

The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Taxation Appeal No. 0003 of 2023

(Arising from Taxation Application No. 0023 of 2023)

(Arising from Civil Suit No. 0064 of 2019)

Otim Richard :.....: Appellant

Versus

Alupo Bernadette Christine :::::::::::::::::::: Respondent

15 *(Taxation appeal arising from the decision of Her Worship Jessica Chemeri, Deputy Registrar dated 15th June 2023 in Taxation Application No. 23 of 2023)*

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement

20 1. Background:

The appellant being dissatisfied with this bill brought this appeal for the following orders.

- 25 1. The award of Ugx. 32,330,000 (Thirty-two million, three hundred and thirty thousand shillings) as the respondent's costs made by the Deputy Registrar Jessica Chemeri on the 15th day of June 2023 in Taxation Application no. 23 of 2023 be set aside.

- 5 2. The bill of cost in Taxation Application No. 0023 of 2023 be taxed according to the provisions of the law as the justice of the case requires.
3. The costs of the Appeal be provided for.

The grounds of the appeal are that;

- 10 1. The taxing master erred in law and fact when she failed to apply properly known and precedent principles of taxation thereby arriving at a wrong decision occasioning a miscarriage of justice.
2. The taxing master erred in law and fact when she taxed and allowed the bill of costs which was manifestly excessive in the sum of Ugx. 32,330,000 (Thirty-two million, three hundred and thirty thousand shillings) without proper consideration of law and principles governing taxation thus arriving at a wrong decision occasioning a miscarriage of justice.
- 15 3. The learned taxing master erred in law and fact when she failed to demonstrate how she arrived at the quantum of instruction fees in item 1 and 9 that she awarded the respondent.
- 20 The respondent in an affidavit in reply sworn by Ogoi Allan stated that the bill of costs was fixed for taxation on the 5th day of May of 2023 and despite the Appellants advocates being served, they elected not to appear in court. The taxing master then decided to tax exparte and duly exercised her discretion judiciously in taxing the bill of costs.

25 2. Determination:

This appeal was brought under section 62(1) of the Advocates Act and Regulation 3(1) of the Advocates (Taxation of Costs) (Appeals and References) Regulations SI 267-5.

5 Section 62(1) of the Advocates Act provides that, 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.

10 Counsel for the appellant in his submissions decided to review the jurisprudence on taxation focusing on the principles of taxation which I do not intend to reproduce here.

Counsel faulted the taxing master for merely stating that *"I have been guided by the proceedings in Civil Suit No. 64/2019, the Advocates (remuneration) and*
15 *taxation of Tariffs (Amendments) Regulations 2018 and the principle in the decided case of Malcered Quarry Services of East Africa Ltd and others 1972 EA 162, Nalumansi vs Lule Superintendent of Uganda Civil Application No 12/1992 among others and have taxed the bill and awarded it 32,330,000/=(Thirty Two Million three hundred and thirty thousand shillings."*

20 That this clearly demonstrates that the taxing officer did not cite or even apply any known principles and precedents of Taxation.

That the taxing officer did not demonstrate that she considered any of the principles that were expounded in previous authorities on taxation and by not considering these principles she erred in law and fact.

25 Counsel for the respondent in reply submitted that counsel for the appellant laboured to review jurisprudence on taxation, however, he miserably failed to show how the said jurisprudence was not applied by the learned taxing master.

The record of proceedings in Taxation Application No. 23 of 2023 indicate that the bill of costs was fixed for taxation on the 5/5/2023.

5 However, the appellant nor his counsel turned up despite being served with a hearing notice.

The taxing master upon being satisfied with the service on counsel for the appellant and furthermore given that no reason for non-appearance was given proceeded to tax the bill exparte.

10 The filed bill of costs was to a tune of Ugx. 115,872,600 /= (Uganda shillings One hundred fifteen million, eight hundred seventy-two thousand six hundred) and on the 15th of June 2023 she delivered a ruling on the bill which she awarded at 32,330,000/= (Thirty-two million three hundred thirty thousand shillings).

As already noted above the taxing master in delivering her ruling stated that she
15 had been guided by the proceedings in Civil Suit No. 64/2019, the Advocates (remuneration) and Taxation of Tariffs (Amendments) Regulations 2018 and the principle in the decided case of *Malcered Quarry Services of East Africa Ltd and others 1972 EA 162, Nalumansi vs Lule Superintendent of Uganda Civil Application No 12/1992*.

20 Counsel for the appellant finds that the above statement proved that the taxing master had not considered the principles of taxation.

However, as noted by counsel for the respondent counsel for the appellant did not single out a particular principle that was not met by the taxing master and I will not try to do so for him.

25 Given that he did not point out the principles that were not met I cannot determine anything in that regard as against the taxed bill of costs.

The rest of counsel for appellant's submissions regard the specific items on the taxed bill of costs, these include instruction fees and transport costs.

- 5 Counsel submitted that the taxation fee of 10,000,000/= for item 1 and 5,000,000/= for item 9 were exorbitant and not backed by our legal regime.

That the guiding scheme is in the 6th schedule to the Advocate (Remuneration and Taxation of Costs) (Amendment) Regulations. Counsel further submitted that section 11(2) of the Civil Procedure Act requires one to indicate the value of the
10 subject matter which value guides the taxing master.

Counsel for the appellant in his submissions admits that the value of the subject matter was not stated in the bill of costs or suit, he however proceeds to submit that given that the value at which the subject matter was bought was Ug. Shs. 5,700,000/= in 2010 and the same property was used for a loan of Ug. Shs.
15 11,000,000/= in 2017 surely by 2019 the suit property could not be more than Ug. Shs. 12,000,000/=. He invited court consider this figure and tax the instruction fees at Ug. Shs. 1,400,000/=.

Counsel further submitted that the 5,000,000/= given in item 9 should be reduced to 300,000/=.

- 20 Counsel for the respondent submitted the plaintiff's claim was for declaratory orders that the 2nd defendant fraudulently caused his registration as joint proprietor on the suit land, declaration that the plaintiff solely paid consideration for the suit property and is the sole proprietor of the suit property, an order directing the defendants to hand over the certificate of title, an order directing
25 the Registrar of titles to cancel the entry of the 2nd defendant and enter the plaintiff as the sole proprietor and as such the plaint was for declaratory orders which are not quantified with Regulation 9(1) of the Advocates (Remuneration and Taxation of Costs)(Amendment) Regulations 2018 clearly provides that for instructions not provided for in the schedule a reasonable fee not less than Ug.
30 Shs. 2,000,000 shall be charged.

5 As rightfully noted by counsel for the respondent, declaratory orders are not directly provided for by Schedule 6, however, Regulation 9(1) of the 6th Schedule provides that the instruction fees to sue or defend in any case not provided in the schedule shall be reasonable but not less than Ug. Shs. 2,000,000/=.

This provision does not give an upper limit rather it requires the fee to be
10 reasonable.

- In the instant matter it would appear that the taxing master considered the proceedings in Civil Suit No. 64 of 2019 which was declaratory orders involving fraud, cancellation of a name from a title amongst others and found that Ugx. 10,000,000/= was reasonable. I have no reason to disagree
15 with the taxing master's findings and will not alter this figure as in my considered view it was for counsel for the applicant, who fully knowing well that the suit from which the bill arose was for declaratory orders, should have indulged himself in an attempt to value the suit land given that the value of the land was not the matter in issue rather proprietorship.
- Regarding item 9, which was Ugx. Shs. 5,000,000/= as instruction fees for representing the plaintiff in MA 84/2020, Regulation 9(2) of Schedule 6 to the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations 2018 provides that for instructions to make or oppose
20 interlocutory the fees shall not be less than Ugx. Shs. 300,000/=. Once again no upper limit is prescribed and it is based upon the taxing master's
25 discretion and after considering the weight of the application and thus to grant a sum she saw fit. I find thus no illegality as to the sum imposed and I will therefore not tamper with this discretion and alter the sum awarded by the taxing master.

- 5 - Regarding items 73,75,77, 82, 84. 86, 89, 91, 95,96,97,101 and 110, these items were in respect of transport costs incurred by counsel for the respondent when he came to court. Items 112 and 113 are in regard to phone calls with the client, printing and photocopying. Regulation 13 of the Advocates (Remuneration and Taxation of Costs) Regulations provides
10 for discretion of the taxing officer thus;

Notwithstanding anything in these Regulations, on every taxation the taxing officer may allow all such costs, charges and expenses as are authorised in these Regulations and appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party but, except as against
15 the party who incurred them, no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over caution, negligence or mistake, or by payment of special charges or expenses to witnesses or other persons, or by other unusual expenses.

The taxing master had the discretion to allow the above expenses which after her
20 examination of the proceedings and the nature of the suit, decided to award the sums in those individual items on the bill.

It is worth noting that the appellant and his counsel absented themselves from the taxation prompting the taxing master to tax the bill *ex parte*. The appellant and his counsel were not interested in challenging certain items on the bill as
25 they did not attend the taxation hearing and raised said concerns which would have been taken into account while the taxing master is exercising her discretion. As that was not the case, it is difficult to fault the exercise of discretion in a matter where the taxing master exercise discretion where the law merely provides for a minimum and a starting point.

- 5 In the final result I find that the taxing master rightly exercised her discretion and awarded a bill of Shs. 32,330,000/= to the respondent.

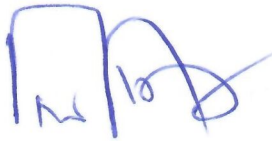
Overall, I find this appeal as misconceived as it serves no legal purpose other than presenting an argument in futility with the hope of postponing the inevitable.

3. Conclusion and Orders:

- 10 The above being so, I would find no reason to interfere with the discretion exercised as a whole in the impugned matter by the taxing master as that exercise of discretion was carried out within the parameters of the law and based on the facts presented before her.

Accordingly, this appeal is dismissed with no order as to costs.

- 15 I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

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30th January 2024