

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

TAXATION APPEALS NO. 08 and 09 OF 2020

(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 44 OF 2020)

(ARISING OUT OF CIVIL SUIT NO. 019 OF 2020)

1. PETER MULIRA
2. SARAH MULIRA (suing as administrators ::::::::::::::::::::::::::::::: APPELLANTS  
Of the estate of the late E. M. K. MULIRA)

VERSUS

WALAKIRA GEORGE ::: RESPONDENT

*Before; Hon Justice Victoria Nakintu Nkwanga Katamba*

**RULING**

The Appellants filed Taxation Appeals No. 08 of 2020, and 09 of 2020 challenging the taxation awards made in Misc. Application No. 44 of 2020 and Civil Suit No. 019 of 2020 respectively.

In accordance with the provisions of Order 11 Rule 1(a) of the Civil Procedure Rules SI 71-1 and on this Court's own motion, the two applications will be consolidated and determined concurrently since they raise similar questions of law, and are between the same Parties.

The Appellants brought the taxation appeals under Section 62 of the Advocates Act and Regulation 3 of the Advocates (Taxation of Costs) (Appeals and References Regulations) seeking orders that the costs taxed and allowed in Civil Suit No 019 of 2020 and Misc. No. 44 of 2020 be revised/reviewed downwards and set aside, and costs of the application be provided for.

The grounds of the Appeals are that the 1<sup>st</sup> Appellant filed Civil Suit No 019 of 2020 against the Respondent for recovery of land comprised in Block 405 Plot 58 Buddu Masaka, an eviction order, Permanent Injunction restraining the Defendant/Respondent from further trespass, general damages and costs of the suit. The Appellant filed Misc. Application No. 44 of 2020 which was determined in favor of the Respondent and a costs of the application were taxed and allowed at Ugx. 6,286,500/=. The Appellant withdrew the suit before it was heard, with costs. On the 23<sup>rd</sup> day of November, 2020, the bill of costs filed by the Respondent was taxed and allowed at Ugx. 17,520,750/=. The Appellant contends that the costs are high, excessive, and unconscionable in the circumstances of the case.

In his affidavit in reply to Taxation Appeal No.08 of 2020, the Respondent opposed the appeal on grounds that the Appellant consented to all the items for instruction fees. That the taxing master awarded Ugx. 16,000,000/= 3.2% of the subject matter which was very fair to the Appellants given that the suit land was valued at Ugx. 500,000,000/=. In reply to Appeal No. 09 of 2020, the Respondent contends that the taxing master awarded instruction fees of Ugx. 4,000,000/= which was very fair to the Appellants.

Both Parties filed written submissions.

In arguing Appeal No. 08 of 2020, Counsel for the Appellants cited the case of National Insurance Corporation Vs. Pelican Services Ltd, Civil Reference No. 13 of 2005 (unreported) which the Court of Appeal restated the principle laid down in the Supreme Court case of Cc Chadran Vs. Kangrow Industries Ltd Civil Application No. 22 of 2002, that the correct approach to be adopted by the taxing officer would be the exercise of an intricate act whereby the taxing officer has to mentally weigh, the diverse general principle which are sometimes against one another, in order to arrive at the reasonable fees. Counsel also cited the case of Airtel (U) Limited vs. Kasonzi Martin (Taxation Appeal 2018/2)[2020] UGHC 406 in which the applicant withdrew the case before it was heard and court stated that before awarding an unusually high sum as instruction fee, court ought to consider the novelty, complexity and deployment of considerable amount of industry by Counsel.

In relation to Appeal No. 09 of 2020, Counsel argued that Item 9(2) of the Sixth Schedule to the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018 provides for instruction fees in interlocutory applications of not less than Shs. 300,000/=. Counsel submitted that awarding Ugx. 4,000,000/= was unfair basing on fees provided for by law.

In response, Counsel for the Respondent submitted that the awards of Ugx. 4,000,000/= and Ugx. 16,000,000/= were just and adequate considering the value of the subject matter which was stated to be Ugx. 500,000,000/=. Counsel relied on the principles of taxation as per the Advocates (Remuneration and Taxation of costs) (Amendment) Regulations, 2018 and as per the Supreme Court case of CC Chadran Vs Kengrow Industries Ltd Civil App. No. 22 of 2002.

#### **Determination of the Appeals;**

I have carefully perused the record of Civil Suit No. 019 of 2020 and Miscellaneous Application No. 08 of 2020, as well as the pleadings and submissions of both Parties.

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**).

It is clear that the Appellants only seek to challenge the awards in as far as the instruction fees taxed and allowed for being excessive. I will proceed to determine the appeal under two issues as follows;

1. Whether the taxation award/costs as to instruction fees of Ugx. 16,000,000/= in Civil Suit No. 019 of 2020 was excessive
2. Whether the taxation award/costs as to instruction fees of Ugx. 4,000,000/= in Misc. Application No. 44 of 2020 was excessive.

Regulation 2 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. Rule 57 of the Advocates (Remuneration and Taxation of Costs) 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.

In the instant case, the value of the subject matter was Ugx. 500,000,000/= as per the sale agreement annexed to the Defendant's written statement of defence. To that end the instruction fees for such a claim would be Ugx. 16,220,000/= as per the provisions of the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2020, sixth schedule.

The taxing master in the instant case taxed and allowed instruction fees of Ugx. 16,000,000/= which the Appellants claim was excessive.

It is important to note that Civil Suit No. 019 of 2020 was withdrawn by the Appellants under Order 25 Rule 1 of the Civil Procedure Rules. The question to determine there is whether the court should award the entire full amount of fees as specified for in the law when the suit has been withdrawn.

A similar question was considered in the case of **Mayers and another versus Hamilton and others [1975] 1 EA at page 13 (cited in Lion Insurance Company Ltd v Kasekende Kyeyune & Lutaya Advocates (Miscellaneous Appeal-2013/358) [2013] UGCommC**

**154 (06 September 2013** where the litigant had withdrawn instructions from one Advocate and instructed another. In that case, the court stated as follows;

*“It would, in my view, be quite wrong if the Appellants were now to receive a full instruction fee, based on the total amount involved in the suit and all the complexities of the suit as a whole, and later, if they succeed against the second plaintiff company, receive a second instruction fee covering largely the same ground. It was said, in **Ellingsen v. Det Skandinaviske Compani**, [1919] 2 K.B. 567, in the judgment of the court prepared by Scrutton, L.J., that “the principle of allowance of costs is that the successful party is to be recompensed the liability he has reasonably incurred in defending himself”. I think the taxing officer was under a duty to consider to what extent the instruction fee related to the claim by the first plaintiff company and to allow only such amount as was appropriate to it. I think, with respect, that the judge was right to refer, as he did, to the second plaintiff company. If any specific justification is needed, it can, I think, be found in the words “all other relevant circumstances” in the first proviso to item (1) of Schedule VI to the Advocates (Remuneration) Order”*

In the instant case, Civil Suit No. 019 of 2020 was not defended to its conclusion since the matter was withdrawn by the Plaintiff before it had proceeded for hearing. The taxing master had the discretion to revise or reduce the instruction fees specified under the law to the extent of how much work had been done by the Respondent`s Counsel in defending the suit.

The taxing master set off Ugx. 220,000/= from the entire instruction fees as per the sixth schedule and awarded Ugx. 16,000,000/=. I find that for matter which was withdrawn, such an award was unjustified and excessive especially considering that all the other activities as conducted by the Respondent`s Counsel were catered for under the different items of the bill of costs.

In that regard, the award of **Ugx. 16,000,000/=** is hereby set aside and reduced to **Ugx. 8,000,000/=** being instruction fees to the extent that the Respondent defended Civil Suit No.

019 of 2020. This is in my view proportionate to the value, importance and the work covered in as far as the Respondent's instructions were concerned.

As for the award of Ugx. 4,000,000/= in Misc. Application No. 44 of 2020, Counsel for the Appellants argued that Item 9(2) of the sixth Schedule to the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018 provides for instruction fees in interlocutory applications of not less than Shs. 300,000/=.

The Respondent had prayed for Ugx. 7,000,00/= as instruction fees for opposing the application and the taxing master taxed the same to Ugx. 3,000,000/=. I do not find this award excessive in any way as the Application proceeded for hearing to its conclusion.

In the final result, the costs taxed and allowed in Miscellaneous Application No. 44 of 2020 are hereby wholly maintained whereas the costs taxed and awarded in Civil Suit No. 019 of 2020 in as far as item (i) to instruction fees is concerned, is hereby set aside and reduced to Ugx, 8,000,000/= (Uganda Shillings Eight Million only)

No order is made as to costs.

I so Order.

Dated at Masaka this 20<sup>th</sup> day of May, 2021.

**Victoria Nakintu Nkwanga Katamba**

**Judge**