

1. That the appellant who lost Misc. Application No. 36 of 2007 was ordered to pay costs which were taxed at 2,090,000/= (shillings two million ninety thousand only).

2. That the Taxing Officer erred in law and in fact when he went ahead to consider a Bill of Costs which was not drawn in accordance with the rules governing taxation instead of dismissing the Bill of costs.
3. That the Taxation Order occasioned a miscarriage of justice because the amount awarded was so excessive in the circumstances.
4. That the learned Taxing Officer failed to apply the principles applied in the taxation matters as a result of which he made a wrong award in the matter.
5. That the learned Taxing Officer erred in law and fact when he allowed claims which were not authorized in law.

The appellant's affidavit evidence is that:

"Affidavit in support of Chamber summons

I, Nalunga Norah of

1.
2.
3. That I lost the application and I was ordered to pay costs which was taxed and allowed at 2,090,000/= (two million ninety thousand shillings only) by the Chief magistrate. A photocopy of taxed bill of costs is annexed hereof and marked "A".
4. That I was not represented at the Taxation and a request for adjournment on my behalf was unfairly refused by the Chief magistrate of Mpigi Court.
5. That I have been advised by my lawyers and I verily believe them that the learned Chief Magistrate should have dismissed or rejected the Bill of costs because it was not drawn in accordance with the rules governing taxation in that the folios were not indicated and the party to be served was also not indicted.
6. That I honestly believe after consulting my lawyers that the taxing officer did not properly apply the principles applied in the taxation matters.
7. That I have been further informed by my aforesaid lawyers and I verily believe that the learned taxing officer erred in law when he awarded claims which were not in accordance with the law.
8. That the learned taxing officer erred in law when he awarded claims which were not proved and authorized in law.
9. That the costs awarded by the learned chief Magistrate were manifestly excessive.
10. That I swear this affidavit in support of my appeal against the decision of the learned taxing officer dated 8/4/08 and state that whatever appears hereinabove is true to the best of my own knowledge save for paragraph 7 which is based on information and belief.

....."

In reply and in opposition to this appeal, the judgment creditor/ respondent, Naluggwa Safina, gave affidavit evidence that:-

“Affidavit in reply

1, Naluggwa Safina

1.
 2. That I emerged successful in the objector proceedings in the lower Court and subsequently my bill of costs was taxed and allowed in Ug. Shs. 2,090,000/=
 3. That I have perused the application and affidavit in support of the appeal with my advocates above mentioned and wish to reply as hereunder:-
 4. That the applicant/objector was represented in the lower Court by M/s Mukanza & Co. Advocates and on appeal by M/s Bamwite & Co. Advocates who were properly served with the taxation hearing notice on the above matter and sufficient reason was not furnished to grant the adjournment of taxation proceedings.
 5. That I have been informed by my lawyers above whom I verily believe to be true that my Bill of costs was properly drawn and endorsed with the name and address of the advocates entitled or instructed to receive the notice of taxation in the matter.
 6. That I have been further informed and verily believe my advocates that the quantum of costs was not oppressive or excessive but rather adequate given the circumstances of the case that necessitated omnibus bill to cater for costs awarded both in objector proceedings and for the collapsed appeal against the decision not to investigate the property attached.
 7. That the applicant has not stated that the taxing officer acted on some mistaken principle or had not exercised his discretion judicially to warrant the re-assessment of the taxed costs by this Honourable Court or order directing the lower Court to do so.
 8. That this Honourable Court ought to confirm the taxing officer's order in the lower court and have this appeal dismissed with costs.
 9. That whatever I have affirmed hereinabove is true and correct to the best of my knowledge and belief save for information the source herein disclosed.
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Both parties filed in Court written submissions.

In reply to the written submission by counsel for the appellant, Counsel for the judgment creditor/respondent, Naluggwa Safina raised the following objections to the appeal:

- (1) That Court fees were not paid in the case. He advanced reasons for his belief or /and in support of his submissions.
- (2) That the appeal was lodged out of time. He again advanced his reasons for his belief thereof or/and in support of his submissions on the matter.

In reply in rejoinder, Counsel for the appellant asserted that the filing fees of the chamber summons were paid on 7th May, 2008 for this application. The Court general receipt No.0433558 dated 7th May, 2008 is attached to his written submissions as proof of payment of court fees. The respondent is not challenging this piece of evidence, both by way of affidavit evidence nor in her written submissions on the matter. I have looked at a photocopy of the said receipt and I accordingly hold that the court fees in respect of this appeal were paid. Thus the 1st objection has no merit and it is dismissed.

On the 2nd objection raised by Counsel for the judgment creditor/respondent; in reply in rejoinder, Counsel for the appellant submitted that the bill of costs in Miscellaneous application No. 36 of 2007 which the appellant complained against was taxed and allowed on 8th April, 2008. That the chamber summons for the appeal was filed on 7th May, 2008. The respondent does not rebut this fact.

I have perused the record of the lower Court and as per the certificate of taxation, the bill of costs was taxed and allowed on 8th April, 2008. The appeal was filed in this Court on 7th May, 2008, which was within 30 days as prescribed by the above cited law. Therefore, I hold that the appeal is not time barred. Accordingly, the judgment creditor's/respondent's 2nd objection is, too, dismissed.

Further, It should be noted that Counsel for the respondent/judgment creditor argued this appeal in the alternative. I, therefore, turn to consider the merits of this appeal.

On ground 1 of appeal, counsel for the judgment creditor/respondent submitted that the appellant was properly served and that he attended taxation. In his submissions, he acknowledges that the appellant brought a letter to Court dated 8th April, 2008 requesting for an adjournment of taxation as her Counsel was engaged in the High Court of Uganda before Hon. Justice Aweri Opio in land **Misc. Application No. 103 of 2006, the Administrator General vs Alfred Nabasa**. Counsel for the appellant submitted that his client's lawyers

were never served with the taxation notice. That might be true. However, to me such argument appears to be legalistic. This is because the appellant on the date of hearing the respondent's bill of costs, she was present in Court and that she requested for an adjournment.

According to the Court record and the respondent's affidavit evidence, the taxing officer never gave reasons as to why he proceeded with the matter the way he did. For the fact that the appellant bothered to attend the taxation and presented a letter from her lawyers requesting for an adjournment to another date and that the said plea fell on deaf ears of the taxing officer, the appellant was denied an opportunity to be heard before an adverse decision was made against her. Again, she was denied legal representation by the taxing officer as is enshrined in Article 28, Clauses 1 & 3 (d) of the Constitution of the Republic of Uganda, 1995, as amended. There was no fair hearing in respect of the appellant.

In the result, I hold that this ground of appeal has merit. It is answered in the affirmative.

Furthermore, Counsel for the judgment creditor/respondent argued the 2nd and 3rd grounds of appeal together. He argued that taxation was in respect of two (2) matters:-

- (1) The Mpigi Miscellaneous Application No. 36 of 2007 arising out of Civil Suit No. 6 of 2005; and,
- (2) Nakawa High Court Civil Appeal No. 28 of 2007;

That those two matters are in essence omnibus bill of costs including costs incurred in the high court and the lower court respectively. The bill of costs complained of was taxed and allowed by the then chief magistrate of Mpigi. He was not a Registrar of the High Court of Uganda at Nakawa. Hence for him to tax and allow costs in reference to the High Court of Uganda at Nakawa, when he did not have jurisdiction, the outcome in that award is illegal. Therefore, the taxing officer did not comply with the law when he proceeded to tax and allow the omnibus bill.

In addition, there is no reasoned ruling by the taxation officer attached to the affidavit in reply by the respondent and in essence I am unable to see how the said taxing officer would have exercised his discretion. It appears to me that the taxing officer simply ticked against each item as allowed without giving reasons why such items were allowed or why he

disallowed certain items in the disputed bill of costs. To say the least, the disputed taxation by the taxation officer was a hoax. There are no proceedings of the lower that would show how the taxation of the respondent's bill of costs was done. The taxing officer did not show how he arrived at Shs 2, 090,000/= in favour of the respondent.

The entire taxation, the way it was done exposed some irregularities and illegalities. I, therefore, make a finding that in matters of taxation the taxing officer ought to write a reasoned ruling for the parties to appreciate that the principles governing taxation of bills of costs were followed. Henceforth, failure by the taxing officer to write a reasoned ruling, the taxing is taken not to have taken into account the principles of taxation while taxing officer this disputed bill of costs in favour of the judgment creditor/respondent.

The party claiming costs must claim costs properly incurred by the judgment creditor.

Counsel for the appellant submitted that the respondent's bill of costs contravened Regulations 47, 48 and 52 of the Advocates (Remuneration and Taxations of costs) Regulations S.I. 267-4.

Rule 47 of The Advocates (Remuneration and Taxation of Costs) Regulations provides for the manner of preparing a bill of costs and one of the requirements is that the Bill of costs is to be drawn in 5 columns, the first column being for the date showing the year, month and day. The purpose is to show the date on which the activity for which a claim is made took place.

However, the Bill of costs by the respondent did not indicate any dates for the events claimed or charged. It is my finding that without indicating dates, for the event it is difficult for one to tell whether the event for which a claim is made ever took place. Take for instance the respondent claimed attendance money without showing dates of attendances under items 7, 10, 13, 14, 15, 16, 17, 18, 21, 23, 26, 27, 28, 29, 31, 33, 39, 40, 42, 43, 50, 51, 53, 54, 55, 56, 57, 60, 62, 63 and 65 of the Bill of costs.

These are items where one must show the dates for the Taxing officer to ascertain whether the items claimed took place on those days! So, without dates being indicated how did the Chief Magistrate confirm that such attendances were made? Wherefore, failure to indicate

the dates rendered the Bill of costs fatally bad because there was no way the taxing officer could tell whether the events claimed ever took place or not.

Rule 48 (1) thereof also requires every Bill of costs to be endorsed with the name and address of the Advocates or any other person entitled to receive the notice of taxation and Rule 52 thereof also requires that the number of folios for the documents the preparation of which is charged should be indicated. These provisions are mandatory but the Bill of costs that was filed by the respondent did not indicate the name and address of person entitled to receive the notice, neither did the Bill indicate the number of Folios of the documents the preparation of which was charged. I am, therefore, of the considered opinion that failure to comply with these rules rendered taxation a nullity.

Without indicating folios for the documents, it becomes difficult for the taxing officer to decide how much to award for drawing or perusing a document because drawing and perusal of documents is charged according to number of folios. This is so because rule 37 of the Taxation Regulations (supra) requires the taxation to be conducted in accordance with the rates prescribed in the sixth schedule to the Regulations.

Under Schedule six of the said Taxation Regulations, drawing and perusal of documents are charged per folio. Drawing of documents is covered under item 2 and perusal is covered by item 6 of the regulations and charges are set according to number of folios. So where a Bill of costs did not show that number of folios, what criteria did the taxing officer use to award for documents drawn and perused?. For instance in item 2 of the Bill of costs the Taxing officer awarded Shs. 50,000/= yet perusal under the Regulations is Shs 10,000/= or where there are folios Shs 5,000/= per folio. The taxing officer committed an error to award Shs.50,000/= because number of folios were not indicated. It is not clear how the taxing officer arrived at Shs. 50,000/= when the number of folios was not indicated. Under item 6 of schedule 6 where folios are not indicated, the award should have been Shs. 10,000/=.

In items 11, 12, 19, 30, 31, 46 and 47 of the Bill of costs the respondent claimed charges for drawing documents for which folios were not indicated. I make a finding that the taxing officer should not have taxed a Bill of costs which did not comply with the regulations.

In **Kyomuhendo Jolly Christine vs Basajja David Kisembo and Mungereza High Court Misc. Application No. 331 of 2007** a Bill of costs which contravened rules in the repealed law but were in the same wording as rules 48 and 52 was rejected. This case is helpful in the instant appeal.

Further, I have considered the bill of costs that was taxed by the taxing officer, and it is clear that some claims awarded were not proved and that contravened the law. For example:

1. Item where the taxing officer awarded Shs 50,000/= for an Advocate attending to a clerk. This was not duly proved and is not provided anywhere in the Regulations.
2. Item 2 perusal is Shs 10,000/= or Shs 5,000/= per folio but the taxing officer awarded Shs 50,000/= yet the number of folios was not indicated. This was irregular.
3. Item 3 attending to the judgment creditor to Bailiff Shs. 50,000/= is also not supported and not provided for in the regulations.
4. Item 15 the taxing officer award Shs 100,000/= for attending Court to oppose application. As the date was not indicated it was not proved whether such attendance ever took place.
5. Item 38 for Miscellaneous expenses, the Taxing Officer awarded Shs. 100,000/= but this Miscellaneous expenses were not proved at all.
6. Item 41 Taxing Officer awarded Shs 150,000/= instruction fee to handle appeal. This was also a claim for a non-existent activity because which appeal was the taxing officer considering here.
7. Item 56 where the Taxing Officer awarded Shs 50,000/= for attending to a clerk to receive notice of change of Advocates is also an exaggeration. The rules do not provide that an advocate should be awarded Shs.50,000/= to attend to a clerk
8. Item 67 is also an award of Shs. 200,000/= for Miscellaneous expenses. What Miscellaneous activities are these. The taxing officer had already awarded Shs 100,000/= under item 38 for Miscellaneous Activities, how did item 67 differ from item 38? This is an exaggeration and a repetition of item 38 and should not have been allowed.

Wherefore by allowing the above items which contravened the Regulations, the Taxing officer acted illegally and this resulted in a miscarriage of justice against the appellant. It is now settled that irregularity or illegality once brought to the notice of the Court, the Court should not sanction or condone it.

In the case of **National Housing and Construction Corporation vs Lira Municipal Council 1996 HCB 53**. Justice Kagaba held that a Taxing Officer must use his discretionary powers judicially and that if a Taxing officer exercises his discretion outside the set rules laid down by the law, such officer cannot be said to have used his discretion judicially.

In this case the Taxing Officer having awarded costs outside the rules, he did not exercise his discretion judicially.

In the premises, I answer grounds 2, 3, 4 and 5 of appeal in the affirmative.

In the result and for the reasons given hereinabove in this judgment, this appeal is allowed in the following orders; that:-

1. This appeal is allowed.
2. The taxation of the respondent's bill of costs that was made on 8th April, 2008 and the Certificate of taxation of the bill of costs of Ug. Shs.2,090, 000/= dated 8th April, 2008 is set aside.
3. The respondent's bill of costs is omnibus and does not comply with Rules 47, 48 and 52 of the Advocates (Remuneration and Taxation of costs) Regulations S.I.267-4. It is accordingly struck off the record. The respondent is free to file fresh Bills of costs in the proper Courts for taxation interparties, if she is still interested in claiming her costs.
4. Costs of this appeal and those of the court below are awarded to the appellant.

Dated at Kampala, this 14th day of August, 2012.

MURANGIRA JOSEPH
JUDGE