

IN THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION
HCT-00-CC-CS-0707-2012

UGANDA REVENUE AUTHORITY APPELLANT

VERSUS

ROCK PETROLEUM LTD RESPONDENT

BEFORE: HON MR. JUSTICE W.M. MUSENE

RULING:

This is an appeal by chamber summons under section 62 (1) and (50 of the Advocates Act Cap 267, Regulations 3(1) and (2) of the Advocates (Taxation of costs) Appeals and References) Regulations Statutory instruments 267-5, and section 98 of the Civil Procedure Act, Cap 71, Laws of Uganda. It seeks for order that:-

1. Part of the Taxing officers decision in Civil Suit No 9 of 2009, which relates to item (1) of the Respondents bill of costs be set aside and / or reviewed.
2. That costs of the Appeal be provided for

The ground in support of the appeal is briefly that the bill of cost as taxed by the Taxing Officer was in the circumstances manifestly excessive. The appellant was represented by Mr. Habib Arike, while Mr. Ebert Byenkya the representative of both sides, paragraph of the appeal relating to the appeal was struck out. Secondly, it was agreed that under paragraph 4 of the chamber summons, the contested amount was only 5,818,419,105/=. The rest of the items were struck off by consent of both sides were paragraphs 7 – 14 of the affidavit in support of the chambers summons sworn by Mr. Mbeeta Haruma of the legal services and Board Affairs.

Department of the Appellant. Counsel for the appellant specifically referred this court to paragraph 5 of the affidavit, whereby it was averred that the sum of Shs.5,818,419,105/= was excessive. It was further urged that where the amount at item (1) was claimed at shs7,000,000,000/= that in awarding the contested sum of shs5,818,419,105/= the Taxing master based the award on the percentage of 10%. Counsel for appellants submission were that the Taxing Master should have stuck to the 6th schedule of the Advocates (Taxation of costs) (Appeals and Reference) regulations and should not have awarded more than Shs300,000,000. He reiterated that the Taxing Master should have used her discretion on the basis of the peculiar circumstances of the case, and that the amount awarded be reduced. Mr. Byenkya for the Respondent in reply submitted that the Taxing Master, in her experience was aware of the sliding scale but took into account the Nature of the case a representative action affecting the oil industry. He added that the case concerned oil Petroleum and distribution Industry and was of great responsibility and importance. Counsel for the Respondent further submitted that the Taxation Master followed the correct principles of the law, particularly the principle of consistency. And that the trend of the courts in recent times is to award between 8.5% to 10% of the value of the subject matter. Counsel for the Respondent quoted the case **of Banco Arabe Espanol Vs Bank of Uganda, Supreme Court Civil Appeal No 8 of 1998**, where the Supreme Court held that the appellant court should not interfere with the award of the taxation master unless there was a misdirection or failure of justice.

I have carefully studied and considered the chamber summons and the affidavits for and against. I have also addressed my mind to the submission of both counsels for the Appellant and the Respondent. The principles of determining appeals in matter of taxation of cost are well settled in a number of Supreme court decisions/authorities. These include the cases of **C.C. Chandram Vs Kangrow Industries Ltd, Supreme Court Civil Application No 22 of 2002, A Kassam and 2 Others Vs Habre International and Bank of Uganda Vs Banco Arabe Aspanol, Supreme Court Civil Appeal No 8 of 1988**.

One of the principle is that court should not interfere where there has been no error in Principle and should not do so in questions solely on quantum as that in an area where the taxing officer is

more experienced and therefore up to the Job (**Nicholas Roussos Vs Gulam Hussein Habib Virni and Another 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 through process and once that has been exercised, the award will be upheld on appeal Alexander **Okello Vs Kayondo JCO Advocates, C.A. I of 1997** in the present Appeal, the Taxing Officer considered the value of the subject matter being Shs.58,184,191,050/= as unusually large amount. She went on to rely on the principles governing taxation as laid down in **Mukula International Ltd Vs His Eminence Cardinal Nsubuga 1982 HCB II** . These were:-

1. Successful litigants ought to be fairly remunerated for the costs incurred.
2. The general level of remuneration of Advocates must be such as to attract recruits to the profession.
3. There should be consistency in awards.

The learned taxation master concluded that taking into account the Nature of the case, a representative action affecting an entire industry (oil and petroleum), the industry employed to prosecute it and the interest involved . After the matter deserved increasing the rate beyond the scale in the 6th schedule. I am unable to find any fault of any error in the principles followed and adopted by the Taxing Officer. I therefore disagree with the submissions by counsel for the appellants that the Taxing Master applied a wrong principle and /or that the award occasioned injustice. It is generally conceded that there is not mathematical formula for calculating awards in taxation. However, and as was noted by the Supreme Court in **C.C. Chandaran Vs Kengrow Industries Ltd (Supra)**.

The correct approach by the Taxing Officer is to exercise an extricable balancing Act and mentally weigh the diverse general principles applicable in order ` to arrive at a reasonable fees. It was also emphasised that the Taxing Officer has to observe consistency and must take into account inflation.

In this case and as I have already stated, the Taxing Officer was alive to the applicable principles of Taxation and based her award on reasonable considerations. Nevertheless, going by the

practice of consistency, in the case of **Bank of Uganda Vs Trespert Ltd, Supreme Court Civil Appeal No 3 of 1997**, the value of the subject matter was V.S Dollars 5,333,550.80. The instruction fees was allowed at about 8% - 9% of the value of the subject matter.

I am inclined to go by the by the principle of consistency which was rightly followed by the Taxation Officer in this case, only that she used 10% of the value of the subject matter. I shall go by the consistency of 8% - 9 % which the Supreme Court ruled Bank of Uganda Vs Trespert Ltd (Supra) and that will reduce the award of instruction fees from 5,818,419,105 to around figure of Shs5,000,000,000/=

The sum of Shs5,818,419,105 instructions fees awarded by the Taxing Officer is accordingly hereby reduced by shs818,49,105/= leaving a sum of shs5,000,000,000.- which is hereby awarded as instructions fees . Since the rest of the items were by consent not interfered with, I shall not touch them as well. Each party to bear their own costs of Taxation of this appeal.

Judge

Mr. Habib Arike for Appellant present

Mr. Ebert Bankya for Respondent

Mr. Ojambo Court Clerk present

Hon. Mr. Justice W. M. Musene

HIGH COURT JUDGE

2.4.2013