

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CIVIL APPEAL No. 0029 OF 2017**

**(Arising from Nebbi Grade One Magistrate’s Court Civil Suit No. 0010 of 2016)**

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**OKOYA BAZIL** ..... **APPELLANT**

**VERSUS**

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**NYAYENGA MARGARET** ..... **RESPONDENT**

**Before: Hon Justice Stephen Mubiru.**

**JUDGEMENT**

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This appeal is filed by way of Chamber Summons under section 62 of the *Advocates Act*, and Regulation 3 of the *Advocates (Taxation of Costs) (Appeals and References) Regulations*, wherein the appellant seeks to set aside an award of costs of Uganda shillings 4,616,900/= as instruction fees as being excessive in the circumstances of the case. The taxation Order was delivered on 22<sup>nd</sup> September, 2017.

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The appeal is supported by the appellant’s affidavit sworn on 13<sup>th</sup> October, 2017, stating that the award is excessive and based on wrong principles of taxation; some items present a duplication of claims since they are incorporated in the instruction fee, there are items allowed for activities that never took place and disbursements allowed without the necessary documentary proof. There is no affidavit in reply.

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At the hearing of the appeal, Ms. Daisy Patience Bandaru, representing the appellant argued that the taxation did not follow the rules applicable. The Taxing Officer erred in awarding costs for court process in items 39, 40 and 41. He also included awards for activities that never took place such as items No. 4, 23, 54 and disbursements relating to these items. For item No. 54, the taxing Officer did not give reasons. There are no reasons given for any of the awards made. She prayed that the appeal be allowed and the award be taxed down.

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The circumstances in which a Judge of the High Court may interfere with the Taxing Officer's exercise of discretion in awarding costs were restated by the Supreme Court in the case of *Bank of Uganda v Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999 (Mulenga JSC)* to be the following:

5 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.

10 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.

15 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.

20 Taxation of bills of costs is not an exact science. It is a matter of opinion as to what amount is reasonable, given the particular circumstances of the case, as no two cases are necessarily the same. The power to tax costs is discretionary but the discretion must be exercised judiciously and not capriciously. It must also be based on sound principles and on appeal, the court will interfere with the award if it comes to the conclusion that the Taxing Officer erred in principle, or that the award is so manifestly excessive as to justify treating it as indicative of the exercise of a wrong principle or that there are exceptional circumstances which otherwise justify the court's intervention.

30 Considering that the process of taxation of costs relies heavily on the discretion of the Taxing Officer, the parties have a right to know the considerations upon which that discretion was exercised, in short, to understand them. At the very least, the Taxing Officer must be able to justify his or her decision. The giving of reasons is one of the cornerstones of the judicial

function and a central aspect of the rule of law (see *Breen v. Amalgamated Engineering Union* [1971] 2 QB 175 at 191). In *Stefan v. General Medical Council* [1999] 1 WLR 1293, Lord Clyde stated as follows: “the advantages of the provision of reasons have often been rehearsed. They relate to the decision making process, in strengthening that process itself, in increasing the public  
5 confidence in it and in the desirability of the disclosure of error where error exists. They relate also to the parties immediately affected by the decision, in enabling them to know the strengths and weaknesses of their respective cases and to facilitate appeal where that course is appropriate.” Therefore, parties are entitled to know on what grounds the costs have been awarded. An appellate Court is also entitled to the assistance of the Taxing Officer by an explicit  
10 statement of the reasons for deciding as he or she did.

The duty imposed on a Taxing Officer to give reasons is a function of the rule of law and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties, especially the judgement debtor, should be left in no doubt why they  
15 have to pay the quantum awarded. This is especially so since without reasons the judgement debtor will not know whether the Taxing Officer has misdirected himself or herself and thus whether he or she may have an available appeal on the substance of the award. Where no reasons are given it is impossible to tell whether the Taxing Officer has gone wrong on the law or the facts, the judgement debtor would be altogether deprived of his or her chance of an appeal unless  
20 the appellate Court entertains the appeal based on the lack of reasons itself. The second is that a requirement to give reasons concentrates the mind; the resulting decision is much more likely to be soundly based on the material before the Taxing Officer than if it is not. The Taxing Officer must enter into the issues canvassed before him or her and explain why he or she preferred one case over the other.

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The extent to which this duty to give reasons applies will vary according to the nature of the bill of costs to be taxed, in the light of the circumstances of the case. The Taxing Officer’s reasons need not be extensive if the decision makes sense. The degree of particularity required will depend entirely on the nature of the issues falling for decision. In the instant case though, the  
30 most striking feature of the taxation by the Taxing Officer is that the award is unreasoned and unexplained.

Whereas in certain contexts, reasons for allowing certain items in a bill of costs and the corresponding quantum can properly be inferred, however, this is not possible in the present case. There is substantial prejudice occasioned to a judgement debtor where the reasons for the award are totally lacking or so inadequately or obscurely expressed as to raise a substantial doubt  
5 whether the decision was taken after due consideration by the Taxing Officer. Secondly, a judgement debtor is substantially prejudiced where the considerations on which the award is based are not explained sufficiently clearly to enable him or her reasonably to assess the prospects of succeeding in an appeal. Thirdly, a judgement debtor is substantially prejudiced by an award in which the considerations on which it is based are not explained at all or sufficiently  
10 clearly to indicate what, if any, impact they may have in relation to the decision of future taxation of bills of costs.

In light of the duty to give reasons, even when the Taxing Officer chooses to deliver a summarised taxation ruling, he or she should at a minimum by way of reasons provide an outline  
15 of the principles that have guided allowing or rejecting items in the bill of costs, a summary of the basic factual conclusions about the items and a statement of the reasons which have led to assessment of the quantum awarded.

In the final result, I hereby set aside the award of the Taxing Officer and direct that the bill of  
20 costs be taxed afresh and reasons for the resultant award be given to the parties in a ruling of the Taxing Officer. The costs of this appeal are awarded to the appellant.

Dated at Arua this 21<sup>st</sup> day of December, 2017.

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Stephen Mubiru  
Judge  
13<sup>th</sup> December, 2017