

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-MISC. APPEAL 003/2013  
(Arising from Miscellaneous Application No. 95/2012)**

**1. ATTORNEY GENERAL  
2. BUSIA DISTRICT LOCAL GOVERNMENT COUNCIL...APPELLANTS  
VERSUS  
OUMA ADEA.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

This is an appeal brought by the appellants against the Respondent contesting a taxation ruling given in Misc. Application 0095 of 2012 by the Registrar.

The appeal is premised on 5 main grounds, and one ground in the alternative. The gist of the grounds are that:

1. The taxing officer erred in law and fact when he awarded instructions fees for the counsel to defend the Respondent to the tribunal at Busia in the Respondent's Bills of Costs against both appellants.
2. That the taxing officer erred in law and fact when he awarded taxed costs for perusal of a petition against the respondent in the tribunal at Busia in the Bills of costs against appellants.

3. That the taxing master erred in law and fact when he awarded taxed costs to four counsels to attend the tribunal at Busia in Respondent's bill of costs against Appellants.
4. That the grand total of taxed costs of one Hundred and Sixty million shillings awarded as instruction fees to challenge the tribunal findings in the High Court at Mbale in Respondent's Bills of costs against the appellants is too excessive.
5. That the taxing officer erred in fact when she awarded taxed costs to the Respondents in paragraphs 4, 6, 7, 8, 9, 10, 11, and 12 in Respondent's Bill of costs against 2<sup>nd</sup> Appellant.

In the Alternative, that the taxed costs awarded as instruction fees to defend the Respondent in the Tribunal in Busia, perusal of the petition against the respondent in the tribunal at Busia, in the Respondent's Bills of costs against the 1<sup>st</sup> and 2<sup>nd</sup> appellants is too excessive.

The application is supported by the affidavit of Lumbe Eric, which contains the further particulars of allegations upon which the grounds above are premised.

In rebuttal respondent filed an affidavit in reply deponed by the respondent **OUMA ADEA.**

Both appellants and Respondents filed written submissions in support of their respective arguments.

The appellant in arguing the grounds, chose to summarize them under three issues as here below.

Grounds 1, 2, and 3, were argued under the issue whether the taxing officer erred in law and fact by awarding taxed costs to the Respondents Bill of costs for costs incurred at the tribunal in Busia, against the Appellants.

Ground 4, was argued under the issue whether the taxing master erred in law and fact when he awarded excessive costs of one hundred and sixty million shillings as instruction fees for challenging the tribunal findings in the High Court.

Ground 5 was argued under the issue whether the taxing master erred when he granted costs to the Respondent against 1<sup>st</sup> Appellant when the Respondent had been granted with costs by consent in the Respondent's Bill of costs against 2<sup>nd</sup> Appellant.

I have had to amend the issues to conform to the grounds to keep them in line with arguments as they were presented. I will now resolve them in that order.

Before determining these issues, I will dispose off the following preliminary matters that arose.

In the opening remarks of counsel for respondent's submissions, objection is made to the affidavit in rejoinder filed by appellants. Also in the affidavit in reply filed by Respondent Adea, he attacks the procedure adopted by appellants, alleging that the applicants filed an application instead of an appeal.

The court record indicates that this is an appeal filed as appeal No.3 of 2013 arising from Misc. Application No. 0095 of 2012. All the filed pleadings on record bear the above endorsements. There is therefore no irregularity as alluded to by the respondent.

The affidavit in rejoinder is however irregular as it was filed out of time contrary to the orders of this court. The affidavit is therefore of none effect and is hereby struck off from the pleadings.

Going to the grounds, of this appeal, this court finds as here below.

### **Grounds 1, 2, and 3**

These grounds are argued under the issue whether the taxing officer erred in law and fact when she awarded taxed costs to the Respondent's Bill of costs for costs incurred at the tribunal in Busia against the appellants.

On this issue appellants' case is that the costs that were allowed by the trial court were costs of the application i.e. Misc. Appl. No. 0095 of 2012 and that the order for costs did not provide that the respondent was to be paid for costs incurred in the tribunal at Busia. He referred to section 27 of the Civil Procedure Act which provides for costs.

In the alternative he argued that the allowed costs were too high.

Respondent's counsel in reply referred to section 27 (1) of the Civil Procedure Act, stating the general rule that costs follow the event. They referred to a number of

decided cases, and other legal writers, to conclude their argument that proceedings of the tribunal are at the centre and form the crux of judicial review; so that there is no way tribunal proceedings can be isolated from the judicial review application.

With due respect, I have considered all authorities referred to but find that they were concerned with other issues of pleadings before court. However the issue here is a matter that is clearly sorted out by section 27 of the Civil Procedure Act.

That costs are in the discretion of the court or judge who has full power to determine by whom and out of what those costs are paid and to give all necessary directions for that purpose.

Section 80 of the Advocates Act provides;

*“ that the taxing officer for the taxation of bill under this Act shall be the registrar of a District or Deputy Registrar of the High Court.....”*

The above provisions mean that the Judge who hears a matter determines the party who should pay costs, and out of what they should be paid. It is the Judge who also gives all necessary directions for the purpose. Section 80 of the Advocates Act does not infer jurisdiction upon the Registrar to assume the powers of the Judge. The Registrar’s role is to tax bill of costs that have been allowed by the Judge.

With the above position of the law in mind, I do not agree with the arguments raised by respondents in their submissions that tribunal costs should be inferred as incidental costs, when the Judge never said so in his order. While considering

Misc. Appl. 0095 of 2012, the Judge was not in any way party to whatever transpired in the tribunal.

In any case the tribunal proceedings are governed by different rules and are not part of the known ordinary judicial hierarchy of cases. The costs incurred therein could not therefore be taxed by the Registrar of the High Court, in an application for Judicial Review. On page 4 of the taxing masters ruling, the taxing master was misled to believe that she could use section 80 of the Advocates Act to tax the costs relating to the tribunal, yet the Judge never granted them. This was erroneous and I agree with appellants' argument against this taxation as contained in the affidavit of **LUMBE ERIC**, and submissions of appellants.

I therefore find that the costs of the tribunal were not costs covered by the Order of the Judge, as costs incurred during the hearing of the application for review. The taxing Master (Registrar) therefore had no jurisdiction to tax these costs, and they should all be disallowed as prayed and be taxed off.

Grounds 1, 2, and 3 of the appeal shall therefore succeed by virtue of the findings above.

I will now turn to Ground 4, which is discussed under the issue whether the taxing Master erred when she awarded excessive costs as instruction fees for challenging the tribunal findings in the High Court.

It was argued for appellants that the taxed bills on this ground are excessive at shs. 160,000,000/=. The Principles laid down in *Solo Electrics (U) Ltd Civil App.11 of 1994* cited in *Legal Practice in Uganda by Francis A. Wazarwali Bwagye* were cited. Appellants argued that the 6<sup>th</sup> Schedule of Advocates remuneration and taxation of costs Rules provide a minimum of shs.150,000/= as instruction fees and to them the difference between the minimum and what is awarded is too excessive and high above a reasonable level so as to deny the poor access to court. They argued that Misc. Cause No. 0095/12 was a simple application which took only one day to be heard.

In rebuttal Respondent argued that the case was novel involving constitutional rights of the respondent. It was the first of its kind in Uganda, and created a new authority being followed in other cases. The case of *Republic v. The Minister of Agriculture (2006) 1 EA 359 exparte W. Nguguna & Others* held that novelty was the main fact to consider in the taxation.

I have carefully looked at the facts of Misc. Cause 0095/2012- the Review application and indeed agree that the issues before court were of great importance. I also acknowledge the principles laid down to guide courts in awards of costs in all cases quoted by all parties. Having regard to the facts, and the law, and aware of the provisions of Schedule 6 of the Advocates remunerations and taxation of costs rules, referred to by appellants, I find that the award was excessive. The schedule (6) of the Advocates rules and cases above, can guide court to reach a justifiable fee. The schedule provides that the least fees that could have been allowed is shs.150,000/=. However this was a complex, novel, highly involving matter. If one is to consider the above facts, assuming that they are treated with

100% level of importance I would consider that if I took the lowest amount and multiplied it 100 times, i.e.  $(150,000) \times (100) = 15,000,000/=$ .

In my view the figure of 15,000,000/= per Advocates is reasonable. Each Advocate will be allowed shs.15,000,000/= hence shs. 30,000,000/= is allowed for both counsel instead of 80,000,000/= allowed by the taxing master.

Ground 4 therefore succeeds within terms as indicated above.

Ground 5 was discussed under the issue whether the taxing master erred when she awarded taxed costs against 1<sup>st</sup> Appellant to the Respondents in paragraphs 4, 6, 7, 8, 9, 10, 11, and 12 which had been consented to be granted in Respondent's bill of costs against 2<sup>nd</sup> appellant irregularly filed. The items which are complained of in my view are items which as explained by the Respondent in his affidavit in reply, **Mr. Ouma Adea** paragraphs 12, 13, 14, and submissions of respondents on page 6, and also page 3 of the ruling, shows that the items were consented to.

As to apportionment, costs always follow the event. See section 27 of the Civil Procedure Act. The aim of costs is to reimburse the parties for expenses they have been put into as a result of the litigation.

According to available literature, where there are multiple defendants....

Apportionment, costs follow the event.

Where there are multiple defendants each defendant should bear the costs of reimbursing the plaintiff for costs that their mischief occasioned to the plaintiff. Where the mischief led the plaintiff to consider separate retainers, these are



recoverable from each defendant but only to the extent as presented in the bill of costs, and to the extent of the taxation principles. I am persuaded by the South Wales position i.e;

*“Unless the Order specifies otherwise, an order for costs against two or more parties renders each of them jointly and severally liable to pay the costs concerned.”*

However there is no ambiguity. Taxation of costs is an exercise involving proof of costs. If a defendant or a party presents a bill, it's the duty of the opposite party to defend themselves before the taxing matter, and convince him or her that the costs were not incurred. In other words where there are joint defendants, the taxation rules will be applied to affect each one of them, jointly and severally as presented in the Bill before court.

In this case the taxing Master considered the bill and noted that these were consented to. Respondents in their submissions re-emphasized this. The record does not present a contrary position. I am convinced that the Registrar correctly considered items 4, 6, 7, 8, 9, 10, 11 and 12 as against 1<sup>st</sup> appellant and the findings thereon are upheld. (As pointed out by Respondents these costs were incurred separately by each counsel against each party).

This ground therefore fails.

In the result this appeal succeeds on grounds 1, 2, 3, 4. Ground 5 fails. The alternative ground 6, is terminated by findings under 1, 2, 3, and 4. The result is that the appeal partially succeeds with orders that:

1. The instruction fees for counsel to defend Respondent to the tribunal at Busia of shs 120,000,000/= is hereby taxed off (shs.120,000,000/=).
2. The award of costs for perusal of petition against respondent at Busia is hereby taxed off (shs.30,000,000/=).
3. Taxed costs allowed to four counsels to attend the tribunal in Busia, are hereby taxed off (shs.2,000,000/=).
4. The amount of shs.160,000,000/=, as taxed costs of instruction fees are set aside and replaced with a figure of 60,000,000/= (sixty millions).

Therefore the costs payable by the appellants to the Respondent shall be as follows:-

2<sup>nd</sup> Appellant:

- Shs. 120,000,000/= is taxed off from item 1.
- Shs.30,000,000/= is taxed off from item 2.
- Shs. 2,000,000/= is taxed off from item 3.
- Shs. 50,000,000/= is taxed off from item 5 the amount of shs. 293,324,400/= allowed by the taxing master, is therefore hereby reduced by shs.202,000,000/= leaving the amount of shs.91,324,400/= as taxed costs against the 2<sup>nd</sup> appellant.

1<sup>st</sup> appellant shall also have shs. 120,000,000/= taxed off from item.1,

- Shs. 30,000,000/= is taxed off from item 2.
- Shs. 2,000,000/= is taxed off from item.3.
- Shs. 50,000,000/= is taxed off from item.5 total of shs.202,000,000 taxed off, hence the amount of shs.284,592,400/= allowed by the tax master is

hereby reduced by shs.202,000,000/= leaving a total of shs.82,592,400/= as taxed costs against the 1<sup>st</sup> appellant.

This appeal is allowed subject to the above directions. I so order each party to bear its own costs of this application.

**Henry I. Kawesa**

**JUDGE**

**13.11.2013**