



**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MBARARA**  
**TAXATION APPEAL NO. 17 OF 2022**  
**(ARISING FROM MBR-CR-TA-002 OF 2022)**  
**(ALL ARISING OUT OF MBR-00-CV-CS-0036 OF 1993)**

1. BADRU DUDU
2. FULMERA TIBAIJUKA
3. KANYEMA DUDU
4. DR. FRANCIS BAJUNIRWE ..... APPELLANTS

**VERSUS**

1. NANTONGO HAWA
2. ABDALLA JUMA
3. HARUNA ABUBAKAR ..... RESPONDENTS

**BEFORE:** Hon. Justice Nshimye Allan Paul

**JUDGEMENT**

**INTRODUCTION**

This is an appeal against the decision of the taxing master decision taxing a bill of cost for Mbarara Chief magistrates Court civil suit 36 of 1993. The suit that is the basis of the taxation was premised on a trespass claim against the defendants (Appellants herein), who had also filed a counter claim seeking the cancelation of the certificate of title of the plaintiffs (Respondents herein). The Chief Magistrates decided the suit and the counter claim in favor of the plaintiffs who were granted costs. The defendant (respondents herein) filed High court appeal No 89 of 2017 appealing against the decision in Mbarara Chief magistrates Court civil suit 36 of 1993, the resultant orders after the high court where that;

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1. The plaintiff are the rightful owners of land comprised in LRV 2077 Plot 68 Kashari Block 4 measuring approximately 7.41 hectares.
2. The defendants trespassed onto the plaintiff's land.
3. A permanent injunction restraining the defendants or their agents from further trespass.
4. The defendants vacate the land.
5. General damages of shillings 5,000,000/=
6. Costs are awarded to the plaintiffs (only in Mbarara Chief magistrates Court civil suit 36 of 1993)

The parties agreed on all items of the Bill of Cost before the Chief Magistrate Mbarara save for item 1, the instruction fees. The taxing master on 18<sup>th</sup> October 2022 ruled that, shillings 15,000,000/= as reasonable instruction fees under item one of the Bill of costs. The total certificate of taxation was then taxed and allowed at Shillings 37,650,000/=.

This High court taxation appeal is against the decision of the taxing master in respect only on item 1, which is instruction fees that was taxed at shillings 15,000,000/=

### **TAXATION APPEAL**

The Appellant brought this taxation appeal by way of chamber summons basing on the law in Section 98 of the Civil Procedure Act Cap 71, Section 62(1) of the Advocates Act Cap 267 and Rule 3(1) (Taxation of Costs) (Appeals and References Regulations) seeking orders that:

1. The taxation decision of the learned Taxing Master delivered on 18<sup>th</sup> October, 2022 allowing the Respondents' instruction fees at Ug Shs 15,000,000/= (Uganda Shillings Fifteen Million only) be set aside.
2. The amount of Ug Shs 15,000,000/= (Uganda Shillings Fifteen Million only) awarded to the Respondents as instruction fees be set aside and replaced with an award not exceeding Ug Shs 720,000/= (Uganda Shillings Seventy Hundred Twenty Thousand only).

3. This Honourable Court taxes item 1 of the Respondents' Bill of Costs in accordance with the Advocates (remuneration and Taxation of Costs) (Amendment) Regulations, 2018.
4. Costs of the Appeal be provided for.

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### **GROUND FOR THE APPEAL**

The grounds of appeal listed in the chamber summons are;

1. The learned Taxing Master injudiciously exercised his discretion when he taxed the Respondents' bill of costs in Civil Suit No.36 of 1993 and allowed item 1 at Ug Shs 15,000,000/= (Uganda Shillings Fifteen Million) only which was manifestly high, harsh, unconscionable, oppressive and in contravention of the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018.
2. The learned Taxing Master misdirected himself when he held that the subject matter of the suit could not be ascertained from the pleadings and or judgment.
3. The learned Taxing Master did not consider the fact that the duration of the case had led to the Respondents being entitled to huge amounts under the other headings thereby coming to the wrong conclusion that Respondents were entitled to UGX 37,650,000/= as total costs.
4. It is just, fair, reasonable and in the interests of substantive justice that this appeal is allowed.

### **THE APPELLANT'S CASE**

- 25 The Appellant's counsel – Mr. Mugabe Deus framed two issues in his submissions;
- i. Whether the learned Taxing Master erred in law and fact when he held that the subject matter of the case could not be ascertained from the pleadings and judgment.
  - ii. Whether the learned Taxing Master exercised his discretion properly in granting the amount of UGX15,000,000/= as instruction fees.
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On the first issue, Counsel Mugabe submitted that the subject matter in this case could be ascertained from the pleadings and or the judgment on the basis that; (1)



the value of the subject matter was contained in the Respondent's plaint for Civil Suit No.36 of 1993, particularly paragraph 8 which set the value of the suit land at Ug Shs 400,000/= (Uganda Shillings Four Hundred Thousand) only and (2) that there was a claim for damages which was granted by the High Court to the tune of Ug Shs 5,000,000/= (Uganda Shillings Five Million) only. Counsel argued that if the Respondents wanted to rely on a quantum of the subject matter different from that in the pleadings, then they should have conducted and produced a valuation report before the Taxing Master and relied on the case of **Administrators of the Estate of the late Barbara Lakeli Nalubaale Ssali vs J.W.B Kiwanuka and Others High Court Taxation Appeal No.003 of 2013**.

Counsel further argued that the amount defended by the defendants (currently - the Appellants) should be used as a basis of calculating the value of the subject matter and relied on the case of **MMAKS Advocates and Another vs Uganda Muslim Supreme Council High Court Civil Appeal No.31 of 2017**.

Conclusively, counsel contended that since the value of the subject matter was stated as Ug Shs 400,000/= only in the Respondents' pleadings, then the Taxing Master ought to have applied provisions of Section 1 paragraph 1 item (a) of the Sixth Schedule to the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018, and henceforth should have valued instruction fees at Ug Shs 60,000/=: hence ending up with an aggregate cost of Ug Shs 22,710,000/= (Uganda Shillings Twenty Two Million, Seven Hundred Ten Thousand only).

Alternatively, counsel contended that since this Court granted the Respondents damages worth Ug Shs 5,000,000/= only, then the Taxing Master ought to have applied provisions of Section 1 paragraph 1 item (a) of the Sixth Schedule to the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018, and henceforth should have valued instruction fees at Ug Shs 720,000/= (Uganda Shillings Seven Hundred Twenty Thousand) only, and thus bring the aggregate cost to Ug Shs 23,370,000/= (Uganda Shillings Twenty Three Million, Three Hundred Seventy Thousand only).

On the second issue, counsel Mugabe faulted the learned Taxing Master for considering the duration of the Respondent's matter before the Chief Magistrates Court without taking into consideration other items of the Bill of costs that the Respondents were already entitled to, and thus failed to assess the proportionality of the resulting aggregate costs. He relied on the authority of ***Alnasir Gulam Hussein Virani and Another vs Paresh Shukla and Another High Court Taxation Appeal No. 19&20 of 2019.***

#### THE RESPONDENT'S CASE

Counsel for the Respondents admitted that in their plaint for Civil Suit No.36 of 1993, the Respondents valued the subject matter at Ug Shs 400,000/= only; but since the Appellants (then Defendants) counterclaimed claiming that the Plaintiff's (now Appellants) certificate of title was acquired fraudulently, and did not value the subject matter in that counterclaim, the learned Taxing Master rightly provisions of item 9(1) of the Sixth Schedule to the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018. He relied on the authority of ***Joreth Limited vs Kigano & Associates [2002] eKLR*** for the principle that where the subject matter is not provided for in the Sixth Schedule, then the fees should be reasonable, not being less than Ug Shs 2,000,000/=.

Counsel prayed to this Court to consider all principles outlined in previous precedents where the value of the subject matter could not be ascertained in the pleadings and judgment. He relied on the authorities of ***Makula International Limited vs His Eminence Cardinal Nsubuga and Another [1982] HCB 11*** and ***Patrick Makumbi and Another vs Sole Electrics SCCA No.11 of 1994.***

Counsel prayed that the decision of the Taxing Master be upheld and that this Appeal be dismissed with costs.

In rejoinder, Counsel for the Appellants reiterated his earlier submissions.



## DETERMINATION

In the determination of this matter the court will be guided by the two issues

- 1) Whether the learned Taxing Master erred in law and fact when he held that the subject matter of the case could not be ascertained from the pleadings and judgment.
- 2) Whether the learned Taxing Master exercised his discretion properly in granting the amount of UGX15,000,000/= as instruction fees.

I will proceed to resolve the two issues jointly as a whole.

It is trite that a taxing master ought to tax a bill of costs in accordance to the Advocates (Remuneration and Taxation of Costs) Regulations as amended. In this case since the matter was contentious, the taxation is guided by the law in regulation 36, 37 and 38 of the Advocates (Remuneration and Taxation of Costs) Regulations.

The evidence on court record in the judgement of the Chief Magistrate in Civil Suit No.36 of 1993 shows that the respondents herein were granted costs after they succeed in the main suit and after the appellants counter claim in Civil Suit No.36 of 1993 was dismissed. The fact that there was a successful suit and dismissed counter claim will be considered when determining if the taxing master exercised his discretion properly when granting costs.

It is trite that A judge may not interfere with the assessment award of what the taxing officer considers to be a reasonable fee except in exceptional circumstances which may include,

1. The taxing officer applying a wrong principle.
2. An award of an amount which is manifestly excessive or manifestly low.

His Lordship George Okello in his decision in Ocaya Faruuk & Ors Vs Odoch Geoffrey HCMC 09 of 2023 restated nineteen principles that guide the taxation of bill of costs. I will list three of them that were given more consideration, they are;

1. Costs must not be allowed to rise to such a level so as to confine access to courts only to the wealthy.
2. A successful litigant ought to be fairly reimbursed for costs he or she has had to incur.
- 5 3. The general level of remuneration of advocates must be such as to attract worthy recruits into the profession.
4. The taxing master has to make allowance for the fall, if any, in the value of money.

10 In my analysis the facts are clear, the Mbarara Chief magistrates Court civil suit 36 of 1993 was filed in 1993 , in the plaint a value of shillings 400,000/= was stated and the counter claim is also in respect of the same suit . The judgment in Mbarara Chief magistrates Court civil suit 36 of 1993 was delivered in 2017, which is 24 years since the suit was filed. It is obvious that the value of the land must have  
15 appreciated in the last 24 years, in the same vein the value of money estimated at shillings 400,000/= must have changed in 24 years due to inflation and loss in value.

In my opinion considering the principles meant to guide court in taxation of costs include the requirement that a successful litigant ought to be fairly reimbursed for  
20 costs he or she has had to incur and also that a taxing master has to make allowance for the fall, if any, in the value of money, and also considering that no valuation of the land was made in 2011 when the counter claim was filed or 2017 when the judgement was made, then it was fair the taxing master followed item 9(1) of the Sixth Schedule to the Advocates (Remuneration and Taxation of Costs) Regulations  
25 as amended that deals with circumstances where the value cannot be ascertained. I find that the taxing master applied the correct principle in the circumstances taxing the bill under item 9(1) of the Sixth Schedule to the Advocates (Remuneration and Taxation of Costs) Regulations as amended.

30 The other principles to guide on taxation of costs, are that costs must not be allowed to rise to such a level so as to confine access to courts only to the wealthy, while also the general level of remuneration of advocates must be such as to attract worthy recruits into the profession. Based on these principles a high court may

interfere with the award of costs made by the taxing master if the award is either too low or excessive.

item 9(1) of the 6<sup>th</sup> Schedule to the Advocates (Remuneration and Taxation of Costs) Regulations as amended provides that:

“for instructions to sue or defend in any case not provided for in this Schedule, the fees shall be reasonable but shall not be less 2,000,000 shillings”

In my opinion considering that the respondents were granted damages of shs 5,000,000/= and also considering that they taxed for the daily appearances for the duration of the trial, which are not contested, the amount that the taxing master awarded of shillings 15,000,000/= is excessive. In order to balance the desire for advocates be adequately remunerated, and successful parties be adequately compensated while not deterring litigants from seeking court redress for fear of costs. I find that shillings 7,000,000/= fair in the circumstances.

In conclusion, I order that;

1. The award of the taxing master on item 1 of the bill of costs in is set aside and replaced with shillings 7,000,000/=.
2. The total costs due to the respondents from the appellants now stand at shillings 29,650,000/=
3. The parties will each bear their costs of this application.



**NSHIMYE ALLAN PAUL**

**JUDGE**

**20-10-2023**