THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

CIVIL DIVISION

TAXATION APPEAL NO.006 OF 2019

(ARISING FROM TAXATION APPLICATION NO. 114 OF 2017)

(ARISING FROM CIVIL SUIT NO. 49 OF 2014)

IN THE MATTER OF THE ADVOCATES ACT CAP. 267

AND

IN THE MATTER OF THE ADVOCATES (TAXATION OF COSTS) APPEALS & REFERENCES) REGULATIONS S.I 267-5

DISON OKUMU & 8 OTHERS :::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

UGANDA ELECTRICITY TRANSMISSION COMPANY LIMITED ::: RESPONDENT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW.

JUDGMENT:

The Appellants brought this appeal under Section 62 (1) of the Advocates Act Cap. 267; and Regulation 3 of the Advocates (Taxation of Costs) (Appeals and References) Regulations S.I 267-5; seeking for orders that;

1. ***That the taxing master's award of UGX.1,424,727,300/= (one billion four hundred twenty-four million seven hundred***

5 ***twenty-seven thousand three hundred shillings only) delivered in Taxation Application No. 114 of 2017 be set aside.***

2. ***The court substitutes the award of the taxing master with its own award***

10 3. ***Costs of this Appeal.***

The grounds of appeal are that;

1. ***The learned taxing master erred in law and fact when she taxed the Respondent's bill of costs without regard to the Advocates (Remuneration and Taxation of Costs) Rules and***
15 ***principles applicable to taxation of costs.***

2. ***The learned taxing master erred in law and fact when she awarded UGX.1,424,727,300/= (one billion four hundred twenty-four million seven hundred twenty-seven thousand three hundred shillings only) to the Respondent, which***
20 ***amount was manifestly excessive, exorbitant and without legal and or factual justification.***

3. ***It is fair and equitable that the taxing master's award be set aside.***

5 The grounds of appeal are amplified in the supporting affidavit sworn by Mr. Edward Udhec Rubanga, who states that he is one of the Appellants. The appeal is wholly opposed by the Respondent who filed an affidavit in reply sworn by Mr. Yusuf Kagumire, Managing Partner of *M/s. Kateera & Kagumire Advocates*, lawyers
10 for the Respondent. He states that he is very conversant with facts pertaining to this matter and swears the affidavit in that capacity. The respective affidavits are on court record and their content will be evaluated simultaneously in the resolution of the grounds of appeal.

15 The Appellants were represented on appeal by *M/s. Byenkya, Kihika & Co. Advocates* while the Respondents were represented by *M/s. Kateera & Kagumire Advocates.* Counsel for the parties filed written their respective submissions to argue the appeal, which this court has taken into account in its judgment, and also appreciates
20 both counsel for supplying the authorities they relied upon.

Background:

The Appellants sued the Respondent and several other defendants vide; *HCCS No. 49 of 2014 Dison Okumu & 9 Others versus UETCL & 7 Others.* Court found in favour of the Respondents and dismissed

5 the suit with costs. The Respondents' bill of costs was subsequently taxed and allowed at UGX.1,424,727,300/=. Dissatisfied with the award of Her Worship Joy Bahinguza Kabagye, the taxing master, the Appellants filed this appeal and advanced the grounds stated above.

10 As can be discerned the Chamber Summons, the appeal is premised on a singular ground specifically in respect to the award of UGX.1,180,000,000/= as instruction fees. Quite evidently, the other awards are not contested. It is, therefore, majorly the award in respect of instruction fees that is the subject of this appeal. 15 Although the Chamber Summons and affidavit in support appear to challenge the full award of UGX.1,424,727,300/=, in actual fact the contest lies only on the instruction fees of UGX.1,180,000,000/=. That is even what is duly canvassed in the pleadings and in the submissions of counsel for Appellants.

20 Besides, the record of proceedings also shows that all the other items in the bill of costs were allowed by consent of the parties even before the taxation could be done. Counsel for the Appellants only opted to argue the claim of instruction fees which appears in *Item 1* of the bill of costs. This further manifests that other than the issue

5 of instruction fees, the award of the sum of UGX.27,729,000/= in respect of all other uncontested items in the bill of costs, as was awarded by the taxing master, is virtually uncontested. Therefore, the award in that particular regard is upheld; which renders the appeal in that particular aspect to fail.

10 Also to note is that this court was previously seized with similar matter vide; *Dison Okumu and Others versus UEB in Liquidation and 5 Others, Consolidated Taxation Appeals Nos. 9 and 10 of 2018.* The consolidated taxation appeals in that matter were also filed by the self-same Appellants as herein. Similarly, the Appellants were 15 challenging the award of instruction fees of UGX.6 billion awarded, among others, to the Respondent herein who was one of the defendants in HCCS No. 49 of 2014. While dealing with the said consolidated appeals, in its decision in the consolidated appeals rendered on 25/01/2019, this court was reluctant to disturb the 20 award of instruction fees of UGX.6 billion which the taxing master therein had awarded under a party - to - party bill of costs arising from the said suit.

The *Consolidated Taxation Appeals Nos. 9 and 10 of 2018* above are on all fours with the instant appeal. Similar arguments were

advanced for all the Appellants and the Respondents therein; of whom the Respondent herein was also party. Most importantly, this court has not departed from its position as to the finding and reasoning in that matter. Therefore, similar conclusions would *ipso facto* apply in the instant appeal and this court would not disturb the amount of UGX.1,180,000,000/= awarded as instruction fees to the Respondent, by substituting it with any lesser award. On that account alone, this appeal would fail. Be that as it may, this court will proceed to resolve the grounds advanced on merit for avoidance of any doubt.

Ground 1: The learned taxing master erred in law and fact when he taxed the Respondent's bill of costs without regard to the Advocates (Remuneration and Taxation of Costs) Rules and principles applicable to taxation of costs.

In this ground, the taxing master is faulted for applying Rule 1 (iv) of the Schedule VI to the Rules, in determining the amounts awardable as instruction fees due to the Respondent. The Appellants' contention is essentially that the taxing master ought to have

5 applied Rule 1(v) (supra) since no monetary claim was disclosed in the pleadings(plaint) or in the judgment.

On proper evaluation of the taxing master's ruling against this particular argument, it is not hard to find that the Appellants' contention is devoid of merit, factually and legally. The reading of
10 the taxation ruling as a whole will show that it is not anywhere stated therein, that the taxing master applied or relied on Rule 1(iv) as the legal basis for her award. That was owing to the fact that the value of the subject matter of the suit could be ascertained from the pleadings and as such, and Rule 1(iv) would not apply. The taxing
15 master noted very clearly that the Appellants, in the main suit, had sought orders to set aside a consent order and a taxation order. The total amount arising under the said orders was UGX56 billion as stated in the uncontested affidavit evidence in reply to this appeal.

A similar scenario arose in ***Shumuk Springs Development Ltd &***
20 ***O'rs vs. Bonny Mwebesa Katatumba & O'rs HCTA No. 21 of 2012,*** The appellants in that case had advanced the argument that the value of the subject matter was inapplicable in the circumstances since the suit was for a permanent injunction to restrain the respondents therein from accessing the suit premises.

Relying on the Supreme Court decision in ***Bank of Uganda vs. Banco Arabe Espanol S.C.Civ. Appl. No.23 [1990] 2 EA 45,*** the court held that the substance of the action against the Respondents represented, other than the 1st respondents therein, was to deny them proprietary rights in the condominium units held by them. It is immaterial that the suit was for a permanent injunction to restrain them from accessing their own property registered in their own names. Court went on to hold that;

> ***"…. the pleadings show that in relation to the 27 condominium units the subject matter was a bank guarantee for the sum of US $ 1.700.000 under a consent order. The subject matter value does not have to be the actual value of the property but the value that is claimed or ascribed in the pleadings…."***

This court associates itself with the conclusions of the learned Judge in the above case. Similarly, in the instant appeal, the argument that there was no subject matter value because the prayers in the plaint are not specific in regard to the value of the subject matter attached, is not sustainable. The taxing master, at

5 page 4 of her ruling, correctly considered that the suit was for setting aside a consent judgment and a taxation order which was already entered and agreed upon by the parties and which accordingly defined the subject matter of the suit.

Worth noting is that Rule 1 (v)(supra) only provides for a minimum

10 amount of UGX.75,000/=. The Rule does not provide the maximum fee allowable. The taxing master therefore is imbued with the discretion to award the appropriate reasonable instruction fee in the circumstances. That being the case, the taxing master's award in her did not contravene the said Rule. The taxing master

15 exercised her discretion properly guided by the principles set by law and found that UGX. UGX.1,180,000,000/= was the appropriate and reasonable amount awardable taking into consideration the value of the subject matter of the suit, which is UGX.56,607,456,800/= being the decretal sum, costs of the suit,

20 and the legal fees.

It is also quite evident that the taxing master took into consideration the circumstances and merits of the case, the value of the subject matter and guided by the principles set by various

5 courts, rightly considered an award of instruction fees of UGX.1,180,000,000/= as reasonable and sufficient. As already observed above, there are no new circumstances being raised in this appeal that have not been raised and determined by this court before. This ground of appeal wholly fails and it is dismissed.

10 ***Ground 2: The learned taxing master erred in law and fact when she awarded UGX.1,424,727,300/= (one billion four hundred twenty-four million seven hundred twenty-seven thousand three hundred shillings) to the Respondent, which amount was manifestly excessive, exorbitant and without***
15 ***legal and or factual justification.***

It is a well-established guiding principle, re-stated in ***Auditor General vs. Ocip Moses and O'rs Taxation Reference No. 089 of 2014,*** that in all taxation appeals, the Judge ought not to interfere with the assessment of what the taxing master considered to be a
20 reasonable fee unless the award is considered manifestly excessive, exorbitant and without any legal or factual justification. It is generally accepted that questions which are of quantum of costs are matters which the taxing master is particularly suited to deal with

and in which he or she has more experience than the Judge will not alter a fee allowed by a taxing master merely because in the Judge's opinion he or she should have allowed a higher or lower amount.

In the instant appeal, the Appellants contend that the award was manifestly excessive considering that the case was dismissed at a preliminary hearing. To buttress this argument, counsel for the Appellants relied on the case of ***Western Highland Creameries Ltd and A'nor vs. Stanbic Bank Uganda Ltd, Tax Appeal Reference No. 10 of 2013.*** The reading of that case shows that Madrama Izama J., (as he then was) clearly held, inter alia, as follows;

> ***"The result is the same as a dismissal on the merits and there is no difference in quality whether the dismissal or rejection of the plaint occurs at the beginning of the trial or at the end ... Instruction fees may be referred to as profit costs to which party is entitled in 'party and party taxation' in contentious matters. The costs are based on a scale and not the actual work done.*** [underlining mine for emphasis].

In her ruling, at page 5, the taxing master considered a number of issues including the stage at which the matter had been dismissed, the value of the work done, and in proper exercise of her discretion, came to the conclusion that an award of UGX.1,180,000,000/= was appropriate as instruction fees in the case. Therefore, would be immaterial at what stage the matter was determined by the court. As a matter of principle, full instruction fees to defend a suit is ordinarily earned the moment a defence has been filed. The subsequent progress or steps taken in the matter are irrelevant to that item of fees. A similar stance was taken in ***First American Bank of Kenya vs. Shah & O'rs (2002) 1 EA 64.*** This court is persuaded and bound to follow the same position.

This court has also had occasion to read and appreciate the authorities cited by counsel the Appellants in their submissions. They are, however, distinguishable from the facts of the instant appeal. In the suit out of which the taxation arose, the judgment was interlocutory in nature, but was final and the suit was dismissed. Equally, the case of ***Kapeeka Coffee Works Ltd & A'nor vs. NPART CACA NO.2 0F 2002,*** which was cited by counsel

5 for the Appellants is not relevant to the matters in the instant appeal. The decision in that case related to taxation of a bill of costs submitted after an appeal to the Court of Appeal. Similarly, the case of ***Dr. Isamat Abraham vs. Dr. Epetait Francis Misc. Appl. No. 2 of 2015 at page 2 (Arising from EP No.2 of 2011;*** and
10 ***Uganda Revenue Authority vs. Rock Petroleum CACA No.199 of 2013;*** are inapplicable to the instant appeal. They specifically relate to determination of the appropriate quantum of costs in election petitions and originating summons respectively. Similarly, the case of ***Twinobusingye Severino vs. Attorney General Const. Ref. No.***
15 ***27 of 2013;*** does not apply as it relates to taxation of costs in public interest litigation/constitutional matters. Ground 2 of the appeal also fails and it is dismissed.

The net effect is that the appeal fails on all the grounds and it is dismissed with costs to the Respondents.

20 ***BASHAIJA K. ANDREW***
JUDGE
15/05/2020.