

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL APPEAL NO. 15 OF 2018

[ARISING FROM HIGH COURT TAXATION NO. 110 OF 2018]

[ARISING FROM CIVIL SUIT NO. 222 OF 2013]

FINANCE TRUST BANK LIMITED

(Formerly Uganda Finance Trust Bank Ltd) ===== APPELLANT

VERSUS

1. GEOFFREY KIWANUKA

2. NABIRYO KULDA ===== RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application brought under Section 62 of the *Advocates Act*, and Regulation 3 of the *Advocates (Taxation of Costs) (Appeals and References) Regulations*, wherein the appellants seek to set aside the award of instruction fees in the sum of **Ushs 19,104,764/=** (Uganda Shillings Nineteen Million One Hundred Four Thousand Seven Hundred Sixty Four Only) by the taxing master.

The appellant was represented by Mr. Timothy Kansime and the Respondents were represented by Mr. Arthur Murangira. In the interest of time court directed counsel for both parties to file written submissions however, the Respondents did not file their submissions.

The main ground for this application is that the sum awarded as instruction fees in *High Court Taxation No. 110 of 2018* was manifestly high, unfair and unreasonable.

That the Respondents were awarded costs of the suit in Civil Suit No. 222 of 2013. They duly filed their bill of costs and the same was taxed. In her ruling dated 23rd November 2018, the Deputy Registrar awarded the Respondents instruction fees in the sum of Ugx 16,190,480/= (Uganda Shillings Sixteen Million One Hundred Ninety Thousand Four Hundred Eighty Only) and Ugx 2,914,284/= (Uganda Shillings Two Million Nine Hundred Fourteen Thousand Two Hundred Eighty Four Only) as VAT thereon.

The Respondents filed an affidavit in reply and contend that the appellant filed a civil appeal that is fatally defective in material particulars thereby rendering the underlying appeal incompetent.

That the appellant's affidavit in support of the application is argumentative and non-factual.

The Appellant submitted that the value of the subject matter was undisputed according to the judgment which was Ushs 202,381,000/= and that the Respondents were entitled to a fee of Ugx 3,211,310/= as instruction fees per the 6th Schedule of the Advocates (Remuneration & Taxation of Costs) Rules.

I have looked at the record on the taxation by Her Worship Sarah Langa Siu, the Deputy Registrar and specifically on the issue of the instruction fees, I find that she rightly exercised her discretion in the awarding of the 8% of the subject matter as instruction fees.

However, the law governing instruction fees in complex matters as per *Regulation 1 of the 6th Schedule of the Advocates (Remuneration & Taxation of Costs) Rules* is clear and is to the effect that a higher fee is appropriate where an advocate for either party applies for a certificate allowing him to claim higher fee.

In the instant case, the Respondents during the taxation hearing submitted that the case was a complex one and thereafter attached numerous authorities to support a higher fee as instruction fees but failed to make an application for a higher fee as required by the law.

Discretion can be exercised where either party to the suit has taken an extra effort to claim the relief from court. I agree with counsel for the appellant that the taxing master awarded a high value for the instruction fees since

18% of the subject matter where the Respondents failed to make an application for a higher fee implied that they were in agreement with the set law that governed the instruction fees, therefore the stipulated law had to be followed putting in mind the set principles of taxation. *See Lanyero Sarah & Anor vs Lanyero Molly (Reference No. 225 of 2013).*

In the result for the reasons stated herein above this application is allowed.

The ruling of the Deputy Registrar / Taxing Master given on the 23rd November 2018 in respect of **Ushs 19,104,764/=** for the 1st and 2nd Respondents' Bill of Costs is hereby set aside and instruction fees reduced to **Shs. 3,211,310/=** .

Each party shall meet their own costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
20th December 2019