



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Civil Appeal No. 168 of 2018

In the matter between

LAJUL HEALY

APPELLANT

And

- | | | | |
|----|--|---|--------------------|
| 1. | KATO STONEWALL | } | |
| 2. | AMURU DISTRICT LAND BOARD | } | |
| 3. | AMURU DISTRICT LOCAL GOVERNMENT | } | RESPONDENTS |

Heard: 12 February 2019

Delivered: 28 February 2019

Summary: a judicial decision without reasons is a nullity.

JUDGMENT

STEPHEN MUBIRU, J.

Introduction:

[1] This appeal is made 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 awards in three bills of costs; of shs. 18,668,000/=, shs. 13,508,000/=, and shs. 32,176,000/=, respectively as being excessive in the circumstances of the case. The taxation Order was delivered on 16th November, 2018.

[2] The appeal is supported by the appellant's affidavit sworn on 28th November, 2018, stating that the awards are excessive and were based on wrong principles of taxation. On the date that taxation was done, counsel for the appellant had sustained a fracture of the right foot and could not make it to court yet the taxation proceeded ex-parte nevertheless. A number of items in the bills of costs are single out as having been taxed contrary to the principles governing taxation of costs. In their written submissions, M/s. Latigo and Company Advocates, representing the appellant expounded further on those grounds.

The respondent's reply:

[3] There is an affidavit in reply by the first respondent dated 6th December, 2018 rebutting the applicant's arguments. Counsel for the appellant was duly served with a taxation hearing notice on 29th October, 2018 but on the date fixed for taxation both the appellant and his advocate were not in court. The bills were therefore taxed ex-parte but fairly in accordance with the rules governing taxation. He prayed that the appeal be dismissed.

General principles:

[4] The circumstances in which a Judge of the High Court may interfere with the Taxing Officer's exercise of discretion in awarding costs generally are;

Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters which taxing Officers are particularly fitted to deal with and the court will intervene only in exceptional circumstances (see *Thomas James Arthur v. Nyeri Electricity Undertaking*, [1961] EA 492 and *Bank of Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999*)

[5] 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.

The requirement for reasoned taxation rulings:

- [6] 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. The order awarding a specified amount ought to speak for itself by giving reasons. The judgment debtor must know why and on what grounds the specified amount has been passed against him or her. The courts have justified the requirement for self explanatory orders on three grounds: (i) the party aggrieved has the opportunity to demonstrate before the appellate or revisional court that the reasons which persuaded the authority to reject his case were erroneous; (ii) the obligation to record reasons operates as a deterrent against possible arbitrary action by executive authority invested with judicial power; and (iii) it gives satisfaction to the party against whom the order is made. The power to refuse to disclose reasons in support of the order is of an exceptional nature and it ought to be exercised fairly, sparingly and only when fully justified by the exigencies of an uncommon situation (see *English v. Emery Reimbold and Strick Limited*, [2002] 1 WLR 2409 and *Cullen v. Chief Constable of the Royal Ulster Constabulary* [2003] 1 WLR 1763).
- [7] Where an order is subject to appeal or revision, the necessity of recording reasons is greater as without reasons the court exercising appellate or revisional authority cannot exercise its power effectively inasmuch as it has no material on which it may determine whether the facts were correctly ascertained, law was properly applied and the decision was just and based on legal, relevant and existent grounds. Recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just. If valid

reasons are not found in the order, such an order becomes erroneous. The person aggrieved gets an opportunity to demonstrate that the reasons are erroneous. Failure to disclose reason amounts to depriving the party of the right of appeal or revision.

[8] Since the decision on taxation is appealable, at the very least therefore the Taxing Officer should by way of a taxation ruling, 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 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 statement of the reasons for deciding as he or she did.

[9] 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 judgment debtor, should be left in no doubt why they have to pay the quantum awarded. This is especially so since without reasons the judgment 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 judgment debtor would be altogether deprived of his or her chance of an appeal unless 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.

- [10] 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. The requirements of recording reasons will be satisfied if only relevant reasons are recorded. In the instant case though, the most striking feature of the taxation by the Taxing Officer is that the award is unreasoned and unexplained.
- [11] 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 judgment debtor where the reasons for the award are totally lacking or so inadequately or obscurely expressed as to raise a substantial doubt whether the decision was taken after due consideration by the Taxing Officer. Secondly, a judgment 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 judgment debtor is substantially prejudiced by an award in which the considerations on which it is based are not explained at all or sufficiently clearly to indicate what, if any, impact they may have in relation to the decision of future taxation of bills of costs.

Order :

[12] For absence of a ruling explaining the reasons behind the amounts allowed, I hereby set aside the awards of the Taxing Officer in respect of each of the three bills of costs and direct that the bills of costs be taxed afresh and reasons for the resultant awards be given to the parties in a ruling of the Taxing Officer. Each party is to bear their own costs of this appeal.

Stephen Mubiru
Resident Judge, Gulu

Appearances

For the appellant : Mr. Watmon Brian.

For the first respondent : Mr. Oyet Michael.

For the second respondent: Mr. Walter Okidi Ladwar.