

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT HOIMA
MISC. CIVIL APPEAL NO. 06 OF 2023
(Formerly MSD Misc. Civil Appeal No.2 of 2019)
(Arising from HCCS No.51 of 2012)

AIRTEL UGANDA LTD ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

HAJJI MUSA HASSAN ::::::::::::::::::::::::::::::::::: RESPONDENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- [1] The Respondent filed **MSD C.S No.14/2015** (formerly KLA HCCS No.51 of 2012) against the Applicant/Appellant for among others, trespass to land (the Respondent's land comprised in **Bugangaizi Block 333, Plot 5 situate at Bulaiga - Kakito, Kibaale District**). The suit was heard and determined in favour of the Respondent. The Applicant later filed **HCMA No.69 of 2017** which was heard and determined with costs to the Respondent. The Respondent filed the impugned bill of costs which was duly served on the Applicant. The Applicant/Appellant did not participate in the taxation of the bill on the ground that it was based on the wrong law and as a result, the Registrar taxed the costs and allowed it at **shs.7,585,000/=**.

[2] By this application, the Applicant/Appellant sought for the following;

1. An order to set aside the taxation of the bill of costs in **MSD HCMA No.69/2017** and that appropriate consequential orders be made.

2. The costs of the application be provided for.

[3] In this case, the Respondent filed a bill of costs of **shs. 26,055,000/=** and the same was taxed to **shs. 7,585,000/=**. The taxation of the bill was based on **S.I No.7 of 2018, the Advocates (Remuneration and Taxation of costs) (Amendment) Regulations, 2018**. Counsel for the Appellant protested and objected to the regime of the taxation rules applied. Counsel for the Respondent **Mr. Simon Kasangaki** on the other hand relied on **Total (U) Ltd Vs Rozenbel Twinamasiko, HCCA No.29/2019** (Commercial Division) where it was held that **S.I No.7 of 2018** is deemed to have come into force on 2/3/2018 when it was published in the gazette and thus therefore, according to him, it is the applicable law to the impugned bill of costs. In the above case, Anna Mugenyi, J. observed thus;

“Nowhere in these Regulations is it indicated that the old Regulations (S.I 267-4) shall be applied to matters that were filed in courts before March 2018.

It follows then that the new Regulations i.e, The Advocates (Remuneration and Taxation of costs) (Amendment) Regulations, 2018 are applicable to all matters/bills of costs filed in this court after the 2nd March 2018. In the circumstances, I find that the Taxing officer erred when he applied the old Regulations in taxing the Defendant’s bill of costs in C.S No.202 of 2012 thus the Bill of costs are set aside and referred back to the Taxing officer/Master

*to be taxed in accordance with the Advocates
(Remuneration and Taxation of Costs) (Amendment)
Regulations 2018.”*

- [4] **Mr. Mutyaba** for the Appellant did not agree. He relied on **UBA Vs NAT UNION [1998] KALR 388** wherein the contrary was decided. In the above case of **Uganda Bankers (Employers Association) Vs National Union of clerical Commercial, Professional & Technical employees C.A C.A No.51/1996, [1998] KALR 388**, their Lordships of the Court of Appeal were of a different proposition of the law, the amended regulation did not have a retrospective application in view of **S.13(2) of the Interpretation Act**,

“Where a law is repealed, the repeal does not affect a right, privilege, obligation or liability which had accrued before the repeal came into effect.”

Court held:

“In the present case, the Appellant’s liability to pay costs accrued on 17th August 1995 when the order to pay costs was made against the Appellant and not when the bill was taxed on 31/3/96....”

J.P.Berko J.A observed:

“.... It is necessary to find out when liability to pay costs arises or accrues. In my view, liability to pay costs accrues when the court makes an order for costs to be paid. The process of Taxation is only to determine the quantum of the costs to be paid. Since the order for costs in the instant case was made by the learned trial judge on 17/8/95, the taxation ought to have been based on the 1982 Remuneration Rules and the Sixth Schedule to those rules. The learned Judge therefore erred in law when he held that the Advocates (Remuneration and Taxation of costs

(Amendment) Rules 1996 applied to the Taxation.”

- [5] In the instant case, it follows therefore that since the ruling of the Judge was made on **3/8/2017** and the bill was filed on **27/3/2019**, the taxing master erred in law when he applied the amended **Regulations S.I No.7 of 2018**. The court is bound by the **UBA Vs NAT.UNION** decision. The Applicable regulations are **S.I No.267-4 of 2000** which provide the cost applicable scales of the legal regime during when the parties incurred the costs they seek to recover through taxation. This is the law the parties anticipated to apply to their taxation proceedings.
- [6] As a result of the foregoing, I find that the impugned bill offends fundamental principles of statutory interpretation. The award of **shs. 7,585,000** was erroneous, the appeal accordingly succeeds with costs of this appeal to the Appellant. The allowed sum is accordingly set aside.

Dated at Hoima this **10th** day of **November, 2023**.

Byaruhanga Jesse Rugyema
JUDGE