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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALA

CIVIL APPEAL NO. 0008 OF 2022

**(Arising from Civil Suit No. 0011 of 2008 of Kisoro Chief Magistrates’
Court)**

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- 1. BYANGASHA ALIAS NDIKUMWAMI**
- 2. NKINABANZI EGRASI=====APPELLANTS**

VERSUS

HABIYAKARE JAMES=====RESPONDENTS

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BEFORE: HON. JUSTICE SAMUEL EMOKOR

RULING

The Appellant brought this Taxation Appeal under **Section 62(1)** of the **Advocates Act Regulation 3** of the **Advocates Taxation of Costs (Appeals and Reference Regulations)** seeking orders that:

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- 1) The taxing order dated the 17/03/2022 be set aside.
- 2) That the bill of costs be taxed a fresh and an appropriate award be made.
- 3) That costs of this application be provided for.

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The grounds upon which this application is premised is that the learned Taxing Master/Chief Magistrate taxed and allowed the Respondent’s bill at UgX 12,489,500/= without taking into account the dictates of the **Advocates Remuneration and taxation of costs Regulations** and that the bill was exorbitant.

The Appeal is supported by the affidavit of the 1st Applicant.

The Respondent filed an affidavit in reply to the application.

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Representation:

5 Mr. Felix Bakanyebonera appeared for the Appellants while Ms. Ayesiga Rebecca represented the Respondent.

Both Counsel in this matter proceeded by way of Written Submissions.

10 Circumstances under which a Judge of the High Court may interfere with the Taxing Masters' exercise of discretion in awarding costs were restated by the Supreme Court in the case of **Bank of Uganda versus Banco Arabe Espanal SCCA No. 0023 of 199** to be in the following:

15 *“Save in exceptional cases a Judge does not interfere with the assessment of what the Taxing Officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the Taxing Officer is particularly fitted to deal with and in which he has more experience than the Judge. Consequently a Judge will not alter a fee allowed by the Taxing Officer merely because in his opinion he should have allowed a higher or lower amount”*

20 I will also bear in mind the principles of taxation as laid down by the Supreme Court in **Makula International Ltd versus His Eminence Cardinal Nsubuga and another SCCA No. 0004 of 1982**.

This Court before it delves into the issue raised in this Appeal needs to determine the law applicable to the Appeal.

25 It is the submission of Counsel for the Appellant that the case was filed in 2008 and at the time the legislation in force governing taxation of bill of costs was the **Advocates (Remuneration and Taxation of Costs) Regulations SI No. 267 - 4**.

30 Counsel for the Respondent in reply submits that while it is true that the Suit between the parties was filed in 2008 the Amendment to the **Advocates Remuneration and Taxation of Costs) Regulations SI No. 267 - 4 by SI No. 7 of 2018** replaced the schedules to the principal regulations and accordingly Court wouldn't have relied on schedules that have since been replaced.

The background to the Civil Suit No. 0011 of 2018 is that the same was filed on the 19/09/2008 and determined on the 06/06/2017. The filing and conclusion of the Suit therefore preceded **SI No. 7 of 2018**.

5 It is a general rule of legislation and statutory interpretation that laws should never have retrospective enforcement. This seems to be the spirit under **Article 92** of the **Constitution**.

See also **Wambewo Simon versus Mazelele Silvester HC MA No. 128 of 2013**.

10 Hon. Justice Sekaana in **Hon. Erias Lukwago and others versus Electoral Commission and 7 others HCM No. 431 of 2019** had the following to say:

“...The ordinary rule of interpretation of statute is that an enactment or a rule having a force of law is not to be taken retrospectively unless such intention appears clearly from the language of the enactment or the rule.

15 *It is a fundamental rule of interpretation that a statute other than one dealing with procedure shall not be construed to have retrospective effect unless the intention of the legislature that it should have such effect appears in terms or by clear and necessary implication”*

20 Hon. Lady Justice **Nakachwa in Mayanja Joshua and 70 others versus Wantante Samuel and 60 others HCCS No. 497 of 2018** in reference to amendments while a matter is pending had the following to say:

25 *“In my Judgment where a statute is amended while a matter is pending the rights of the parties to the action, in the absence of a Contrary Intention must be decided in accordance with the statutory provisions in force at the time of the Institution of the action. Where the legislature intends that a provision should have retrospective effect it has to state so in clear and unequivocal terms”*

In view of the above authorities I am persuaded by the argument of the Appellants’ Counsel that the law applicable in the taxation of **Civil Suit No. 0011 of 2008 is the Advocates (Remuneration and Taxation of Costs) Regulations SI No. 267 - 4)**

30 Counsel for the Appellant on item No. 1 submits that instruction fees claimed by the Respondent was UgX 8,000,000/= but that the Taxing Master awarded him UgX 4,000,000/= but it is not clear how this figure was arrived at since the value of the subject matter was not stated.

5 The Respondent's Counsel in his Written Submissions in reply contends that the Suit property was purchased in 1968 at a value of UgX 600/= with the property being big land considering the currency value at the time and that the same has appreciated since then therefore the award of UgX 4,000,000/= was appropriate.

10 It must be noted as submitted by the Appellant's Counsel that the Taxing Master did not provide any reasons for the awards that he gave in this matter. This fact not withstanding I will proceed to consider the awards made.

The Supreme Court in **Patrick Makumbi versus Sole Electrics SCCA No. 0011 of 1994** held that instruction fees cover the Advocates work, including taking instruction and work necessary for presenting the case for trial or Appeal.

15 Under the **6th schedule, Reg 1 (a) (v)** provides that in cases where the subject matter cannot be determined from the Judgment the instruction fees shall not be less than UgX 75,000/=.

20 The Suit before the Lower Court was filed on the 19/09/2008 and concluded on the 06/06/2017. The Prosecution of the Suit therefore took about 9 years during which period the Plaintiff presented 5 witnesses and the Defendant presented 4 witnesses. The record also reflects several adjournments over this period of time.

The Court in **Premchand Raichand versus Quarry Services of East Africa 1972 EA16** held that an Advocate ought to be adequately remunerated for the work done without making costs so high as to deny access to Courts.

25 Taking into consideration the amount of work done by Counsel in the Prosecution of the Plaintiffs' case I find the sum awarded of UgX 4,000,000/= as instruction fees to be sufficient and I will not interfere with the same.

30 Counsel for the Appellant submits that the fees charged when drawing Court papers is governed under **Rule 2(a) and (b)** of the **6th schedule** and translates to UgX 15,000/- for the 1st 2 folio and UgX 30,000/= for the rest of the 6 folios and as such items 2 of the claim should only be UgX 45,000/=

It is also the contention of Counsel that by claiming UgX 450,000/ for the summary of evidence and lists Counsel for the Plaintiff exaggerated the claim as he used the Amendment to the Regulations that came in force in 2018.

5 The Respondent's Counsel in reply contends that the **6th schedule** under **Reg 10(1) (the Amendment)** allows the drawing of Court papers at UgX 300,000/= and 50,000/= for each copy made and submits that the award by the Taxing Master be maintained.

10 I have taken into consideration item 2 and after applying the relevant scales will tax off UgX 10,000/ from the same.

The Appellants' Counsel further contends that he opposes the costs allowed in item 4 as it does not contain the dates on when Counsel attended Court and that the costs in items 4 and 5 should be disallowed.

15 Further that on the dates provided in items 9, 10, 11, 21, 22, 24 and 28 the Plaintiff's Counsel did not attend Court and therefore the sum of UgX 700,000/= should be taxed off the sum allowed.

20 On the attendance by the Plaintiff, Counsel submits that the dates indicated on items 45, 48, 49, 55, 63, 66, 69 and 70 are not reflected on the record of proceedings meaning that Court did not sit on these days and that therefore UgX 800,000/= should be taxed off the sum allowed on these items.

The Respondent on the other hand submits that items 4 and 5 should be maintained by the Court and that the Respondent's Counsel was present on dates under items 9, 10, 11, 21, 22, 24 and 28.

25 Further that the Court sat on dates listed in items 45, 48, 49, 55, 63, 66, 69 and 70 as endorsed by the Trial Magistrate on the record.

I have carefully perused the record of proceedings and agree with the Appellants' Counsel that on items 9, 10, 11, 21, 22, 24 and 28 the Plaintiffs' Counsel did not enter appearance and as a result the awarded sum of UgX 700,000/= on these items shall be disallowed.

30 I further agree with the Appellants' Counsel that the Plaintiff did not enter appearance on the stated dates in items 45, 48, 55, 63, 69 and 70. As a result the sum of UgX 800,000/= awarded on these items is disallowed.

In the results the sum of UgX 2,315,000/= is hereby deducted from the award of the taxing master and the bill of costs is allowed at UgX 10,167,500/=

5 Each party shall bear their own costs.

Before me,

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Samuel Emokor
Judge
06/06/2023.

02/06/2023.

Parties absent

15 Clerk: Vianney

Court: Ruling delivered in open Court.

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Samuel Emokor
Judge
06/06/2023

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