaviske Compani, [1919] 2 K.B. 567,*** *in the judgment of the court prepared by Scrutton, L.J., that "the principle of allowance of costs is that the successful party is to be recompensed the liability he has reasonably incurred in defending himself". I think the taxing officer was under a duty to consider to what extent the instruction fee related to the claim by the first plaintiff company and to allow only such amount as was appropriate to it. I think, with respect, that the judge was right to refer, as he did, to the second plaintiff company. If any specific justification is needed, it can, I think, be found in the words "all other relevant circumstances" in the first proviso to item (1) of Schedule VI to the Advocates (Remuneration) Order"*

The relevant Ugandan proviso which was revoked namely Advocates (Remuneration and Taxation of Costs) Rules S. I. No. 258 – 6 which was then in force and allowed the Taxing Master discretion provided as follows:

> "Provided that –
>
> *(i) the taxing officer may at his discretion take into consideration the other fees and allowances (if any) to the advocate in respect of the work to which any such allowances ..., the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings, and all the other relevant circumstances".*

The proviso has not been reproduced in the current rules. S. I. No. 258 – 6 was revoked by regulation 57 of the **Advocates (Remuneration and Taxation of Costs) Rules, 1982**.

The decision of the East African Court of Appeal sitting at Nairobi in the above case was clearly based on the discretionary powers of a Taxing Master conferred by the revoked proviso quoted above. There is clearly a lacuna in the law in so far as the current regulations for the remuneration and taxation of costs of advocates does not deal with a situation in an Advocate/Client Bill of Costs where the advocate does not pursue the suit to its logical conclusion. The reasoning in the **Mayers case** that if the client instructs another Counsel, he might be obliged to pay additional instruction fees based on the same subject matter of the suit holds water. For the moment, the court cannot deal with the lacuna in the law. However, because the Court of Appeal decision is founded on the proviso to the rules which has since been revoked, the High Court is free to formulate the principles to be applied on the basis of the prevailing rules.

In the circumstances where the advocate has not completed instructions i.e. by completing handling of the suit he or she was instructed to file, the logical thing to do would be to establish the actual instruction fees according to the scale where the subject matter of the suit is ascertainable. Secondly, because the

Appellant subsequently instructed other Counsel while the same suit is pending, the duty is on the Counsels to negotiate on the question of fees because the client cannot be charged twice. Secondly the quantum of instruction fees cannot change merely because there are more than two Counsels handling the same matter. In the absence of an application to the presiding judge to increase the fees on the ground that it was necessary to employ more than one Counsel, instruction fees have to be shared in proportion to the amount of work done by the two or more Counsels handling the same matter.

Such a scheme would be consistent with the rules for the remuneration and taxation of costs. This is because where several Counsel or more than one Counsel handles the same matter, they have to share instruction fees/legal fees unless costs for more than one advocate is certified by the presiding judge or magistrate. Item 1 (a) (xi) of the Sixth Schedule to the **Advocates (Remuneration and Taxation of Costs) Regulations** provides that where costs of more than one advocate is certified by the presiding judge or magistrate, instruction fees shall be calculated under the scale and increased by one half to cover the second advocate as prescribed by item 1 (a) (xi) (supra). Otherwise joint Counsels have to share the same instruction fees as calculated under the rules. It is an error of law to award the entire instruction fees established under the rules where the suit is only partially handled. This is because the subsequent Counsel is entitled to a portion of the same instruction fees. The client cannot be vexed with double instruction fees but only the instruction fees established under the rules. Of course where a client instructs several advocates over the same matter, the prudent thing is to agree on the fees. The rules should be applied where there is disagreement over the fees.

The ruling of the Taxing Master which gave rise to the current appeal does not however explain whether the value of the subject matter of the suit could be ascertained. The Respondent specifically claimed that the suit was for the recovery of about US$34,742 (item 3 refers). Because the ruling of the Taxing Master is a one line/one sentence ruling and which incorporates another ruling, there is no specific ruling or finding on the question of instruction fees.

Secondly, the Appellant is concerned with an alleged excess in the fees. The court cannot however conclude that the fees were excessive except under the principle that it ought to cover the costs of the subsequent Counsel handling the matter as well and as held above. What is important is that the rules prescribe an increase in the basic fee, where costs for more than one Counsel are certified. This was considered by the Supreme Court and decision of hon. Justice Mulenga JSC in the case of **Alexander Okello versus Messieurs Kayondo and Company Advocates Supreme Court Civil Appeal number 1 of 1997.** The decision clears any controversy about the discretionary powers of a registrar. It is apparent from the said decision that the registrar/Taxing Master does not enjoy wide discretionary powers. Honourable justice Mulenga JSC held as follows:

> *"The prescription on fees under the Sixth Schedule includes the provision in Para 1(b) thereof, namely the one-third rule. It follows therefore that as against his client an advocate is entitled to charge for instruction fee one and one-third times the fee allowed for instructions as between party and party. In taxing an advocate to client Bill of Costs, the taxing officer is obliged to use that formula which is specified by the rules. The question raised in this cross-appeal is whether that formula is applicable to every advocate to client Bill of Costs, or whether the formula is limited to only one which follows a parts-to-party Bill of Costs wherein the instruction fee has been taxed and allowed at a specific amount. The learned judge appears to have assumed the latter i.e. the limited application. I must say that initially I was troubled by the use of the word*

"actual" in the rule and was nearly swayed to the limited application view. However giving tile provisions that interpretation would create a disparity. It would mean that in cases where each party is to bear its own costs, either by consent as a result of settlement, as happened in the instant case, or by order of court as sometimes happens, the advocate would forfeit his entitlement under the one-third rule. I find nothing in the provisions of r.55 of the Remuneration Rules and those of paragraph 1(b) of the Sixth Schedule suggesting that the legislature intended to provide for such forfeiture. I am satisfied that the intention of the legislature was to provide a uniform formula for fixing instruction fees as between Advocate and client where they failed to agree as in the instant case. In my view therefore the taxing officer acted properly and did not err when he increased the instruction fee by one-third. He complied with the provision of paragraph 1(b) of the Sixth Schedule to the Remuneration rules. I would therefore hold that this ground of cross-appeal succeeds."

Because the intention of legislature was to provide a uniform provision where an advocate and his client cannot agree on instruction fees, the rules have to be complied with. I do not see any room for the reduction of fees where the basic fee has been properly established under the sixth schedule. The only room seems to be for the award of instruction fees based on discretionary powers where the basic fee is stated to be Uganda shillings 75,000/=. What is material is that the basic fee should be established in accordance with the sixth schedule.

The conclusion is that after the basic fee has been established according to the Sixth Schedule, the fees have to be increased by one third. However, the fees have to be apportioned between Counsels handling the same matter. In other words, the entire instruction fees may be awarded and subsequently split in proportion to the amount of work done between each Counsel. The Respondents were therefore not entitled to the entire instruction fees but to a portion to be shared between both Counsels handling the matter. In the absence of a certificate of the presiding judge certifying the need for more than one Counsel, the fees cannot be increased to take care of additional Counsel. The 1/3rd rule only applies in establishing instruction fees as between advocate/client. On the basis of the above findings, grounds 2, 3 and 4 of the Chamber Summons succeeds.

In the premises, I am satisfied that the Taxing Master did not exercise powers judicially by considering all the necessary rules and principles applicable to the items referred to in the Respondents Bill of Costs. Errors of principles as held above have been established and the Appellant's appeal succeeds.

The taxation award is accordingly set aside. The court will not tax the Bill of Costs as prayed for by the Appellants Counsel but refers it back to the Taxing Master for taxation afresh in accordance with specific rules referred to in this judgment and the principles contained in the judgement of this court.

The costs of the appeal shall be borne by the Respondents.

Judgment delivered in open court this 6th day of September 2013

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Edmund Kyeyune for the Respondent

Serunjogi Nasser for the Appellant.

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

6th September 2013