

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL APPEAL No. 045 OF 2021

5 (Arising from Mengo Grade One Magistrates Court Civil Suit No. 0759 of 2020)

MWANJE STEPHEN APPELLANT

VERSUS

MUKOSE ALEX RESPONDENT

10 **Before: Hon Justice Stephen Mubiru.**

JUDGMENT

a) The background;

15 The appellant filed a summary suit against the respondent seeking to recover a sum of shs. 13,500,000/= in arrears of rent. The respondent applied for and was granted leave to defend the suit, whereupon he filed his written statement of defence to the suit. Considering that his claim had risen to a sum beyond the jurisdiction of a Chief Magistrate’s Court, the appellant withdrew the suit. The respondent then filed a bill of costs which was subsequently taxed.

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b) The taxation ruling;

The respondent’s bill of costs was taxed and allowed at shs. 5,210,000/=

25 c) The ground of appeal;

Being dissatisfied with the decision, the appellant appealed to this court on the following ground, namely;

1. The award of shs. 5,210,000/= as costs in Mengo Civil Suit No. 759 of 2020 be set aside
30 as it was not based on the law governing taxation of costs, among other reasons.

Consequently the appellant prays that the respondent’s bill of costs be struck out for non-compliance with the law or alternatively, be taxed de-novo.

d) The submissions of counsel;

When the appeal came up for hearing, neither counsel for the appellant M/s The Law Associates
5 Advocates, nor that for the respondent, M/s Newmark Advocates, was in court. The parties too
were absent and therefore the decision had to be made without the benefit of their submissions.

e) The decision;

10 Having perused the record of the Magistrate Grade One, I find that there is no taxation ruling and
as such it is difficult to discern the principles that guided him as he went about the taxation.
Considering that the process of taxation of costs relies heavily on the discretion of the Taxing
Officer, the parties have a right to know the considerations upon which that discretion was
exercised, in short, to understand them. At the very least, the Taxing Officer must be able to justify
15 his or her decision. The giving of reasons is one of the cornerstones of the judicial function and a
central aspect of the rule of law (see *Breen v. Amalgamated Engineering Union [1971] 2 QB 175
at 191*). In *Stefan v. General Medical Council [1999] 1 WLR 1293*, Lord Clyde stated as follows:
“the advantages of the provision of reasons have often been rehearsed. They relate to the decision
making process, in strengthening that process itself, in increasing the public confidence in it and
20 in the desirability of the disclosure of error where error exists. They relate also to the parties
immediately affected by the decision, in enabling them to know the strengths and weaknesses of
their respective cases and to facilitate appeal where that course is appropriate.” Therefore, parties
are entitled to know on what grounds the costs have been awarded. An appellate Court is also
entitled to the assistance of the Taxing Officer by an explicit statement of the reasons for deciding
25 as he or she did.

The duty imposed on a Taxing Officer to give reasons is a function of the rule of law and therefore
of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the
parties, especially the judgement debtor, should be left in no doubt why they have to pay the
30 quantum awarded. This is especially so since without reasons the judgement debtor will not know
whether the Taxing Officer has misdirected himself or herself and thus whether he or she may
have an available appeal on the substance of the award. Where no reasons are given it is impossible

to tell whether the Taxing Officer has gone wrong on the law or the facts, the judgement debtor would be altogether deprived of his or her chance of an appeal unless the appellate Court entertains the appeal based on the lack of reasons itself. The second is that a requirement to give reasons concentrates the mind; the resulting decision is much more likely to be soundly based on the material before the Taxing Officer than if it is not. The Taxing Officer must enter into the issues canvassed before him or her and explain why he or she preferred one case over the other.

The extent to which this duty to give reasons applies will vary according to the nature of the bill of costs to be taxed, in the light of the circumstances of the case. The Taxing Officer's reasons need not be extensive if the decision makes sense. The degree of particularity required will depend entirely on the nature of the issues falling for decision. In the instant case though, the most striking feature of the taxation by the Taxing Officer is that the award is unreasoned and unexplained. In light of the duty to give reasons, even when the Taxing Officer chooses to deliver a summarised taxation ruling, he or she should at a minimum by way of reasons provide an outline of the principles that have guided allowing or rejecting items in the bill of costs, a summary of the basic factual conclusions about the items and a statement of the reasons which have led to assessment of the quantum awarded. A decision of a judicial officer without reasons is no decision at all as it deprives both the unsuccessful party and the appellate court of a basis for scrutinising its propriety.

In the final result, I hereby set aside the award of the Grade One Magistrate and direct that the bill of costs be taxed afresh and reasons for the resultant award be given to the parties in a ruling. Each party is to bear their own costs of this appeal.

Delivered electronically this 19th day of July, 2022

.....*Stephen Mubiru*.....
Stephen Mubiru
Judge,
19th July, 2022.