THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL No. 0036 of 2020

(ARISING FROM Chief Magistrate's Court Civil Suit No. 0086 of 2012)

1. **HENRY BUREGYEYA**
2. **MARTHA MBABAZI**::**APPELLANTS**

VERSUS

ARINATWE JOTTY:::**RESPONDENT**

BEFORE: HON. JUSTICE SAMUEL EMOKOR

RULING

The Applicant brings the instant Application by Chamber Summons under **Section 62(1)** of the **Advocates Act, Rules 2(a) and 3(c)** of the **Advocates (Taxation of Costs) (Appeals and References) Regulations SI 1267 -5** seeking orders that the Grade one Magistrate's Ruling date 14/07/2020 be varied and or set aside and that costs be provided for.

The grounds upon which the instant Application is premised is that the taxing officer erred in law and fact when he failed to properly apply known precedence principles of taxation thus arriving at a wrong decision occasioning a miscarriage of justice and that the learned taxing officer erred in law and fact when he failed to properly evaluate evidence on record in taxation of the bill of costs thus arriving at a wrong decision occasioning a miscarriage of Justice.

The Application is supported by the affidavit of one Scovia Mulondo an Advocate of the High Court who avers that the taxing officer erred in law and fact when he over taxed the Appellant's bill of costs to UgX 7,887,600/= and that the taxing

officer erred in law by failing to adhere to the taxation rules on all the items in the bill resulting in an inordinately low taxed bill.

The Respondent despite proper service of the Appeal upon him did not file a reply to the same.

The Appellant represented by Merssrs Kamugisha & Co. Advocates filed written submissions to this Appeal.

The circumstances under which a Judge may interfere with the Taxing masters exercise of discretion in awarding costs were restated by the **Supreme Court in Bank of Uganda versus Banco Arabe Espanal, S.C civil application No. 0023** of **1999** to be the following:

"Save in exceptional cases Judges do not interfere with the assessment of what the taxing officers consider 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.

Secondly 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. In this regard, application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.

Thirdly, even if it is shown that the taxing officer erred on principle, the Judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties"

It is the submission of Counsel for the Appellant that the taxing officer failed to adhere to the taxation rules on all the items in the bill rendering the exercise meaningless and yet it had been drawn according to the rules governing taxation.

The brief background to this Appeal is that the Plaintiffs filed their suit vide civil suit No. 0036 of 2012 on the 15/03/2012 against the Defendants. Judgment was finally delivered on the 24/09/2014 in favour of the Plaintiffs who consequently filed their bill for taxation on the 01/10/2019. Counsel for the Defendant in his written submissions contended that the matter was filed in 2012 and concluded in 2017, therefore the taxation of the matter should be governed by the **Advocates (Remuneration and Taxation of costs) Rules 1996** and not the new rules of taxation of 2018.

Counsel for the Plaintiffs in his oral submissions in reply submitted that the Defendant's submission that the bill of costs should have been drawn under the old rules is misleading and not grounded in law. It was the contention of Counsel for the Plaintiffs that new law on Taxation of costs amendment regulations 2018 was gazzetted on 02/03/2018 and that under the Rules thereof it states that the schedules to the principal regulations are replaced. According to Counsel the Keyword is *"replaced"* and if something is replaced it doesn't remain in existence and that there was therefore no way the bill of costs can be taxed under the replaced rules.

I will reproduce verbatim the relevant parts of the ruling of the Magistrate Grade one/Taxing master below:

"Accordingly; I am alive to the fact that in the new rules, there are no provisions saving the old rules. The old rules of 1996 were accordingly replaced by the rules of 2018. Taxation is accordingly governed by the new rules.

However it's only just and fair in the prevailing circumstance for Court to make certain considerations while considering the figures. This is intended to avoid any of the parties from gaining an unfair advantage in as far as the awarded (sic) of costs is concerned.

For example if instruction fees were paid under the old rules and charges were based on the value of the subject matter, it would be manifestly unjust to allow a higher figure envisioned in the new rules. This is where Court should come in and tax the bill in a fair and balanced manner.

Taxing it under the 1996 rules would be proceeding under a non-existing law and taxing it under the 2018 would be disadvantaging the Judgment debtor. The purpose of Court is not to disadvantage any party to an action but to give decisions which are just and fair.

A hybrid approach would therefore suffice"

The taxing master it would appear found himself at sea. On the one hand he had formed the opinion that the old rules of 1996 were inapplicable and on the other hand he was faced with the stark reality of the injustice that the new rules of 2018 would occasion the Judgment debtor. It is this being at crossroads that led the

taxing master to come to the conclusion that he must deploy a hybrid approach to his taxation.

It is this hybrid approach that the Plaintiff/Judgment creditor was dissatisfied with because while the rules of 2018 gave him specific figures under the scales provided thereunder the taxing master in abid to balance the scales would award the Plaintiff less than he was entitled to under the new law.

I have looked at the taxed bill of costs and I fully appreciate the complaints of the Plaintiff. The hybrid approach that the taxing master envisaged would strike a balance obviously did not and I must add that the same is strange to the law of taxation.

I will not turn to the reasoning of the taxing master that led him to the hybrid approach.

I agree with the taxing master that the new rules in the **Advocates (Remuneration and Taxation of costs) Regulations. (**As Amended by SI No**. 7** of 2018) did not contain any saving provisions under which one would expressly apply the Advocates (**Remuneration and taxation of Costs) Rules SI No. 3 of 1996**. Be that as it may generally restropectivity is not permitted in the application of statutes. Justice Mubiru in **The Commissioner General Uganda Revenue Authority versus Edulink Holdings Ltd and 2 others HCCA No. 0178 of 2021** on retrospectivity had the following to say:

"It is a well settled rule of interpretation hallowed by time and sanctified by Judicial decisions that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute, so

as to take away or impair an existing right, or create a new obligation or impose a new liability otherwise than as regards matters of procedure"

The learned Judge also made reference to the *latin maxim "Nova constitution futuris formain imponere bebet non prateristis"* (a new law ought to regulate what is to follow, not the past).

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

"*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 a retrospective effect it has to state so in clear and unequivocal terms"*** [emphasis mine]

I have carefully studied the provisions of SI No. 7 of 2018 and it does not in any way imply that its provisions are to have a retrospective application.

The Court of Appeal in **Uganda Bankers (Employers Association) versus National Union of clerical commercial professionals and technical employees CACA No. 0051 of 1996. [1998] KALR 388** in considering whether an amended regulation did not have a retrospective application their lordships observed thus:

"... 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 17/08/1995, the taxation ought to have been based on the 1982 remuneration rules and the 6th 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"

In view of the above, the suit which is the subject of this appeal was filed on the 15/03/2012 and Judgment delivered on 24/09/2014.

The law applicable at its taxation is therefore the **Advocates (Remuneration and Taxation of Costs) Rules** SI No. 3 of 1996**.**

The taxing master therefore erred in deploying a hybrid to the Advocates (Remuneration and taxation) Regulations SI No. 7 of 2018.

In the result the award of UgX 7,887,600/= is hereby set aside.

An order is hereby issued that the bill in Civil Suit No. 0086 of 2012 be retaxed before a different Taxing Master.

Each party shall bear their own costs.

Before me,

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SAMUEL EMOKOR

JUDGE

27/03/2024