

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA KAMPALA
TAXATION APPEAL NO. 19 & 20 OF 2019

(ARISING OUT OF Tax Application No. 84 of 2019 and Civil Suit No. 284 of 2017)

- 1. ALNASIR GULAM HUSSEIN VIRANI**
2. AISHA ALNASIR VIRANI :::::::::::::::APPELLANTS/RESPONDENTS

VS

- 1. PARESH SHUKLA**
2. SHREE GOPAL LIMITED:::::::::::::RESPONDENTS/APPELLANTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

These are consolidated references under section 62 of the Advocates Act, from a decision of the taxing officer in arising from Taxation application No. 84 of 2019, wherein the respondent's bill of costs was taxed and allowed at the total sum of Shs 101, 471,000/=.

The Appellants/Respondents challenged the decision of the taxing officer on grounds that she failed to determine the basic fee in the instruction fees on the basis of the value of the subject matter.

While the Respondent/Appellant challenged the taxing masters award of 30,000,000/= as instruction fees for being illegal and unreasonable. Further challenged the entire award by the taxing master of 101,471,000/= for being unreasonable and manifestly excessive.

When this matter came up for hearing on 11th February 2020, the court consolidated the applications/appeals and directed the parties to file their submissions in their respective appeals/applications by 13th-03-2020. According to

the record, the appellants/respondents complied but the respondent/appellant failed.

The appellants/respondents were represented by *Counsel Mugenyi Yesse* while the Respondents/Appellants respondents were represented by *Counsel Charles Nsubuga*.

The appellants/respondents are challenging the decision of the taxing officer on the following grounds;

- 1) That the taxing Officer erred in law when she refused to determine the instruction fees on the basic value of the subject matter.
- 2) The Taxing Officer erred in law and fact she held that the value of the subject matter is irrelevant in respect of a suit where they are declaratory orders.
- 3) That the Taxing Officer erred in law and fact she ruled that the Civil Suit only related to declaratory orders.
- 4) That the Taxing Officer erred in law and fact when she awarded instruction fees without due regard to the complexity of the case, the value of the subject matter and the research involved in preparing the defence.

The Respondents/Appellants raised five grounds of Appeal against the decision of the Taxing Officer as follows;

- 1) That the taxation award by the registrar /Taxing Master of 30,000,000/= as instruction fees be set aside as being illegal and unreasonable.
- 2) The taxation award of the registrar/taxing Master of 101,471,000 be set aside for being unreasonable and manifestly excessive.

- 3) That the learned registrar/Taxing master did not exercise her discretion judiciously as required by taxation principles thereby awarding the respondents costs which are manifestly excessive, unfair and unreasonable.
- 4) The award is so excessive that it amounts to an injury to the respondents.
- 5) That the award is so excessive that it confines access to the court to the wealthy and discourages litigants coming to court to access justice.

The background to this appeals/applications is that the Appellants/respondents were sued the Respondents/appellants seeking remedies of declarations and injunctions to halt the constructions of an apartment block. The appellants/respondents submitted their building architectural and structural plans to the physical planning committee of Kampala Capital City Authority which approved them in order to commence the construction of their apartment block.

The respondents/Appellants, being dissatisfied with the approval plans, instituted legal proceedings challenging the appellant's building plan on a number of technical grounds and in essence questioning the Mandate of Kampala capital city Authority to approve the said plans.

The respondents/appellants applied for an interim order which was heard and rejected. The application for temporary injunction was equally dismissed. Later the main suit was eventually dismissed for want of prosecution.

The respondents/appellants sought 5 (Five) declaratory orders against the appellants/respondents contending that the defendant's ten storey construction infringes the plaintiff's right to privacy, an order for environmental easement to preserve a view and open space; general damages and costs of the suit.

Counsel submitted that the schedule enjoins the parties to determine the claim or value of the subject matter from pleadings, settlement, valuation or the judgment. In the present case, the subject matter in this suit was a 9-level residential apartment block. According to him this should constituted the basis of

determining the instruction fees having ascertained the value of the subject matter.

The appellants/respondents adduced evidence in the affidavit in reply insisting that they executed a contract whose value was 5,575,407,822/= and had further spent a sum of 6,207,786,400/= for materials for construction. Therefore according to counsel the total value of the construction of the apartment was 11,961,823,220/=

The appellants'/respondents' counsel sought a sum of 350,864,120/= as instruction fees for handling the matter computed in accordance with the Advocates Taxation remuneration rules. It was there prayer that the court substitutes the taxation award of 30,000,000/= with the figure of 350,864, 120/= as the instruction fees.

Determination

Some of the pertinent principles applicable to review of taxation in applications of this nature are as follows;

Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer consider being a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters which the taxing officer is particularly fitted to deal, and in which he/she has more experience than the judge. Consequently a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount.

Secondly, an exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised, or applied, a wrong principle. In this regard, application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.

Thirdly, even if it is shown that the taxing officer erred on the principle, the judge should interfere only on being satisfied that the error substantially affected the

decision on quantum and that upholding the amount allowed would cause injustice to one of the parties. See ***Bank of Uganda v Banco Arabe Espanol Supreme Court Civil Application No. 23 of 1999***

The exercise of discretion is premised on sound legal principles and by caprice, chance or humour. There are no hard and fast rules laid down but the discretion must be exercised considering the facts and circumstances of each case.

Whenever costs are taxed, the assessment is normally made on 'standard basis', which allows recovery of costs which were reasonably incurred and are reasonable in amount. The more generous 'indemnity basis' may operate in exceptional circumstances, in which event all costs will be permitted except those which have been unreasonably incurred or are unreasonable in amount.

Costs of litigation increase significantly as proceedings continue towards trial as a large part of the expenditure is incurred by the preparation of evidence and the court documents /trial bundles and the presentation of the case.

The general principle is that the court should not simply assess costs on the basis of the number of issues won or lost. Rather it should come to a fair and just determination on all the circumstances of the litigation. In the case of ***Khng Thian v Riduan bin Yusof [2005] 1 SLR(R) 130*** court observed that; *"The assessment of costs ought not to be a clinical science exercise divorced from considerations of intuitive fairness. The court almost invariably ought to look at all circumstances of the case including any matters that led to the litigation"*

The court in determining instruction fees in matters whose value of the subject matter is not disclosed should first assess the relative complexity and difficulty or novelty of the questions involved matter, the work supposedly done against what was reasonably required in the prevailing circumstances (time and labour expended by the advocate), the reasonableness and proportionality of the amounts claimed on an item by item basis and then assess the proportionality of the resulting aggregate costs.

The appellants are contesting the sum of 30,000,000/= awarded as instruction fees as being low and not based on the value of the subject matter of

11,961,823,220/= in their view. This amount included contract value for construction and the value of the materials for construction.

This Court as an appellate court notes that, each case has to be decided on its own peculiar facts and circumstances. In the case of ***Electoral Commission & Another vs Hon Abdul Katuntu HCMA No. 001 of 2009*** which cited the case of ***Patrick Makumbi & Another vs Sole Electronics***. The court stated that there is no mathematical or magic formula to be used by taxing master to arrive at a precise figure. *“Each case has to be decided on its own merits and circumstances. For example, lengthy or complicated case involving lengthy preparation and research will attract higher fees. Fourth, in a variable degree, the amount of the subject matter involved may have a bearing...”*

In the present case, the respondents/appellants in their pleadings they did not attach any value of what they sought since they were declaratory orders only and general damages. The ascertainment the value of the subject matter from the defendant’s case in which no counterclaim was included would be erroneous and in the same spirit, the plaintiff, if he had won the case would not be allowed to premise his costs of the defendant’s value of the project that they were trying to stop.

The value of the subject matter could only be determined from the amount claimed or the judgment and not from other extraneous evidence that was not part of the case. The sixth schedule provided; the fees for instructions shall be as follows;

(iv) to sue or defend in any other case or to present or oppose an appeal where the value of the subject matter can be determined from the amount claimed or the judgment-

If no amounts are claimed in a plaint and cannot be ascertained from the judgment, then it is the discretion of the taxing officer and he/she should apply their mind to the different principles enunciated herein and arrive at reasonable and proportionate amounts as instruction fees.

The above position is buttressed by part (v) which provides; ***to sue or defend or to present or oppose an appeal in any case not provided for above in any court, not less than 75,000/=***. This provision gave the taxing officer wide powers to exercise discretion by not awarding less than 75,000/=. The same principle seems to apply to the new Advocates (Remuneration and Taxation of Costs)(Amendment) Regulations 2018.

Otherwise every advocate will try to attach any higher value to the subject matter and claim their instruction fees based on such amounts that were never pleaded and no filing fees were paid for such a claim at the time of filing. If a party has come to court for declaratory orders, then no value should be attached but rather the taxing officer should exercise their discretion to determine the instruction fees.

The Appellants/respondents counsel submitted that the taxing master is vested with power to increase or decrease the basic fees depending on the complexity of the case. The fact that the matter was dismissed for want of prosecution did not disqualify the taxing Master from considering the complexity of the matter as provided under Rule 6(2) of the Advocates (Remuneration and Taxation of costs) regulations.

The complexity of a matter is determined from the proceedings and manner it was prosecuted and the novel issues that the court explored. This matter was dismissed for want of prosecution. The alleged novel issues were never subjected to litigation to determine their novelty and complexity.

The appellants/respondents appeals fails. The Taxing Officer properly applied the law to the facts of the case and was not bound by the value of the subject matter attached to the suit by the defendants/Appellants/Respondents of 11,961,823,220.

The Respondents/Appellants also contested the award of the taxing officer of 30,000,000/=illegal and unreasonable. The said award was an exercise of discretion and the respondents/defendant had a duty to show how the exercise of discretion was not exercised judiciously.

The case involved three cases in one; that application for Interim order; application for temporary injunction which were all heard and dismissed and the main suit which was dismissed for want of prosecution. The taxing officer bearing that in mind was right to award the sum of 30,000,000/= as instruction fees.

The respondents/appellants contended that the entire amount of the taxed bill of 101,471,000/= was unreasonable and manifestly excessive. This omnibus contestation of the entire taxed bill should be discouraged. The bill has over 80 items and the respondents counsel does not mention any single item in the pleadings which was unreasonably taxed or is manifestly excessive.

This ground of challenge also fails.

In the final result for the reasons stated herein above, both Appeals (References) are dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered be email and whatsApp at Kampala this 22nd day of May 2020

**SSEKAANA MUSA
JUDGE**