THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

TAXATION APPEAL NO. 004/2014

AND

TAXATION APPEAL NO. 005/2014

(BOTH ARISING FROM MISC. CAUSE NO. 028/13,)

ARISING OUT OF HCCS N. 027/2010)

HIS ROYAL HIGHNESS THE KABAKA OF BUGANDA -- APPELLANT/RESPONDENT

VS

SEKABOJJA AND CO. ADVOCATES -- RESPONDENT/APPELLANT

BEFORE JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

Both Appeals arise from the Taxation ruling of His Worship Opesen Thaddeus in Misc. Application 28/13, delivered on 18.02.14.

The brief background to the appeals is that:

- The Appellant/ Respondent instructed the Respondent/Appellant Firm to file a suit against the Attorney General of Uganda.
- In the suit HCCS 027/2010, the Appellant/Respondent sought declarations about ownership of land comprised in Kyadondo Block 273, Plot 38, Kigo. This followed the enactment of the Traditional Rulers (Restitution of Properties and Assets) Act, 1993.

- The said Act automatically vested land and other assets that had been expropriated by the Government of Uganda in 1966, into the respective traditional rulers including the Appellant/Respondent.
- By the time the suit was filed, the said land was under occupation by the Uganda Prisons Service. The value of the subject matter was indicated in the Plaint to be Ug. Shs 18, 794, 600,000/- .
- The suit was filed in January, 2010, and was resolved following negotiations, by a consent judgment dated 19th May, 2011; in which the Attorney General agreed to pay to the Appellant/Respondent Ug. Shs. 11, 523, 546,000/-
- Taxed costs were awarded to the Appellant/Respondent but have never been taxed or recovered by the Respondent/Appellant Firm.
- The Respondent/Appellant Firm filed MA 028/13 seeking to tax two Advocate-Client Bills of costs, arising out of the services rendered in HCCS No. 027/2010. One bill seeking to recover Shs. 12,171,065,200/- , related to the main suit. It is referred to as the "First Bill". The other bill seeking Shs. 6, 583,409,000/-, arose out of MA 229 /2010, which application arose out of HCCS No. 027/2010. It is referred to as the "Second Bill".
- In his ruling of 18th February, 2014, the Registrar awarded the Respondent/Appellant Firm a Uganda Shs. 941, 956, 000/- , in respect of the First Bill; and Shs. 28, 300, 000/-, in respect of the Second Bill; as Advocates clients costs.
- Both parties being dissatisfied by the decision of the Registrar filed the two Appeals. The Appellant/Respondent filed Appeal No.004/2014 contending that the awards were too high. While the Respondent/Appellant Firm filed Appeal No. 005/2014 claiming that the awards were too low.
- The appeals were consolidated on 15th April, 2014, by the order of Hon. Justice Adonyo, in Taxation Appeal No. 004/14

The grounds for the First Appeal are that:

- The award of Shs. 941,956,000/- , and the further award of Shs. 28, 300,000/- were manifestly high,, harsh, unconscionable and oppressive and were made in total disregard of the scale provided in the 6th Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations

- That the Learned Taxing Officer erred in law and fact in not applying the relevant provisions of the 6th Schedule of the Regulations thereby arriving at a wrong decision.
- It is in the interests of justice that the award of costs by the Taxing Officer to the Respondent/Appellant be reversed.

The appeal was supported by the affidavit of Bashir Kizito Juma which was relied upon at the hearing.

The Respondent/Appellant Firm filed an affidavit in reply sworn by Noah Sekabojja, opposing the First Appeal. It was contended that:

- To the contrary, the award by the Taxing Officer was manifestly too low since it did not take into consideration the value of the subject matter.
- That the failure by the Taxing Master to consider the value of the land caused the Respondent/Appellant Firm financial loss and injustice. Hence the Firm filed the Second Appeal seeking enhancement of the instruction fees.

The agreed issues for resolution are the following:

1. **Whether or not the Taxing Officer applied the correct principles of law in taxation of Misc. Application 028/2013**
2. **If so, whether Sekabojja & C. Advocates are entitled to the amounts awarded by the Taxing Officer on 18th February, 2014.**
3. **Remedies available to the parties.**

Court now proceeds to determine the issues in the order that they were presented:

Whether or not the Taxing Officer applied the correct principles of law in taxation of Misc. App. 028/13:

Counsel for the Appellant/Respondent submitted in this respect that the Taxing Officer applied principles of taxation of the Court of Appeal and Supreme Court but not those of the High Court. He relied upon the case of **Lion Assurance C. Ltd Vs Kasekende Kyeyune & Lutaaya Advocates, HC Misc. Appeal No. 358/2013,** where Justice Madrama relied upon the decision of Manyindo (DCJ) as he then was, in the case of **Makumbi & Another Vs Sole Electrics (U) Ltd [1990- 1994] EA 306;** to conclude that **"except for general principles of taxation, the rules applicable to taxation of costs of a particular court (High**

Court, Court of Appeal, Supreme Court) should be applied for a particular court and the cause or matter by the Taxing Officer".

Counsel for the Respondent/Appellant argued on the other hand that, it was clear from the Appellant/ Respondent's Appeal and the submissions of Counsel that the Appellant was only aggrieved by the quantum of the award, but had not demonstrated any error in law or principle and that therefore the appeal cannot be sustained and should be dismissed.

It was asserted that the Taxing Master was alive to the law governing taxation of Advocate-Client Bills of costs, but only erred in principle when he failed to consider the value of the land comprised in Kyadondo Block 273, plot 38 in assessing instruction fees in respect of the bill in HCCC 027/2010, and awarded fees that were manifestly low.

The law governing the taxation of Advocate-Client Bill of costs is **The Advocates (Remuneration and Taxation of Costs) Regulations** made under the Advocates Act. Under regulation 2 of those rules, **the remuneration of an Advocate of the High Court by his client must be in accordance with the regulations**.

And Regulation 57 provides that, **"in all causes and matters in the High Court…, an advocate shall be entitled to charge as against his client the fees prescribed in the 6th Schedule to the regulations".**

In the Advocates Taxation rules applicable in the High Court, for most of the cases, the rules provide an elaborate formula for the taxing officer to follow in calculating the instruction fees.

Rule 37 of the rules provides that **"A bill of costs incurred in contentious proceedings in the High Court ….shall, subject to any other order pronounced by the court in regard to any particular case, be taxable according to the rates prescribed in the 6th schedule to these Rules".**

The schedule provides an arithmetic method of calculating the fee for instructions to sue or defend a suit or to present or oppose an appeal, in cases **"where the value of the subject matter can be determined from the amount claimed or judgment".- 6th schedule paragraph 1 (a) (iv).**

The fee is accordingly calculated as a percentage of the value of the subject matter, on a sliding scale, starting with the highest rate of 12.1/2 % of the first

Shs. 500,000/- and concluding with the lowest rate of 1% of the amount in excess of Shs. 20,000,000/-.

In those cases where the value of the subject matter is ascertainable, the taxing officer does not have to exercise any discretion but has to simply apply the arithmetical formula. Unlike the taxing officer in the appellate taxation rules, the taxing officer in the high court does not have overriding discretion

Looking at the ruling of the Taxation Officer in the present case, there is nothing to show that the taxation regulations were applied. When awarding the instruction fees of Shs. 700,000,000/-, the taxing officer took into consideration **"the submissions of the parties and circumstances surrounding the subject matter of the claim; and concluded that the figure he awarded was suitable and approximate".**

It is apparent that the Taxing Master did not take into account paragraph 1 (a) (iv) (E) of the 6th Schedule to the Regulations that provides the scale or rates for determining the instruction fee, where the value of the subject matter can be determined from the amount claimed or from the judgment.

As can be discerned from the plaint, the value of the subject matter in the present case was Shs.18, 794, 600,000/- That is, the sum claimed as premium and rental arrears. - **See copy of valuation report marked "B".** The Taxing Officer referred to this figure and rejected the claim of Counsel for the Respondent/Appellant that the value of the subject matter was Shs. 49, 290,000,000/- and I have found no reasons to disagree with his finding. Counsel for the Respondent/Appellant's claim that the Taxing officer did not take into account the value of the subject matter is accordingly rejected for those reasons.

Once the Taxing Officer found that the value of the subject matter was 18, 794,600,000/-, then as pointed out by Counsel for the Appellant/Respondent and rightly so; he ought to have applied the scale in paragraph 1 (a) (IV) (E) of the 6th Schedule to the regulations to arrive at the appropriate figure to award Counsel for the Respondent/Appellant.

The submission of Counsel for the Respondent/Appellant that the Taxing Master was not obliged to strictly follow regulations 2, 37 and 57 is belied by the mandatory nature of the rules and the decision in the case of **Western Highlands Creameries Ltd & Another Vs Stanbic Bank (U) Ltd HC Taxation Appeal No.10/2013.** Justice Madrama held in that case **that "the**

taxing officer has no power to depart from the prescribed rules, they cannot be disregarded and have to be considered except where there are exceptions".

Am persuaded by the decision of the learned Judge, since as already pointed out, the regulations are clearly mandatory. Though the parties entered into a consent judgment and agreed that the Attorney General pays the Appellant/Respondent Shs. 11, 523,546,000/- as rental arrears; the plaint provided the value of Shs. 18,794,600,000/-and the matter was resolved on the basis of that value. Therefore taxation had to be resolved on the basis of the value set out in the plaint and not on what the parties finally agreed upon to be paid; as contended by Counsel for the Appellant/Respondent. See the case of **Alexander Joe Okello Vs Kayondo & Co. Advocates, SCCA No. 01/1997**

It also follows therefore that Counsel for the Respondent/ Appellants assertion that the award of Shs. 700,000,000/- as instruction fee was about 6% of the agreed figure and is on the lower side, and that the rate of 8% should be applied to the subject matter cannot be sustained either. The clear provisions of the regulations should have been followed to arrive at an appropriate fee.

Counsel for the Respondent/Appellant also asserted that this was a matter of exceptional importance or unusual complexity where the taxing officer had discretion to grant a higher fee than what would result from the application of the formula. He relied on regulation 6 (i) and (2), and the case of **Jobbing Field Properties Ltd Vs Lumonya Bushara & Co. Advocates, HCCA No. 11/2008**, in support.

To fortify his argument, Counsel for the Respondent/ Appellant submitted that the matter involved a large chunk of land measuring 328.6 acres which belong to the Appellant, a very important Institution in this country. The Appellant/Respondent was seeking vacant possession of a land being occupied by Kigo Government Prison, another important institution. That this made it a delicate matter of exceptional importance.

And indeed, Counsel for the Appellant/Respondent agrees that under regulation 37- See regulations 5 and 6 paragraph 1 (a) (ix) 6th Schedule: Counsel handling a complex matter is entitled to claim a higher fee. However, he argued that, this **is** conditional upon the Advocate **"applying to the Presiding Judge … for a certificate allowing him to claim a higher fee".** In which case, **"the Judge is obliged to specify the fraction by which the instruction fee should be**

increased". See the case of **Western Highlands Creameries Vs Stanbic Bank (U) Ltd (supra).** Counsel pointed out that this was never done in the present case.

However, relying on the case of **Jobbing Filed Properties Vs Lumonya & Bushara Advocates (supra),** Counsel for the Respondent /Appellant argued that it is not a requirement to have a certificate of complexity, since the issue of complexity lies within the discretion of the Taxing Officer having regard, to the tests set out in regulation 6 (2).

I must state that, I am persuaded by the arguments of Counsel for the Appellant/Respondent in this respect, for the reason that the rules provide that, in complex matters; "**the advocate for either party may apply to the presiding judge for a certificate allowing him/her to claim a higher fee. And if the judge grants the certificate the fraction or percentage by which the instruction fee should be increased must be specified".**

It is where costs have been certified by the presiding judge that the instruction fee allowed as between advocate and client shall be increased by one-third.

Despite the clear provision that such increase of the basic fee must be certified by the presiding judge, in it is apparent in the present case that Counsel for the Respondent/Appellant claimed the increase without the certificate. Court therefore finds that, the Taxing Officer wrongfully allowed an amount higher than the basic instruction fee.

The 2nd Bill of costs: arising out of Miscellaneous Application No. 229/2010 was taxed and allowed at Shs. 28, 300,000/-. The instruction fees of Shs. 12,000,000/-, plus Shs. 4,000,000/- being the increase by 1/3 was according to the Taxing Master based on the provisions of rule 1 (a) (vii) B Schedule 6 of the Advocates Taxation rules. However, it is not clear from the ruling as to how the figure of Shs. 12,000,000/- was arrived at. Under the rule relied upon, when an application is not opposed the amount allowed is not less than Shs. 150,000/-. Increased by 1/3 it would amount to Shs. 200, 000/-

The rest of the items included perusals, drawing documents, making copies, which are provided for by the rules, and the Taxing Officer ought to have taken the trouble to cross check and verify the amounts claimed instead of just allowing them because they were not opposed or challenged by the other counsel.

Failure to follow the clear provisions of the law resulted into the Taxing Officer allowing figures that were too excessive.

The mandatory rules of taxation should be followed, because as observed by Odoki JSC as he then was, in the case **of Attorney General Vs Uganda Blanket Manufactures SC Civil Application 17/1993, "the intention of the rules is to strike the right balance between the need to allow advocates adequate remuneration for their work and the need to reduce the costs to a reasonable level so as to protect the public from excessive fees…The spirit behind the rules is to provide some general guidance as to what is a reasonable level of Advocates' fees".**

The next issue for Court to determine is **whether Sekabojja and Co. Advocates are entitled to the amounts awarded by the Taxing Officer:**

Having found in respect of the first issue that the Taxing Officer did not follow the mandatory taxation rules, it follows that the Respondent/Appellant is not entitled to the sums awarded.

The final issue is what remedies are available to the parties?

Counsel for the Appellant/Respondent prayed that the appeal be allowed and costs be borne by the Respondent/Appellant; while the appeal of the Respondent /Appellant should be dismissed with costs. Further that, the taxed costs of Shs. 941,956,000/- in respect of the 1st bill and Shs. 28,300,000/- in respect of the 2nd bill be quashed and set aside; and the Respondent/Appellant's bills of costs be re-taxed in strict compliance with the 6th schedule to the regulations.

On the other hand, Counsel for the Respondent/Appellant argued that in the consent decree, the Appellant/Respondent was awarded costs of the suit and fees paid to the Advocates if any, to be recovered from the Defendant if not already paid. He prayed that the 1st Appeal be dismissed while the 2nd Appeal should be allowed.

To determine the appropriate remedies, Court has to consider whether this is an appropriate case where court should interfere with the awards of the Taxing Officer. This can be established by considering the principles applicable to taxation appeals; as laid down in decided cases.

The principles are to the effect that **"the court should interfere where there has been an error in principle or where there are exceptional circumstances but should not do so in questions solely of quantum"**. See **Jobbing Field Properties Ltd Vs Lumonya Bushara & Co. Advocates (Supra)** where the case of **Nicholas Roussos Vs Gulam Hussein Habib Virani & Another (Supra**) was relied upon.

Both Counsel agree as to the principles applicable.

The court has found in the present cases that the awards were excessive for failure to follow the express provisions of the law and the general principles established by decided cases. The awards are accordingly set aside and the files should be remitted back to the Taxing Officer to be re-taxed in accordance with the taxation regulations. See **Steel Petroleum Vs Uganda Sugar Factory [1970] EA 141**

In the result the 1st Appeal is allowed while the 2nd appeal is dismissed.

Each party should bear its own costs.

The Bills of costs to be remitted back to the Taxing Officer for re-taxation in accordance with the taxation rules.

FLAVIA SENOGA ANGLIN

JUDGE

11.06.14