

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**TAXATION APPEAL NO. 027 OF 2022**  
**(ARISING FROM CIVIL SUIT NO. 020 OF 2019)**

5 **CENTENARY RURAL DEV'T BANK LTD ::::::::::::::::::::::::::: APPLICANT**  
**VERSUS**  
**BIIRA KHIGHAMBO ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE HON. JUSTICE VINCENT WAGONA**  
**RULING**

10

**Introduction:**

The Applicant brought this application under section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Section 62 (1) of the Advocates Act and  
15 Regulation 3 (1) of the Advocates (Taxation of Costs) (Appeals and Reference) Regulations S.I 267 for orders that:

1. The costs awarded to the Respondent in Civil Suit No. 020 of 2019 be reviewed and set aside.
2. That costs of taking out the application be provided for.

20 The grounds of the Application are outlined in the application and particularized in the affidavit of Sekidde Ronald, the Litigation Manager of the Applicant and are:

1. That the respondent was the plaintiff in Civil Suit No. 020 of 2019 which was decided in favour of the Respondent who was awarded the costs of the suit.
- 25 2. That the Respondent's Lawyers, M/s Bagyenda & Co. Advocates filed a bill of costs which was taxed by the taxing master and allowed at UGX



20,818,260/= an amount that is manifestly excessive. That the excessive awards include: that the amount of UGX 8,000,000/= allowed as instruction fees under item 4 is harsh and excessive given the value of the subject matter; that the sum allowed under item 28 for drawing statements of UGX 900,000 is manifestly harsh and excessive and contrary to rule 10 (3) of the Remuneration Rules; that the sum allowed under item 53 on drawing bill of costs is excessive and contrary to rule 10 (5) of the Sixth Schedule of the remuneration rules given that item 54 provided for making copies of the bill of costs and award of UGX 150,000/= was made on that item.

3. That some of the items allowed are not in line with the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations 2018, such as: items 7 and 8 relating to drawing summary of evidence and making copies thereto that are already catered for under items 5 and 6 providing for drawing the plaint and making 3 copies thereto and all accompanying documents; and ought to have been disallowed; that item 21 was an unnecessary expense incurred through over caution of Counsel and ought not to have been allowed.
4. That costs and or items not allowed under the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations 2018, were allowed by the taxing master, such as: items 22 and 37 providing for perusal of the Written Statement of the Defencen and the Defendant's Witness Statements are not provided for in the rules and in any case are covered under Instruction Fees.

The application was opposed by the Respondent who contended in an affidavit as follows:



- 5
1. That the items contested by the Applicant were agreed upon in the pre-taxation hearing held on 6<sup>th</sup> October 2022 and as such the sum recorded for those items were figures consented upon by both parties and the Applicant is estopped from contesting the same. That the appeal at hand has no merit and misconceived and that a point of law was to be raised at trial by the Respondent's counsel to that effect.
  2. That the applicant's application was brought in bad faith and intended to waste court's precious time as such the same should be rejected with costs to the Respondent.

10 **Issues:**

1. Whether the applicant's application is proper before this court and whether the same should be allowed.
2. Remedies.

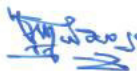
**Representation:**

15 Counsel Hayat Mansur of M/s Muhumuza – Kiiza Advocates and Legal Consultants appeared for the Applicant while Counsel Godfrey Lubangula of M/s Bagyenda & Co. Advocates appeared for the Respondent. Both parties proceeded filed written submissions which I have considered.

20 **Issue No. 1: Whether the applicant's application is proper before this court and whether the application should be allowed.**

**Applicant's submissions:**

25 The Applicant contended that the sum allowed after taxation was harsh and manifestly excessive and the same should be reduced within the confines of the



remuneration rules. Counsel invited court to the decision of the Hon. Justice Mulenga in **Bank of Uganda Vs. Bank Arabe Espanol, SCCA No. 23 of 1999** where it was noted that where the taxing officer exercises discretion in awarding costs, the same may be interfered with guided by the following principles:

- 5 (a) A judge not to alter a fee allowed by the taxing officer merely because in his opinion he should have allowed a higher or lower amount.
- (b) Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be reasonable fees.
- 10 (c) Even if it is shown that the taxing officer erred in principle, the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount would cause injustice to one of the parties.

Counsel submitted that the sum awarded in the items contested if allowed would cause injustice to the Applicant for being harsh and manifestly excessive:

- 15 (i) That under item 4, an award of UGX 8,000,000/= as instruction fees was excessive where the value of the subject matter was approximately UGX 18,000,000/= and should be reviewed and reduced to UGX 2,120,000/=.
- (ii) That items: 1 (Counsel interviewing client in chambers and receiving instructions); 22 (Advocate attending to client and perusing the Defence and annexure thereof); 26 (attending to and interviewing the Plaintiff's witnesses); 37 (Advocate attending to client and perusing the Defence witness statements); and 41 (to advocate preparation and research for submissions); were already covered within item 4 (instruction fees to institute a suit) and thus should be taxed off.
- 20 (iii) That item 28 for drawing witness statements is contrary rule 10 (3) of the
- 25 Remuneration Rules. Counsel cited the decision of in **Balyeku Moses**



Grace Vs. Ali Buk Ben Misc. Appn No. 153 of 202 where court observed this *"In our opinion, an affidavit of service, a witness statement, a scheduling memorandum and hearing notices fall under the category of documents mentioned under rules 10 (3) of the remuneration rules."* It was thus submitted that the sum allowed under item 28 should be UGX 150,000/= not UGX 900,000/= as ordered by the taxing master.

- (iv) That regarding drawing a bill of costs in item 54, a sum of UGX 200,000/= should be allowed not UGX 300,000/= and that for any extra copy, the sum allowed should be that provided for under rule 10 (5) of the Remuneration Rules.
- (v) That the sum allowed for item 7 (Drawing summary of evidence) and item 8 (Making 3 copies of the summary of evidence) should taxed off as it is catered for under item 5 (Drawing of the plaint). That a plaint in law should include a summary of evidence. Counsel relied on the **Balyeku case (supra)** where it was observed thus *"a summary of evidence and a list of authorities are part of the memorandum of claim and not charged differently"*.
- (vi) That for item 21 regarding clerks transport to find out whether a defense was filed, the same should be rejected. That a defendant is supposed to file a defense within the confines of Order 9 Rule 1 of the Civil Procedure Rules; that the plaintiff had the option of waiting for the defense to be served on them.
- (vii) That item 46 (to advocate applying for a decree) is a duplication of item 48 (to advocate extracting a decree); that the taxing master rightly awarded a sum of UGX 50,000/= for item 48 and the sum of UGX 100,000/= on item 46 should be disallowed.

Counsel thus prayed that the appeal be allowed and those items reduced.

**Respondent's submissions:**

In response, counsel for the Respondent commenced with a preliminary point of  
5 law contending that the application is incompetent, vexatious and an abuse of court  
process and thus should be disallowed. That the items contested were agreed upon  
during the pre-taxation meeting conducted on the 6<sup>th</sup> day of October 2022 and only  
reported to court and thus the taxing master merely recorded the agreement.  
Counsel submitted that regulation 13A(1) of the Advocates (Remuneration &  
10 Taxation of Costs) Amendment Regulation 2018 allows both counsel to have a  
pre-taxation meeting and agree on costs, fees and expenses which are not contested  
and as agreed, the taxing master is only mandated to tax items which are contested.  
That all items in the bill were agreed upon by counsel and only reported what  
resulted from the pre-taxation meeting and the taxing master merely recorded what  
15 was agreed upon. That since these items were agreed, an objection to the same in  
form of an appeal is an abuse of court process and court should be pleased to  
dismiss the application at hand with costs for being an abuse of court process.

The point of law notwithstanding, regarding the merits of the application, it was  
20 contended that regarding instruction fees, the value proposed by the applicant's  
Counsel of 18.000.000 is misleading; that the value of the land was greater than the  
loan disbursed. That it was thus erroneous to submit that the value of the loan  
should be taken as the value of the subject matter. It was submitted that the  
applicant did not attach a valuation report for the suit property as evidence which  
25 informed his decision to propose the cited figure. Counsel submitted that for the



other items, the same were agreed upon during the taxation and the same should remain and the application be dismissed for want of merit.

#### **Rejoinder by the Applicant:**

5 In Rejoinder, Counsel for the applicant submitted that the items appealed against were not agreed upon in the pre-taxation meeting as submitted by the Respondent's Counsel. Counsel thus invited court to overrule the point of law for being misplaced. Counsel further submitted relying on the case of **Attorney General Vs. Uganda Blanket Manufacturers, SC Civil Application No. 17/1993** where it  
10 was observed that the intention of the rule is to strike a balance between the need to allow advocates adequate remuneration and the need to reduce costs to a reasonable level so as to protect the public from excessive fees. That the spirit of the rules is to provide some general guidance as to have reasonable level of advocates fees. It was submitted regarding the contention on the value of the suit  
15 property, that it was upon the applicant to attach the value of the subject matter and she relied on rule 1 of the 6<sup>th</sup> schedule to the rules. That the suit property was purchased at UGX 8,700,000 thus the instruction fees allowable is UGX 1,200,000 and not the 8,000,000 awarded by the taxing master. That the WSD assigned the value of the loan to be UGX 18,000,000/= which could be another consideration  
20 regarding the actual value of the suit land and after subjecting the said value to the rules, it does not return a sum of UGX 8,000,000 as awarded by the taxing offer.

#### **DECISION OF COURT:**

##### Point of Objection:

25 I have perused the record of the lower court. I have not found any form of consent to the entire bill or any record of court to that effect. Even if there was consent, it



should comply with the Rules so as to strike a balance between the need to allow advocates adequate remuneration and the need to reduce costs to a reasonable level so as to protect litigants from excessive litigation costs. The objection is therefore overruled.

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*Merits of the Application:*

**Section 62 (1) of the Advocates Act** that provides for appeals and reference provides that: *“Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.”*

Save in exceptional cases, a judge should not interfere with the assessment of what the taxing officer considers to be a reasonable fee. Questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. (See: **Bank of Uganda v. Banco ArabeEspañol, S.C. Civil Application No. 23 of 1999** and **Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492**).

An exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a wrong principle. Application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low. (See: **Gulu Institute of Health Science versus Bwomu Gerald HCCA No. 163 of 2016**)

In **The Administrators of the Estate of the Late Barbara Lakeli Vs. JW B Kiwanuka & 3 others, Taxation Appeal No. 003 of 2013**, the Hon. Lady Justice





Immaculate Busingye Byaruhanga held that: *"In this particular case the law granting discretionary power to the taxing master to award costs taking into consideration "all other relevant circumstances" was repealed. It means in my humble view that the taxing master is restricted now only to apply schedule six of the current regulations and award costs only as set out under those regulations. Nothing more nothing less.....In my view a taxing master cannot award costs less than what is stipulated under the rules. What has to be ascertained therefore is the fee chargeable in contentious matters in High Court under the current rules."*

It is my understanding that under the current legal framework, where parties are represented by advocates, the taxing master must conduct the taxation of a bill of costs to the fullest extent possible, in compliance with the Advocates (Remuneration and Taxation of Costs) Regulations as amended in 2018. Any discretion allowed, the taxing master should be judiciously exercised guided by the established taxation principles in case law to ensure awards that are fair, reasonable and proportionate to the expenses incurred by a successful party in defending or prosecuting a given suit.

In **Makumbi and another v Sole Electrics (U) Ltd [1990–1994] 1 EA 306**, Justice Manyindo DCJ (as he then was) set out the general principles of taxation. In that case, the Taxing Master taxed the fees and disbursements, including the Commercial Transaction Levy at Uganda shillings 13,854,000/=. At pages 310 – 311 Manyindo DCJ said: *"The principles governing taxation of costs by a Taxing Master are well settled. First, the instruction fee should cover the advocates' work, including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be. Second, there is no*

*Handwritten signature in blue ink.*

legal requirement for awarding the Appellant a higher brief fee than the Respondent, but it would be proper to award the Appellant's Counsel a slightly higher fee since he or she has the responsibility to advise his or her client to challenge the decision. Third, there is no mathematical or magic formula to be used by the Taxing Master to arrive at a precise figure. Each case has to be decided on its own merit and circumstances. For example, a lengthy or complicated case involving lengthy preparations and research will attract high fees. In a fourth, variable decree, the amount of the subject matter involved may have a bearing. Fifth, the Taxing Master has discretion in the matter of taxation but he must exercise the discretion judicially and not whimsically. Sixth, while a successful litigant should be fairly reimbursed the costs he has incurred, the Taxing Master owes it to the public to ensure that costs do not rise above a reasonable level so as to deny the poor access to Court. However, the level of remuneration must be such as to attract recruits to the profession. Seventh, so far as practicable there should be consistency in the awards made.

It is my finding that in this case, the taxed bill of costs and certificate of taxation reveal that some awards contravene the principles of taxation and the Advocates (Remuneration and Taxation of Costs) Regulations as amended in 2018 and are hereby adjusted as follows:

1. **Item 1:** Meetings with clients in chambers are not specifically provided for under the Regulations. They are taken as part of instruction fees because it is from these meetings that an advocate gets instructed by a client or from where he get clarification on the instructions from the client. **The awarded sum of UGX 300,000/= in item 1 is accordingly taxed off.**



2. **Item 4:** The guiding scale is in the 6<sup>th</sup> schedule to the Regulations. The record does not reveal any uniqueness in the subject matter or any reasons to justify an amount above what is stated in the Regulations. Under Section 11 (2) of the Civil Procedure Rules, a plaintiff must state the value of the subject. This value should guide the taxing master in assessing the award for instruction fees. The available transaction documents may also help determine the value of the subject matter. In this case there was uncertainty regarding the value of the subject matter and it was not stated in the bill of costs. I adopt UGX 18,000,000/= being the value of the loan disbursed, plus attendant fees and interest as the value of the subject matter, arrived at as follows based on the loan offer letter:

(a) Loan amount –	18,000,000/=.
(b) Interest rate: fixed rate of 29% per annum –	5,220,000/=.
(c) Processing fee: 2% of the loan facility –	360,000/=.
(d) Utilization fee of 0.75% of the loan facility -	135,000/=
(e) Application fee –	20,000/=
(f) Life and catastrophe insurance: 1.25% of facility –	225,000/=
(g) Default interest: 0.5% of the facility per day – est.	3,000,000/=
TOTAL VALUE OF SUBJECT MATTER=====	26,960,000/=

**Therefore 15% of 26,960,000/= is 4,044,000/=.**

Based on this amount, I find that the award of UGX 8,000,000/= awarded as instruction fees was harsh and excessive. Therefore, taking into account the rules and the principles of taxation, I find an award of UGX 4,040,000/= as instruction fees appropriate. **Accordingly, under item 4 (Instruction fees to institute suit) I award UGX 4,040,000/= and set aside the sum of UGX 8,000,000/= awarded by the taxing officer. I tax off UGX 3,960,000/=.**

3. **Items 7, 8, and 16:** Items 7 is about (Drawing summary of evidence) item 8 is (Making 3 copies of the summary of evidence); and item 16 is (extracting summons to file defence) are taxed off. A plaint must be accompanied by a copy of the summary of evidence. The rules do not provide for drafting the summary of evidence separately and the summons. Accordingly, item 7 UGX 50,000/=, item 8 UGX 60,000/= and item 16 UGX 50,000/= are hereby taxed off.
4. **Items 21, 22 and 26:** For item 21, the rules do not provide for Counsel's attendance to check whether a defense was filed. For item 22, perusals form part of instruction fees per the taxation notes in the amendment rules. For item 26, interviewing witnesses forms part of instruction fees as such the same cannot be charged separately. Accordingly, items 21 (UGX 200,000/=) , 22 (UGX 300,000/=) and 26 (UGX 500,000/=) are hereby taxed off.
5. **Item 28:** For item 28, preparing witness statements is not specifically provided for but refuge can be sought under item 10 (3) of the remuneration rules. For drawing/drafting the statement for each of the witnesses, I hereby award a sum of UGX 50,000/= making a total of UGX 150,000/= and for each extra copy, I award a sum of UGX 20,000/= which makes it UGX 40,000/= for each witness which translates into a sum of UGX 120,000 for all the three witnesses. I therefore award a total sum of UGX 270,000 in respect of item 28 and tax off UGX 630,000/= .
6. **Item 30:** Item 30 (To clerk appearance to file joint scheduling memorandum) is a repetition of item 29 (to clerk transport from Kasese to

file joint scheduling memorandum and witness statements). Item 30 UGX 20,000/= is accordingly taxed off.

5 7. Item 37: Item 37 concerning perusals forms part of the instructions. Item 37 UGX 400,000/= is accordingly taxed off.

8. Item 41: Item 42 is equally taxed off. The rules provide for preparing written submissions which is covered under Item 42 (To Advocate writing submissions) which necessarily includes the research involved.  
10 Accordingly, item 41 (To advocate preparation and research for submissions) UGX 200,000/= is hereby taxed off.

9. Items 46 and 47: Item 46 is to Advocate applying for decree) and item 47 is to making 3 copies of the decree. The rules do not provide for applying for a decree. The role of the Advocate is covered under item 48 (To advocate extracting decree). Accordingly, item 46 (UGX 100,000/=) and item 47 (UGX 60,000/=) are hereby taxed off.

10. Item 53: For item 53, drawing a bill of costs is UGX 200,000 per item 10  
20 (5) of the remuneration rules. I therefore tax off the excess of UGX 100,000 and award a sum of UGX 200,000 for item 53.

11. Item 61: Item 61 is about Counsel extracting taxation hearing notice. The rules do not provide for extracting taxation hearing notices. These in my  
25 view are prepared together with the bill. I therefore tax off item 61 (UGX 50,000/=).

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After taking into account the above deductions, I make an award of UGX 14,238,260/= and accordingly set aside the award of UGX 20,818,260/=. This application therefore succeeds and it is hereby granted.

5 **Summary:**

(a) Item 1: The awarded sum of UGX 300,000/= in item 1 is hereby taxed off.

(b) Item 4: I tax off UGX 3,960,000/= and award UGX 4,040,000/=. I set aside the sum of UGX 8,000,000/= awarded by the Taxing Officer.

10 (c) Items 7, 8, and 16: Item 7 UGX 50,000/=: item 8 UGX 60,000/= and item 16 UGX 50,000/= are hereby taxed off.

(d) Items 21, 22 and 26: Item 21 (UGX 200,000/=) , Item 22 (UGX 300,000/=) and Item 26 (UGX 500,000/=) are hereby taxed off.

15 (e) Item 28: I award a total sum of UGX 270,000 in respect of item 28 and tax off UGX 630,000/.

(f) Item 30: Item 30 UGX 20,000/= is hereby taxed off.

(g) Item 37: Item 37 UGX 400,000/= is hereby taxed off.

(h) Item 41: item 41 (To advocate preparation and research for submissions) UGX 200,000/= is hereby taxed off.

20 (i) Items 46 and 47: Item 46 (UGX 100,000/=) and item 47 (UGX 60,000/=) are hereby taxed off.

(j) Item 53: I tax off the excess of UGX 100,000 and award a sum of UGX 200,000 for item 53.

(k) Item 61: Item 61 (UGX 50,000/=) is hereby taxed off.

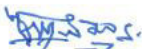
25 (l) Item 66: Item 66 (VAT) should be adjusted in line with the amounts taxed off under the relevant items.

**Issue No. 2: Remedies.**

The court makes the following orders:

- (a) The award by the Taxing Master of UGX 20,818,260/= is hereby reviewed and set aside.
- 5 (b) The Taxing Officer should issue a new Certificate of Taxation in line with the amounts taxed off.
- (c) Item 66 VAT should be adjusted in line with the amounts taxed off and taken care of in the new Certificate of Taxation.
- (d) Each party shall bear their own costs.

10 I so order.



Vincent Wagana

High Court Judge

15 **FORT-PORTAL**

**29.11.2022.**