

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL APPEAL NO.31 OF 2017

(ARISING FROM MISC. CAUSE NO. 130 OF 2017

(ITSELF ARISING FROM CIVIL SUIT NO. 318 OF 2001)

IN THE MATTER OF THE ADVOCATE ACT, CAP 267

AND

IN THE MATTER OF MMAKS AND MAKKERA & CO. ADVOCATES-

CLIENT BILL OF COSTS

1) MMAKS ADVOCATES:..... APPELLANTS

2) MAKEERA & CO. ADVOCATES

VERSUS

UGANDA MUSLIM SUPREME

COUNCIL:.....RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

RULING:

This Appeal filed by MMAKS Advocates and Makeera & Co. Advocates, the Appellants hereof against Uganda Muslim Supreme Council, the Respondent seek orders that;

- a) The Taxation Decision the Learned Registrar delivered on 21st August 2017 awarding the two Applicant/Appellant law firms UGX 96,057,293/= as instruction fees under item 1 of the Advocate-Client bill of costs in HCCS 318 of 2001 be set aside and the sum of UGX 522,954,380/= previously taxed as instruction fees by His Worship on 29th February 2016 in the same suit on the Respondent's party to party costs plus one

third increment under the Rules this totaling UGX 695,529,325/= be awarded in its place.

- b) The Taxation Decision of the Learned Registrar disallowing VAT under item 2 of the Advocates-Client bill of costs be set aside.

The background to this Appeal is straight forward and is simply that in the year 2001, the Respondents were sued by Concorp International Limited in which suit the Plaintiff sought to recover USD and Uganda Shillings equivalent to UGX 53,770,654,800/=.

On the 22nd December 2015 the suit against the Respondents was dismissed with costs. The Learned Judge also ordered the Plaintiff to refund to the Government USD 2,024,442 which he found had been paid to the Plaintiff in excess.

On 3rd February 2016 the Respondents through their advocates filed the Defendants bill of costs seeking UGX 5,227,702,691/= as instruction fees. The Learned Registrar basing himself on the value of the subject matter deferred by the Respondents taxed and allowed instruction fees at UGX 522,954,380/=. He also allowed VAT in the sum of UGX 94,355,994/= in allowing VAT, he relied, in my view rightly so on the Certificate of Registration dated 21st April 2011.

On 14th September 2016 the Applicants wrote to the Respondent seeking payment of the instruction fees and others. When the Respondents failed to pay, they filed an Advocate-Client bill of costs seeking what had been earlier awarded as instruction fees plus now 1/3 of it in line with (Remuneration and Taxation of Costs) Regulations.

When the Registrar taxed the bill, he based it on USD 2,024,442 as the value of the subject matter. He wrote;

“The subject matter in respect of which Judgment was given was USD 2,024,442 which when converted into UGX at the then exchange rate of UGX 3,500/= to a dollar, gives UGX 7,085,547,000/=.”

He subjected that to Rule 1(a) (iv) (c) of the 6th Schedule Advocates (Remuneration and Taxation) of Costs Rules and got UGX 72,042,970/= as the instruction fees. He then enhanced the result by 1/3 as provided for under Rule 1(b) getting UGX 96,057,293/=.

I have studied the record and I am of the view that the value USD 2,024,442 used by the Registrar, was not the subject matter the Appellants defended. The USD 2,024,442 was an

order to the Plaintiff in Civil Suit No. 318 of 2001 to be refunded to the Government of Uganda.

It could therefore not form the basis of calculation of instruction fees because that is not what the Appellant defended. What was the correct value, is what had appeared in the first bill of costs- Party to Party.

In fact the Registrar had already made a finding on the instruction fees and allowed it at UGX 522,954,380/=. What remained was to apply the Rule 1(b) of the 6th Schedule of Advocates (Remuneration and Taxation) of costs Rules.

The Rule reads as follows;

*“as between advocate and client, the instruction fees to be allowed on Taxation shall be the **actual** instruction fee allowed as between party and party increased by one-third.”*

Going by this rule, the Learned Registrar was to determine what amounted to 1/3 of UGX 522,954,380/= and add it to the figure.

A 1/3 of the instruction would therefore be UGX 174,318,126/=. This added to the instruction fees would give UGX 697,272,506/= as allowed in the Advocate-Client bill.

The Learned Registrar in substituting instruction fees he had already assessed to a new figure, acted like an Appellate court. He over turned what he had already awarded, a thing he lacked jurisdiction to do so.

It is this court’s finding that the instruction fees as earlier found by the Registrar stands enhanced by 1/3 would give UGX 697,272,506/= which is hereby awarded replacing the UGX 96,057,293/= which was awarded in error.

Turning to VAT, the Registrar had earlier allowed it. His action was supported by the VAT Registration Certificate. I find that turning around and disallowing it was also a reserve of an Appellate court. Moreover the Appellants had supported their claim with a Certificate of Registration.

The order rejecting the claim of VAT is set aside. VAT will be calculated at 18% as claimed by the Appellant. The Respondents did at one point contend that the Appellants were not the instructed lawyers.

That contention cannot stand however because the Respondent in the same vein stated that they had effected a payment for services rendered by the Appellant.

Haji Ramathan Mugalu the Secretary General of the Respondent deponed in paragraph 4(g);

“That the Respondent has already advanced to the Applicant some UGX 40,000,000/= plus UGX 2,000,000/= for collection.”

The act of paying is in my view proof that the Appellants were their instructed advocates in the matter.

The sum total is that the Appeal is allowed in its entirety with costs.

Dated at Kampala this 14th day of February 2018.

**HON. JUSTICE DAVID WANGUTUSI
JUDGE**