

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT IGANGA

TAXATION APPEAL NO. 3 OF 2023

(Arising From Taxation Application No. 056 of 2022)

(Arising Out Of High Court of Jinja Civil Suit No. 63 Of 2006)

UGANDA MUSLIM WELFARE ASSOCIATION ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

SAUDI MARBLE CO. LTD ::::::::::::::::::::::::::::::::::: RESPONENT

BEFORE: HON. MR. JUSTICE BATEMA N.D.A, JUDGE

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JUDGMENT.

This is an appeal arising out of a taxation of bill of costs' application formerly of High Court of Jinja Civil Suit No. 63 of 2006, wherein the Appellant is dissatisfied with the award of UGX. 142,312,500/= (One Hundred Forty-Two Million Three Hundred Twelve Thousand Five Hundred Uganda Shillings only) as costs taxed and allowed by the Deputy Registrar (Taxing Master).

Background.

The Applicant instituted Civil Suit No. 63 of 2006 at Jinja High Court Circuit in 2006 against the Respondent seeking for general, exemplary damages for trespass, compensation, a permanent injunction restraining the Respondent, its agents or any other person claiming under it from further acts of trespass, interest and costs of the suit.

On 30th March 2022, Her Lordship Jeanne Rwaakakooko delivered her Judgment having found that the Applicant did not have any right in respect of the suit land and thereby dismissing the suit and awarding costs in favour of the Respondent.

The Appellant/ Applicant filed this Appeal on the 17th day of March 2023 under S. 62 of the Advocates Act, Rule 3(1) and (2) of the Advocates (Taxation of

costs) (Appeals and References) Regulations and Section 98 of the Civil
30 Procedure Act for orders that;

1. The award by the Taxing Officer of UGX. 142,312,500/= in Taxation Appl. No. 56 of 2022 be set aside and/ or reduced/ reviewed.
2. Costs of the application be awarded to the Applicant.

The Appeal is based on the following grounds;

1. That costs allowed by the taxing master are exorbitant, high, excessive and unconscionable in the circumstances of the case.
2. That some of the costs taxed and allowed are not in line with the Advocates (Remuneration & Taxation of costs) Regulations governing the taxation of costs.
- 40 3. That some of the items in the bill of costs were taxed and awarded twice.
4. That the taxing master allowed unreasonable numerous Defendants' representative court appearances.
5. That if the award is left to stand as allowed, will render the Advocates (Remuneration & Taxation of costs) Amendment regulations 2018 nugatory.

The Respondent filed an affidavit in reply sworn by Etuumye Umar on the 14th day of July 2023 opposing the instant application/ Appeal.

On 28th August 2023, the Application/ Appeal came up for hearing and both counsel made oral submissions and rejoinder respectively.

50 To this end, I have carefully read and considered the pleadings on court record and the oral submissions made at the hearing and therefore deliver this judgment.

Decision of Court

At the hearing of this taxation Appeal, it became clear that the grounds for Court's determination are as follows;



- a. That the cost allowed by the Taxing Master for items 1, 2, 12, 14, 96, 120, 211, 136, 256, 564 and 563 are exorbitant, high, excessive and unconscionable?
- b. That there was double taxation on items 3, 11, 15, 16, 19, 20, 21, 25, 32, 34, 41, 42, 44, 45, 46, 52, 53, 66, 67, 69, 70, 75, 76, 79, 88, 89, 97, 107, 121, 132, 134, 140, 155, 156, 157, 158, 159, 166, 167, 168, 170, 171, 172, 173, 174, 181, 183, 190, 191, 194, 195, 196, 197, 198, 202, 205, 206, 215, 216, 226, 237, 240, 248, 251, 253, 260, 264, 271, 277, 278, 279, 280 and 282 with item 2 in relation to perusal of documents?
- c. That there was double taxation on items 37, 60, 99, 111, 160, 138, 211, 273, 256, 284, 289, 293, 299, 304, 310, 306, 316, 320, 336, 340, 348, 352, 357 and 361 with Item 563 in relation to printing and making photocopies?
- d. That the items relating to counsel's attendance were taxed twice with items relating to Counsel's transport i.e item 18 with 372, 17 with 370, 31 with 376, 43 with 380, 64 with 387, 65 with 389, 71 with 391, 80 with 395, 81 with 397, 108 with 409, 109 with 411, 113 with 413?

Resolution of Issues.

1. Whether the cost allowed by the Taxing Master for items 1, 2, 12, 14, 96, 120, 211, 136, 256, 564 and 563 are exorbitant, high, excessive and unconscionable?

Item 1 relates to Instruction fees for which Respondent's counsel charged for defending civil suit no. 63 of 2006. Counsel for the Appellant argued that the Appellant/ Plaintiff had sued for trespass and not for recovery of land and therefore the subject matter for determination of the instruction fees was not the total value of the 240 hectares plus the value of the trees on the said chunk of land therein like the Respondent's counsel contended but rather the value of the license fee of UGX. 5000 per hectare, the non-refundable premium of 500,000 for the 16 years [the time when the suit was instituted in 2006 to date


(2022)] and the value of the trees cut and felled which was valued at UGX. 80,000,000/=. In total Counsel for the Appellant submitted that the value of the subject matter from which instruction fees ought to have been calculated is UGX. 99,700,000/=.

90 It is settled law that 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 (*Bank of Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999 and Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492*).

100 The exception 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 instant case, I hold the firm view that the principle applied by the taxing officer to the effect that the subject matter of Civil Suit No. 63 of 2006 was the total value of the 240 hectares (suit land) plus the value of the trees standing on the said chunk of land, was a misdirection and erroneous and therefore the instruction fees taxed off and allowed at UGX. 70,000,000/= (Uganda Shillings Seventy Million) were manifestly excessive.

110 According to the **Sixth Schedule Rule 1 (1) of the Advocates (Remuneration & Taxation of costs) Regulations S.1 267-4 as amended by S.1 No. 7 of 2018**, instruction fees to sue or defend any case commenced by plaintiff, shall be calculated where the claim or value of the subject matter can be determined from the pleadings, settlement, a valuation or the Judgment. The said rule goes



ahead to provide a scale for the calculation and determination of the instruction fees.

It follows that the guiding principle in determination of instruction fees is that a claim/ subject matter can only be ascertained from the pleadings, settlement, a Valuation or the Judgment. (Emphasis mine).

120 As per the Appellant's plaint in Civil Suit No. 63 of 2006, **paragraph 3** reads as follows;-

"The Plaintiffs' claim against the Defendant is for general, exemplary damages for trespass, compensation, a permanent injunction restraining the Defendant Trespassing on the suit land."

The Appellant further quoted the value of the trees felled down to be in the range of UGX. 80,000,000/= (Eighty Million Uganda Shillings only) pursuant to paragraph 6 of its pleadings.

130 My understanding of the claim/ subject matter in Civil suit No. 63 of 2006 was not in any way to do with the value of the suit land measuring approximately 240 hectares held as a purported sub-lease to the Appellant/ Plaintiff but rather it was a claim of trespass to land wherein the Plaintiff sought for general & exemplary damages and compensation for the trees cut.

It cannot therefore be conceivable as Counsel for the Respondent would want this Court to believe that the subject matter was the value of the 240 hectares well aware that the Plaintiff only claimed that they had supposedly been granted a sublease/license on the 240 hectares. In any case the Plaintiffs could not have sold this land even if they were held to have had a claim of right in the 240 hectares.

140 The subject matter in civil suit no. 63 of 2006 ought to be valued basing on the purported interest/claim that the Plaintiff's had which was a sublease of 240 hectares and the value of the trees purportedly cut down as of February 2006.

I have closely looked at the calculations made by Counsel for the Appellant in respect of the instruction fees and I associate myself with them. As for the valuation report tendered in by the Respondent's counsel, it was only in respect to the interests or rights in the trees and even then the value was for existing trees as of 4th April 2022 when inspection was carried out and not the value of the trees that had been cut as claimed by the Appellant/Plaintiff.

I therefore find that the value of the subject matter in civil suit no. 63 of 2006 is UGX. 99,700,000/= (Uganda Shillings Ninety Nine million Seven Hundred Thousand) and thus the instruction fees therein is held to be at UGX. 150 **2,184,500/= (Uganda Shillings Two Million One Hundred Eighty Four Thousand Five Hundred shillings).**

I now move to address **item 2**, I find that the learned Deputy Registrar applied the wrong principle when he moved to tax the block figure constituting perusal of **ALL** necessary documents in relation to civil suit no. 63 of 2006 and setting the same at UGX. 2,540,000/= instead of only taxing the specific items.

I therefore disallow item 2 on account of being a block figure and allow items 3, 11, 13, 15, 16, 19, 20, 21, 25, 32, 34, 41, 42, 44, 45, 46, 52, 53, 66, 67, 69, 70, 75, 76, 79, 88, 89, 97, 107, 121, 132, 134, 140, 155, 156, 157, 158, 159, 166, 167, 168, 170, 171, 172, 173, 174, 181, 183, 190, 191, 194, 195, 196, 160 **197, 198, 202, 205, 206, 215, 216, 226, 237, 240, 248, 251, 253, 260, 264, 271, 277, 278, 279, 280** and the taxed cost made there under.

I now move to address items **14, 96, 120, 211** and **136** in relation to instruction fees for handling interlocutory applications. I will address items 256, 564 and 563 in the preceding issues since that is where they fall.

Counsel for the Appellant argued that the instruction fees for handling the different individual interlocutory applications was part of the instruction fees envisaged in item 1. In response Counsel for the Respondent argued that items 12, 14, 96, 120 are items of distinctive fees for Applications and that the



Respondent's Counsel didn't point out which law the learned Registrar had erred.

The **sixth Schedule of the Advocates (Remuneration & Taxation of costs) Regulations** is very clear. The Instruction fees for suing, claiming, defending or opposing any case commenced by plaint, statement of claim, petition or originating summons or originating motion, or present or oppose an appeal are calculated according to a scale duly provided for under **R 1(1) of the sixth schedule**.

On the other hand, instruction fees for interlocutory applications are provided for under **Item 9(2) of the sixth schedule**. They are therefore different and the scale for calculating each is independently provided for.

180 In any case, interlocutory suits are independent suits of their own and attract costs distinctive from the main suit.

The subsequent argument by the Appellant's Counsel that court should reduce them since the award of UGX. 2,000,000/= on each of the items 12, 14, 96,120, 211 and 136 is without merit.

This Court cannot simply interfere or alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount. I have already found that the taxing officer applied the right principle,

I am therefore inclined to maintain the awarded costs of UGX. 2,000,000/= as instruction fees for the said items.

190 **Issue two**

1. That there was double taxation on items 3, 11, 13, 15, 16, 19, 20, 21, 25, 32, 34, 41, 42, 44, 45, 46, 52, 53, 66, 67, 69, 70, 75, 76, 79, 88, 89, 97, 107, 121, 132, 134, 140, 155, 156, 157, 158, 159, 166, 167, 168, 170, 171, 172, 173, 174, 181, 183, 190, 191, 194, 195, 196, 197, 198, 202,

205, 206, 215, 216, 226, 237, 240, 248, 251, 253, 260, 264, 271, 277,
278, 279, 280 and 282 with **item 2** in relation to perusal of documents?

I have already found that the taxing master erred in law when he misapplied the principles of taxation and double taxed item 2 as a block item with those other specific items in respect to perusing all documents relating to civil suit
200 no. 63 of 2006.

Issue Three.

2. Whether there was double taxation on items **37, 60, 99, 111, 160, 138, 211, 273, 256, 284, 289, 293, 299, 304, 310, 306, 316, 320, 336, 340, 348, 352, 357** and **361** with **Item 563** in relation to printing and making photocopies?

On this issue, counsel for the Appellant argued that there was double taxation since the "making of copies" under the specific items **37, 60, 99, 111, 160, 138, 211, 273, 256, 284, 289, 293, 299, 304, 310, 306, 316, 320, 336, 340, 348, 352, 357** and **361** was the same as the printing and photocopies under
210 **item 563.**

The Respondent's Counsel on the other hand postulates that drawing of extra copies under **Rule 10(3) of the Advocates (Remuneration & Taxation of costs) Regulations** does not in any way relate to item 563.

I am inclined to agree with the Respondent's Counsel.

Rule 10 (3) stipulates that, for decrees, orders and all other necessary court documents, 50,000/= shillings and 20,000/= shillings for each extra copy made. (Emphasis mine).

The specific items relate to drawing of court papers while item 563 of printing and photocopying documents is a disbursement, whose figure can only be
220 ascertained by looking at all documents on record from 2006.

I have had the benefit of perusing the court record since 2006 with over 10 (ten) files and I do not find any compelling reason to interfere with the award made by the Taxing officer in Item 563.

I therefore maintain the award of UGX. 4,000,000/= (Uganda Shillings Four Million only) as taxed and allowed costs for printing and photocopying documents.

Issue Four.

- 230 3. That the items relating to counsel's attendance were taxed twice with items relating to Counsel's transport i.e **item 18 with 372, 17 with 370, 31 with 376, 43 with 380, 64 with 387, 65 with 389, 71 with 391, 80 with 395, 81 with 397, 108 with 409, 109 with 411, 113 with 413?**

On this issue, the Appellant's counsel submitted that counsel's attendance on the listed items was taxed twice with Counsel's transport as if implying that attendance and transport are the same items under the law.

On the other hand, the Respondent's counsel rightly so in my view, observed that attendance is a service/ fee calculated in time spent at court by counsel while transport is simply a disbursement.

240 Under **Rule 12 (2) (a)**, Counsel charges his/her time for attending court and the said fee is quantified per hour spent, this is with all due respect to the Appellant's counsel different from transport extended to counsel as a disbursement/ expense to travel and attend court.

I adopt the same argument in determination of all the items for the clerk's attendance vis-à-vis items for the clerk's transport save for **item 374** which clearly goes against the principle of consistency in awards as discussed in the case of **Attorney General & Anor Vs James Mark Kamoga & Anor, supra** and even then, the Respondent's counsel admitted to the same being manifestly excessive.

250 In the circumstances, since the clerk's transport in the rest of the items was taxed and allowed at 50,000/=, I hold that the same amount should be set for item 374 the result being that **UGX. 150,000/= (Uganda Shillings One Hundred Fifty Thousand only)** should be deducted from the overall allowed bill of costs.

Item 564 in relation to phone calls made since 2006 was submitted on as being high and excessive by the Appellant's counsel and therefore invited this court to reduce the same. In rebuttal Counsel for the Respondent argued that Counsel for the Appellant cited no law for her proposition neither did she cite one that the taxing master had offended.

260 It is worth noting that phone calls are relevant and necessary in prosecution or defending suits. The litigant must always be made aware of what is transpiring in his or her case by counsel in personal conduct through efficient and effective communication.

I am therefore inclined to maintain the award of UGX. 3,000,000/= (Uganda Shillings Three Million only) as costs taxed and allowed by the Deputy Registrar in respect of phone calls since 2006.

CONCLUSION

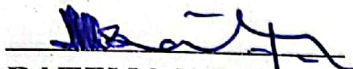
This appeal succeeds in part in so far as items 1, 2 and 374 have been reviewed and reduced.

270 In the circumstances and in consideration of the money already partly recovered by the Judgment creditor/ Respondent, this Court issues a Garnishee Order Absolute for the sum of **UGX. 62,987,375/= (Sixty Two Million Nine Hundred Eighty Seven Thousand Three Hundred Seventy Five Uganda Shillings only)** held on the Appellant's/ Applicant's Tropical Bank Account No. **0010047161.**

This Court further orders that the rest of the sums on the account after complying with the above order should be left for the benefit of the Appellant as the account holder.

I so order.

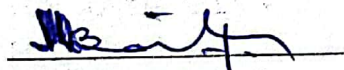
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BATEMA N.D.A
JUDGE
30/10/2023

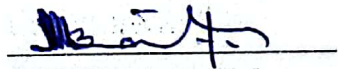
Further Orders:

Let the Judgment Creditor provide details of the Bank account to receive the Court award.

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BATEMA N.D.A
JUDGE
30/10/2023

Right of Appeal explained.


BATEMA N.D.A
JUDGE
30/10/2023

Right of Appeal explained.

BATEMA N.D.A
JUDGE