



**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF MBARARA AT MBARARA  
HCT-05-CV-TA-0008-2023**

**(ARISING FROM TAXATION APPLICATION NO. 113 OF 2022)  
(ALL ARISING OUT OF HCT CIVIL APPEAL NO.19 OF 2020)**

**1. RTD. MAJ. GEORGE MWESIGYE  
2. TANDEKA DENIS  
3. MUHAME KOSIA  
4. BABIKINAMU JOHN ----- APPELLANTS**

**VERSUS**

**CAPTAIN NICHOLAS TUMUSIIME ----- RESPONDENT**

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

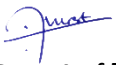
**JUDGEMENT**

**REPRESENTATION**

The Appellants were represented by M/s ASB Advocates, while the Respondent was represented by M/s Tiishekwa A. Rukundo & Co Advocates.

**BACKGROUND**

The Appellants were the unsuccessful parties in Civil Appeal No.19 of 2020 and were condemned to pay the Respondent costs therein. The Respondent thereafter filed a bill of costs *vide* Taxation Application No.113 of 2022, which was taxed and allowed by the learned Deputy Registrar (hereinafter Tax Master) at a value of UGX38,077,975/= (Uganda Shillings Thirty-Eight Million, Seventy-Seven Thousand Nine Hundred Seventy-Five) only. Being dissatisfied with the Tax Master's award, the Appellants lodged this appeal on 26<sup>th</sup> April, 2023 through Chamber Summons.

  
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The Appeal is premised under Section 62(1) of the Advocates Act Cap 267, Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act Cap 13, and Regulations 3&4 of the Advocates (Taxation of Costs) (Appeals and References)

5 Regulations SI 267-5; seeking orders that;

1. The Bill of costs of UGX38,077,975/= taxed and allowed by the learned Taxing Master/Deputy Registrar in Taxation Application No.113 of 2022 be set aside as being manifestly excessive.

10 2. The Bill of costs filed in Taxation Application No.113 of 2022 be taxed according to the provisions of the law and as the justice of the case requires.

3. The Respondent pays the costs of this appeal.

15 The appeal is supported by the affidavit of Tandeka Denis (2<sup>nd</sup> Appellant) who deposed it on his behalf, and on behalf of the 1<sup>st</sup> Appellant (Rtd Maj. George Mwesigye) and 3<sup>rd</sup> Appellant (Muhammed Kosia). The appeal was opposed by the Respondent (Captain Nicholas Tumusiime) in an affidavit filed on 10<sup>th</sup> August, 2023.

## GROUND

The grounds of the appeal as set out in the Chamber summons are;

20 1. The Appellants are dissatisfied with the award of UGX38,077,975/= that was awarded in favour of the Respondent on taxation of the bill of costs filed in Taxation Application No.113 of 2022.

2. The Taxing Master did not exercise her discretion judiciously.

25 3. The bill of costs was not taxed according to the law because the Taxing Master allowed some items which were neither factual nor lawful/believable.

4. It is neither just nor equitable to pay costs that have not been incurred or which had been incurred unnecessarily, or which had not been judiciously considered.

5. The Respondent's bill should be set aside and taxed according to the law and judiciously.

30 6. It is just and fair that this appeal is granted.

## SUBMISSIONS

Both parties proceeded by written submissions; the Appellants filed their submissions in support on 26<sup>th</sup> April, 2023, the Respondent filed his submissions in reply on 10<sup>th</sup> August, 2023, and the Appellants rejoined on 18<sup>th</sup> September, 2023.

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### Appellants' submissions

Counsel submitted that the award of UGX38,077,975/= only was unjustifiably excessive given that the appeal from which it arose was not of a complex nature. Counsel argued that the sum of UGX8,000,0000/= only for instruction fees to  
10 oppose an appeal was excessive and the value of the subject matter was not considered. Counsel pleaded that instruction fees should have been allowed at UGX1,000,000/= since the value of the subject matter does not exceed UGX4,000,000/=.

15 Counsel submitted that items 17 and 18 were awarded at UGX50,000/= and UGX80,000/= respectively for drawing a letter to the judge to allow the Respondent photocopy the Appellants' submissions when the Respondent had actually been served with the submissions. That item 42 which concerned attendance to  
20 telephone call from the Respondent is not envisaged under 6<sup>th</sup> Schedule Rule 12(2)(b) wherein it was taxed. That items 51 to 58 do not fall in the category of attendances envisaged under 6<sup>th</sup> Schedule Rule 12(2)(b) and therefore the Taxing Master acted on a wrong principle of law. Counsel further contended that items 11, 17,18,42,51-58, 106-117, 122-124, 157,158,211 and 212 were never incurred by the Respondent as costs. Counsel prayed for the sum of UGX38,077,975/= to be  
25 set aside.

### Respondent's submissions

Counsel submitted that items 51 to 58 were disallowed by the Tax Master and items 110,112,158,211,212 were only partly allowed and tasked the Appellant to prove  
30 how the Tax Master erred and arrived at a wrong decision. That items 113 to 127 were all ignored by the Tax Master, and that the instruction fees of UGX 8,000,000/= only were justified by the fact that the appeal took 2 years and 8



months to be determined. He contended that taxation application came thrice for hearing and thus the Tax Master rightly taxed the bill.

### **Appellants' rejoinder**

- 5 In rejoinder, counsel reiterated the fact that the Tax Master did not exercise her discretion judiciously and awarded excessive sums in the above-mentioned items. Counsel reiterated his earlier submissions.

### **DETERMINATION**

- 10 In principle any person affected by an order of a taxing officer may appeal to the High Court as is provided in Section 62 of the Advocates Act.

The provision that is applicable in this appeal is **SECTION 62 (1) OF THE ADVOCATES ACT** that states that

- 15 “Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.”

- 20 Taxation of Bills of costs is guided by some principles that were re-echoed by His Lordship Justice Egonda Ntende in a taxation reference to a single judge in **MBABALI JUDE V EDWARD KIWANUKA SEKANDI (CONSTITUTIONAL COURT PETITION NO. 28 OF 2012)**, wherein he quoted the supreme court decision in **PATRICK MAKUMBI AND ANOTHER V SOLE ELECTRICS (U) LTD [1990–1994] 1 EA**  
25 **306**. At pages 310 – 311 Manyindo DCJ, said: The principles governing taxation of costs by a Taxing Master are well settled.

1. First, the instruction fee should cover the advocates' work, including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be.
- 30 2. Second, there is no legal requirement for awarding the Appellant a higher brief fee than the Respondent, but it would be proper to award the Appellant's Counsel a slightly higher fee since he or she has the responsibility to advise his or her client to challenge the decision.



3. Third, there is no mathematical or magic formula to be used by the Taxing Master to arrive at a precise figure. Each case has to be decided on its own merit and circumstances. For example, a lengthy or complicated case involving lengthy preparations and research will attract high fees.
- 5 4. Fourth, variable decree, the amount of the subject matter involved may have a bearing.
5. Fifth, the Taxing Master has discretion in the matter of taxation but he must exercise the discretion judicially and not whimsically.
- 10 6. Sixth, while a successful litigant should be fairly reimbursed the costs he has incurred, the Taxing Master owes it to the public to ensure that costs do not rise above a reasonable level so as to deny the poor access to Court. However, the level of remuneration must be such as to attract recruits to the profession.
- 15 7. Seventh, so far as practicable there should be consistency in the awards made

The other principles that can be deduced from court decisions are:

8. The power exercised in taxation of costs is largely discretionary. Discretion is the faculty of determining in accordance with the circumstances what seems just, fair, right, equitable and reasonable as was held in **SIMBA PROPERTIES INVESTMENT CO. LTD & ORS VS VANTAGE MEZZANINE FUND II PARTNERSHIP & ORS HIGH COURT CIVIL APPEAL NO. 0002 OF 2023.**
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9. It is trite law, that the before issuance of VAT, a VAT certificate ought to be presented as proof of Counsel's law firm's VAT registration status as was held in **BANK OF UGANDA VS SUDHIR RUPARELIA SUPREME COURT TAXATION REFERENCE NO. 0001 OF 2023**
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10. A judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee, save in exceptional cases as was held in **BANK OF UGANDA V BANCO ARABE ESPANOL, CIVIL APPLICATION NO. 23 OF 1999**, where Mulenga JSC stated;
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“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, 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 would cause injustice to one of the parties”

The crux of the appellant’s appeal is mostly on the instruction fees of shs 8,000,000 that he states is manifestly high. The respondent argued that it justified since the appeal took over 2 years to resolve. I have perused the record in **HCT CIVIL APPEAL NO.19 OF 2020** and I find that the subject matter was a Kibanja in dispute is located in Kanoni Trading Centre, Bwagonga 3, Bwagonga Parish Kanoni Subcounty in Kiruhura District, which the appellants were claiming to be valued at over shs 20,000,000/=.

I have considered the scale of fees in the Sixth Schedule of the Advocates (Remuneration & Taxation of Costs) Regulations, I have also considered that during the appeal the appellant herein was quoting the value of the developments on the suit property to be in excess of shs 20,000,000/=. I find that the instruction fees of Shs 8,000,000/= is excessive, I hereby reduce it by shs 2,000,000/= after applying the scales in the Sixth Schedule of the Advocates (Remuneration & Taxation of Costs) Regulations, so item 3 of the bill of costs is adjusted to read 50,000,000 deducted off. This implies that the Instruction fees is now set at shs 6,000,000/=



I have also noted that the bill of costs has VAT component at the end before the grand total. The VAT was calculated at 18% of the total which amounted to 18,268,164/=. I have perused the court record and do not find that the respondent herein furnished the Taxing Master with a VAT certificate or proof of VAT payment.

5 The decision in **BANK OF UGANDA VS SUDHIR RUPARELIA SUPREME COURT TAXATION REFERENCE NO. 0001 OF 2023**, is instructive where the Supreme court states that It is trite law, that the before issuance of VAT, a VAT certificate ought to be presented as proof of Counsel's law firm's VAT registration status. Since NO VAT certificate was produced, the VAT of shs 18,268,164/= was granted in error. I  
10 thereby deduct it from the Bill of Costs.

I have not seen reason to interfere with the Taxing Masters discretion on the other items.

15 In conclusion, I order that;

1. The Appeal is allowed.
2. The Taxing Master's decision in item 3 is set aside and replaced with shs 50,000,000/- to be deducted off.
3. The Taxing Master's grant allowing of the VAT of shs 18,268,164/= is  
20 cancelled.
4. The respondent's bill of costs in HCT T/A 113 of 2022 is now allowed at shs 17,809,800/=
5. No order as to costs is made.

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**NSHIMYE ALLAN PAUL M.**

**JUDGE**

**21-02-2024**