

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI

MISC. APPLICATION NO. 196 OF 2017

(Arising from Taxation Cause No 8 of 2017) and civil suit no. 31 of 2017)

BAGENDA SENFUKA:::APPLICANT

VERSUS

AGABA ROGERS KYALISAMA:::RESPONDENT

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BEFORE: HON. JUSTICE WILSON MASALU MUSENE

RULING

The parties in this matter have a substantive HCCS NO. 31 OF 2017 pending in this court. It is yet to be heard and determined and it is a dispute over land.

It happened that on 12/7/2017 , when the case came up for hearing, the Plaintiff and his Advocate were present , while the Defendant, Senfuka Bagenda was present minus his Advocate. This court ordered that the case be given a last adjournment at the instance of the Defendant, Senfuka Bagenda. The defendant was also ordered to pay costs of the day to the Plaintiff.

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Counsel for the Plaintiff then filed a bill of costs of shs UGX 11,778,000/= which was taxed by the Deputy Registrar to UGX 9,307,000/=.

The defendant, Senfuka Bagenda appealed to this Court under Section 62 of the Advocates Act, Regulation 3 of the Advocates (Taxation of costs) appeal and Reference Regulations SI 267-5. The main ground of appeal was that the taxed bill of costs of one day at UGX 9,301,000/= was manifestly excessive.

The Advocates on both sides in their submissions dwelt on technical matters which I shall discard in the interests of substantive Justice. That is because the arguments were unnecessarily lengthy as if presented at the conclusion of the main case, they were too argumentative and verbose and in the circumstances uncalled for. This Court cannot waste time over such detailed, uncalled for, unnumbered submissions by Advocates on both sides over an order awarding one day's costs to the Plaintiff. Advocates must be brief and precise in their pleadings and submissions, to give room for Courts to decide on matters of substantive Justice particularly during this era when courts are faced with huge backlog of cases. So I shall disregard all preliminary objections and matters by both sides in the exercise of this Courts powers under sections 98 of the civil procedure Act and Section 33 of the Judicature Act. In the same vein, I find and hold that for purposes of costs of one day, it was uncalled for and an abuse of court process for counsel for the Plaintiff to file an exceptionally huge and detailed bill of costs amounting to UGX 11.778.000/=. His is because it is now settled law that whereas costs should not be too low to discourage practicing Advocates from the legal profession, at the same time they should not too High to chse away poor litigants from the Temple of Justice. This has been the position of the law since the decision of the East African court of appeal in **Pramchand Raichand vs quarry Services ltd [1972] E.A 162**. And later in **Nicholas Roussous vs Gulam Hussein Viran and Another, supreme court Civil Appeal No. 6 of 1995 (Unreported)**, where Manyindo D.C.J as he then was stated:-

“ Clearly, it is important that Advocates should be well motivated but it is also in public interest that costs be kept at a reasonable level so that Justice is not put beyond the reach of the poor.”

In the present case, I have no doubt whatsoever in my mind that an award of UGX 9,307,000/= as costs of one day by the taxation master /Deputy Registrar was not only manifestly excessive, but the Taxing officer applied wrong principles. It was erroneous for the Taxing officer for instance to include UGX 7,128,000/= being the cost of Air ticket when as correctly submitted by counsel for appellant, the Plaintiff has a residence in Uganda. Secondly, even if he was working in the U.S.A, he has appointed someone with power of attorney to stand in for him. Other exaggerated items include attendance of Advocate in court in less than six

hours whereby the 6th schedule of Advocates (Remuneration) and Taxation of costs). Provides for UGX 50,000/= per hour and not ten times to UGX 500,000/= as awarded by the Taxing officer under item 1. Similarly, under item 5, a clerk is entitled to UGX 7,000/= and not UGX 20,000/=. Then under item 22, transport for witnesses of UGX 400,000/= was equally oppressive. Even if there were five witnesses as alleged, a sum of UGX 20,000/= each totaling to UGX 100,000/= was reasonable travel costs for witnesses between Kampala and Mpigi. This is not to forget item 23 of transport and Hotel expenses of UGX 1,500,000/= for Plaintiff. It has already been held that he had a residence in Uganda.

10 Lastly, the award of UGX 1,000,000/= as breakfast for five witnesses under item 27 was absurd. A sum of UGX 100,000/= would have been fair and sufficient.

All in all and without going into the minute details of each item as that will be done at the conclusion of the main case, a sum of UGX 800,000/= as costs and expenses of the plaintiff and his Advocate and witnesses for one day is sufficient.

I accordingly do hereby allow the appeal, set aside the sum of UGX 9,307,000/= awarded by the Taxation master and substitute it with a sum of UGX 800,000/= as reasonable and realistic costs of one day.

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W. Masalu Musene

20 **Judge**

13/12/2017