

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT – PORTAL
CIVIL APPEAL/REFERENCE NO.002 OF 2019
(Arising out of HCT – 01 – CV – MC – 010 OF 2015)**

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**THE DEPARTED ASIANS PROPERTY CUSTODIAN
BOARD.....APPELLANT**

VERSUS

**AHMED BHIMJI LTD SUING THROUGH ITS LAWFUL
10 ATTORNEY GELLASE KWEMARA KAFUZI }
.....RESPONDENT**

BEFORE: HIS LORDSHIP HON. JUSTICE WILSON MASALU MUSENE

Ruling

This is an Appeal by the Departed Asians Property Custodian Board, the Appellant, by way
15 of Chamber Summons under **Section 62(2)** of the Advocates Act and **Regulation 3** of the
Taxation of Costs (Appeals and References Rules) against the Respondent Ahmed Bhimji Ltd
suing through its lawful Attorney Gellase Kwemara Kafuuzi.

The Appellant seeks for orders that; the Taxation award of the Learned Registrar be set aside,
an order doth issue to stay execution in Miscellaneous Cause No. 10 of 2015 pending the
20 hearing and final determination of this Appeal/Reference and costs of the appeal.

The Appeal is supported by the affidavit sworn by Bizibu George William, the Executive
Secretary of the Appellant and the grounds briefly are as follows;

1. The Registrar erred in law and fact when he entertained and proceeded with taxation
of the bill of costs without taking cognizance of the fact that the Applicant was not
25 effectively served with a taxation hearing notice.
2. The taxing master erred in law and fact in awarding taxed costs of 174,388,000/=
which amount is exorbitant and unjustified.
3. It is in the interest of justice that this Appeal/Reference be allowed.

An affidavit in reply opposing the Appeal was sworn by Mr. Bwiruka Richard for the
30 Respondent and the pertinent paragraphs are as follows;

2. That I have read the Chamber Summons and the affidavit in support sworn by Bizibu George William and the contents therein are misleading, false and I reply them as hereunder.

3. That the Appellant was dully served with the taxation hearing notice and the bill of costs and was dully represented during the taxation. A copy of the affidavit of service is attached as
5 Annexure “A1”.

5. That after the taxation was done, the Appellant was duly notified in the letter of demand dated 3/4/2019 and the letter was served on 4/4/2019. A copy of the demand letter is attached as Annexure “A2”.

6. That the Appellant has always been aware of this case and his taxation Appeal/Reference is
10 brought in bad faith to deny the Respondent fruits of litigation.

7. That the above appeal is out of time and the same is incompetent.

The Attorney General’s Chambers, Fort Portal Regional Office represented the Appellant and M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates represented the Respondent. By consent both parties filed written submissions.

15 Counsel for the Appellant submitted that the Appellant is a body corporate created under **Section 4** of the Assets of Departed Asians with perpetual succession and a common seal and may sue or be sued in its corporate name. That service was supposed to be effected on the Appellant as prescribed by law and in the instant case the Appellant learnt of the execution when her accounts were frozen by garnishee order arising from the taxed bill of costs.
20 Counsel for the Appellant quoted **Article 28** of the Constitution of the Republic of Uganda, 1995 on a right to a fair hearing and **Order 52 Rule 4** of the Civil Procedure Rules.

He added that the taxing master erred in law and fact when he awarded taxed costs of UGX 174,388,000/= which amount was exorbitant and unjustified in the circumstances. That this was a mere application which should not be seen to attract hefty sums in costs as the amount
25 is manifestly excessive, exorbitant and without legal and factual justification considering that the minimum award in opposed applications in accordance with the 6th schedule of the Advocates (Remuneration and Taxation of Costs) Rules is UGX 150,000/= and that no certificate of complexity was filed with court to entitle the Advocate a higher fee due to complexity of the case as per the said 6th schedule.

Further, counsel for the Appellant cited the cases of **Uganda National Examination Board versus the Management of Kibiito Primary School, Civil Appeals No. 034 and No. 35 of 2015 consolidated with Civil Appeal No. 36 of 2015** where it was held as follows;

5 *“A number of things in this regard come to mind; was the matter complex and the first of its kind? Did the trial Judge assess/evaluate the complexity? Did the Advocates simplify an otherwise complex case? Was there too much research? What about the time frame? Did he trail Judge Issue a certificate of complexity?”*

10 *In light of the above, since the trial judge did not issue not even mention the percentage as per the 6th schedule of the Taxation Rules. I do not see any reason why the Taxing Master would decide otherwise when she is not the one who entertained the mater. For this reason this ground succeeds.”*

Also, in the case of **The Commissioner of Customs, Revenue Authority versus Kasibo Joshua, HCT – 00 – CC – CA – 9 – 2008** it was held that;

15 *“In this case, there was no such certificate given, an increase of the fee without such a certificate was an error of principle. Further. The thought process of increasing the fee without a certificate of a presiding Judge is also wrong.*

20 *When it comes to Regulation 13 in applying the discretion of a taxing Officer, the guiding principles are well set out in the regulation itself. Such costs have to be allowed by the Regulations and are necessary or proper for the attainment of justice or defending the rights of any party.*

Of course an application for judicial review involving prerogative order is not the same as an interlocutory application though both may be filed by motion. Regulation 13 could therefore be used to lift the minimum fees found in paragraph 1(a) (vii) (B) of “not less than Shs. 150,000/=” I however, find that an increase on the basis of Regulation 13 alone to Shs. 25 30,000,000/= is excessive...”

Counsel for the Appellant concluded that the taxing master erred in law and fact when he awarded a hefty sum without a certificate of complexity which amount is manifestly excessive, exorbitant and without legal and factual justification and prayed that this Court allows this ground.

Counsel for the Respondent on the other hand submitted that this appeal/reference has been filed out of time contrary to **Section 62(1)** of the Advocates Act, which requires any person affected by an order or decision of a taxing officer to appeal against such order or decision within thirty 30 days. The taxation was done on the 3rd day of April, 2019 and a certificate
5 duly issued. The time frame for the Appeal expired on 4th May 2019 and the appeal was filed on the 13th of May 2019 outside the required time. Thus, the appeal should be struck out for being illegal.

Counsel for the Respondent added that in the alternative, the grounds in support of the appeal are not tenable and sustainable. The Appellant was duly served through the Attorney
10 General's Chambers, Fort Portal Regional Office who accepted service and appeared in Court and the record has that evidence. That the Appellant has not disassociated itself from Counsel Hannington Rwamwana as its representative and the purported attempt is belated, in bad faith and an afterthought calculated to mock and fool court.

Further, that the complaint that the sums awarded are exorbitant and excessive without
15 justification and that no certificate of complexity was applied for and granted are not tenable and sustainable. The taxed Advocates costs are Shs. 106,613,000/= while those of the Bailiffs of Court who executed the warrant to give vacant possession are Shs. 67,775,000/=. It is therefore erroneous for the Appellant to lump them up as Advocates costs. Besides the record of Court indicates that item one on instruction fees was conceded to by the Learned Counsel
20 for the judgment debtors as appropriate given the complexity of the matter, the research on Court file and value of the subject matter.

I have carefully studied the submissions on both sides and I do concur with the submissions of Counsel for the Respondent, this Appeal was brought out of time and this Court cannot condone such an illegality. **(See: Makula International Ltd versus Emmanuel Cardinal
25 Wamala & Another [1982] HCB 11.**

Secondly, the Appellant was represented during the taxation and as per the evidence on record, an affidavit of service dated 2nd April, 2019 is proof that the Appellant was duly served therefore cannot turn around and claim that she got to know about the bill of costs when it had already been taxed and execution ongoing by way of garnishee proceedings.

30 I accordingly find this appeal lacks merit and order that the taxation award be maintained, execution proceeds. This application is therefore dismissed with costs.

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WILSON MASALU MUSENE

JUDGE

5 **28/5/2019**