

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

TAXATION APPEAL NO. 07 OF 2020

(ARISING FROM AN AWARD IN CIVIL APPEAL NO. 005 OF 2014)

LUSAGI DAVID ::: APPLICANT

VERSUS

SSENJUMBA BENON & 7 OTHERS ::: RESPONDENT

*Before; Hon Lady Justice Victoria Nakintu Nkwanga Katamba*

**RULING**

This appeal is brought under Section 62 (1) of the Advocates Act, Rule 3(1) and (2) of the Advocates (Taxation of Costs) (Appeals and Reference) Regulations seeking orders that;

- a) The award of a sum of Ug. Shs. 14,995,000/= (Fourteen Million Nine Hundred and Ninety-Five Thousand Shillings) as instruction fees to Counsel for the Respondent in Civil Appeal No.005 of 2014 be set aside and an appropriate award be made;
- b) The award of a sum of Ug. Shs. 23,194,000/= (Twenty-Three Million One Hundred and Ninety-Four Thousand Shillings only) to counsel for the Respondent being the total bill of costs taxed and allowed in Civil Appeal No. 005 of 2014 be set aside and an appropriate award in favour of the Respondent be made;
- c) Costs of application be provided for.

The grounds of the application as contained in the affidavit of Ssekanjako Abubakar, one of the applicants' lawyers are briefly that;

1. The Applicant was the successful party in civil suit no. 106 of 2007 and the trial Magistrate ordered both parties to bear their own costs;

2. The Respondent filed Civil Appeal No. 005 of 2014 and the costs of the appeal were awarded to the Respondent;
3. The Respondent's lawyers filed a bill of costs seeking Shs. 40,831,000/= as costs which was taxed to Ugx. 23,194,000/= which is excessive, unfair, and without legal justification;
4. The award of Ug. Shs 14,995,000/= is unreasonable and excessive when the subject matter of the suit is Ug Shs. 1,200,000/= and the matter was not complex;
5. The taxing master contravened the law and principles governing taxation of costs;

The Respondent was not served with the application and as such did not file an affidavit in reply to the application nor did he enter appearance.

Counsel for the Applicant filed written submissions and raised the following issues for the determination of court.

1. Whether the award of a sum of Ugx. 14,995,000/= as instruction fees is justifiable;
2. Whether the award of a sum of Ugx. 23,194,000/= being the total bill of costs taxed and allowed in Civil Appeal No. 005 of 2014 contravenes the principles governing taxation of costs;

Counsel reiterated the rules and principles of taxation as stated in the cases of *AG vs Uganda Blanket Manufacturers' SCCA 17 of 1993* and *Makula International Ltd vs Cardinal Nsubuga & Anor [1982] HCB* respectively. Counsel cited Regulation 13 of the Advocates (Remuneration and Taxation of Costs) Regulations SI 267-4 which gives the taxing master power to exercise discretion in the process of taxing costs, and submitted that the awarded sum of 14,995,000 as instruction fees is contrary to the rules which provide the rate for instruction fees. That in accordance with Schedule 6 of the Regulations, Counsel for the Respondent was entitled to about 4,500,000/=.

Counsel argued that the matter was not complex and that the parties appeared twice and were informed to file written submissions, and further that this being a land matter, there is sufficient jurisprudence that doesn't require much research. It was also counsel's submission

that the costs of the lower court were not awarded to the Respondent and yet they were included in the bill of costs. Counsel submitted that the taxing master did not separate the two sets of instruction fees and costs thereby making an erroneous decision.

Counsel prayed for the award to be set aside and a proper figure to be made by taxing the bill afresh.

Even though he was not served, Counsel for the Respondent filed written submissions and raised a preliminary objection that the Respondent was not served with the instant Appeal and prayed for the Appeal to be dismissed with costs for non-service.

**Determination of the appeal:**

I have carefully perused the application, submissions of the Parties, and the records of court in Civil Appeal No. 005 of 2014 and Civil Suit No. 106 of 2007 which I will take into consideration in determining this appeal.

As stated, Counsel for the Respondent filed written submissions praying for the appeal to be dismissed for non-service of summons.

I have carefully perused the file and there is indeed no affidavit of service. However, considering that Counsel for the Respondent filed written submissions, I am convinced that the Respondent through his Counsel was aware of the appeal. If Counsel was well informed of the existence of this appeal to make submissions for its dismissal, there was no harm in addressing the merits of the appeal without prejudice to his prayer for dismissal.

I am well aware of the law regarding procedure and service of summons *under Order 5 of the Civil Procedure Rules* and the consequences of the non-service of summons. This court however has powers under *Section 98 of the Civil Procedure Act* to exercise its discretion for the ends of justice to be met. I will therefore proceed to address the merits of the appeal and disallow Counsel for the Respondent's preliminary objection.

The law on taxation appeals is established under *Section 62 (1) of the Advocates Act* which provides that;

*“Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.”*

It is trite that save in exceptional cases, a judge should not interfere with the assessment of what the taxing officer considers to be a reasonable fee. Questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the *judge (Bank of Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999 and Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492)*.

*Issue one; Whether the award of a sum of Ugx. 14,995,000/= as instruction fees is justifiable;*

*Regulation 2 Advocates (Remuneration & Taxation of Costs) Regulations (herein `the Regulations`)* provides that the remuneration of an advocate of the High Court by his or her client in contentious and non-contentious matters shall be in accordance with the regulations. *Regulation 57* of the Regulations provides that in all causes and matters in the High Court and magistrates courts, an advocate shall be entitled to charge as against his or her client the fees prescribed by the Sixth Schedule to the regulations.

*Regulation 13 of the Advocates (Remuneration and Taxation of Costs) Regulations S.I 267-4* gives the taxation master power to exercise discretion in the process of taxing costs by allowing costs as authorized which appear to him or her to have been necessary for defending the rights of any party.

The issue of instruction fees was dealt with in the case of *Alexander Okello v. M/s Kayondo & Company Advocates, S/C Civil Appeal No.1 of 1997 (cited in Nabanja v Nabukalu*

*(Taxation Appeal-2018/4) [2018] UGHCFD 27 (31 October 2018)* where it was held that an instruction fee is manifestly excessive if it is out of proportion with the value and importance of the suit and the work involved.

The general principles of taxation are as spelt out in the case of *Makumbi and another v Sole Electrics (U) Ltd [1990–1994] 1 EA 306*;

*“The principles governing taxation of costs by a Taxing Master are well settled. First, the instruction fee should cover the advocates’ work, including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be. Second, there is no legal requirement for awarding the Appellant a higher brief fee than the Respondent, but it would be proper to award the Appellant’s Counsel a slightly higher fee since he or she has the responsibility to advise his or her client to challenge the decision. Third, there is no mathematical or magic formula to be used by the Taxing Master to arrive at a precise figure. Each case has to be decided on its own merit and circumstances. For example, a lengthy or complicated case involving lengthy preparations and research will attract high fees.*

The principles for assessing instruction fees where the subject matter of the suit can be ascertained are under Item 1 (b) of the Sixth Schedule which provides that as between advocate and client, the instruction fee to be allowed on taxation shall be the actual instruction fee allowed as between party and party increased by one third. The scale for the calculation of instruction fees is found under item 1 (a) (iv) of the Sixth Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations.

The Respondent sought Ugx. 15,000,000/= as instruction fees for the appeal. The taxing master taxed off 5000/= and awarded 14,995,000/=. Counsel for the Appellant submitted that this was excessive. I have carefully perused the record of appeal and understood the contention between the Parties. Counsel seeks to rely on the sale agreement dated 10/04/99 wherein the consideration of the suit land was Ugx 1,200,000/= to submit that the award of Ugx. 15,000,000/= was unreasonable and excessive in light of the subject matter.

I do not agree with Counsel for the Appellant that the value of the subject matter of Ugx. 1,200,000/= should guide court on the instruction fees since that was the value as of 1999 and the suit land has since appreciated.

This being a matter for trespass and on appeal where the Respondent as the Appellant succeeded, I find that the award of Ugx. 14,950,000/= is sufficient and reasonable in the circumstances. Despite the lack of reasons for the manner and amount taxed from the instruction fees for the appeal, this was an appeal in which both parties were represented and Counsel had to enforce and defend their clients' claims, I find that this amount was not excessive and as such exercise my discretion and order that it should be maintained.

***Issue two; Whether the award of a sum of Ugx. 23,194,000/= being the total bill of costs taxed and allowed in Civil Appeal No. 005 of 2014 contravenes the principles governing taxation of costs;***

The trial Magistrate in Civil Suit No. 0106 of 2017 ordered that both parties bear their own costs. On appeal, the trial Judge ordered that the Respondent bears the costs of the appeal. There was no order as to costs in the trial court and as such, sneaking them under item 24 of the bill of costs was unprofessional and inconsistent with the orders of court by the Respondent's Counsel. If the Respondent wanted costs on appeal, he would have raised it as a ground of appeal and presented it for the court's consideration. Failing to raise the issue of costs as a ground of appeal meant that the Appellant had no objection to that orders as to costs and as such, the Respondent should not have sneaked the costs in the trial court onto the bill of costs. This item in addition to items 25-31 are therefore struck out from the bill of costs. The Respondent was awarded costs of the appeal and not the costs in the Magistrates court.

From the foregoing, the costs reflected on the bill of costs relating to the proceedings in the lower court to wit; item 32 which provides for transport on 21 occasions for both the lower court and on appeal, item 33 for Advocate's fuel on 21 occasions for both the lower court and on appeal and item 34 for client's transport on 21 occasions for both the appeal and the

lower court should be taxed to deduct the number of occasions relating to the proceedings in the trial court.

I have considered the entire bill of costs and save for the costs relating to proceedings in the trial Magistrate's court that were sneaked into the bill of costs by the Respondent, I find the costs taxed by the taxing Master to be reasonable and sufficient in the circumstances of the case.

The bill of costs is taxed and allowed as follows;

I have considered Items 1 to 23 and 32 to 35 as they were taxed by the taxing Master and I find them to be reasonably taxed and as such, they are allowed as they were taxed.

Items 24 to 31 are hereby struck out since they relate to proceedings in the trial court yet the Respondent was never awarded costs in the trial court.

The total costs of Ugx 3,130,000/= for items 24 to 31 is hereby deducted from the total award of Ugx 23,194,000/= to allow an award of Ugx, 20,064,000/=

The Respondent is therefore entitled to costs of **Ugx, 20,064,000/=** being costs for Civil Appeal No. 05 of 2014.

No order is made as to costs in the instant appeal because the Appellant did not serve the Respondent.

I so order.

Dated at Masaka this 22nd day of October, 2021.

Signed;



**Victoria Nakintu Nkwanga Katamba**

**JUGDE**