

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS TAXATION APPEAL NO. 05 & 06 OF 2021**

**(ARISING FROM MISCELLANEOUS APPLICATION NO. 523 OF 2020)
(ARISING FROM HUMAN RIGHTS PETITION NO. 305 OF 2017)**

**H & G ADVOCATESAPPELLANT/RESPONDENTS
(formerly Kateera & Kagumire Advocates)**

VERSUS

1. INTERNATIONAL AIDS VACCINE INITIATIVE

2. DR. ANATOLI KAMALIRESPONDENTS/APPELLANTS

3. DR. MATT PRICE

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Respondents/Appellants were partially represented by the Appellant/Respondent(Kateera & Kagumire Advocates) in Human Rights Petition No. 305 of 2017, before scheduling the case, the Appellants changed counsel to ENSafrica Advocates. The Petitioner filed a petition in the High court against eleven Respondents including the Appellants, alleging human rights violations arising from the conduct of the study. The Petitioner prayed for an award of compensatory and exemplary/punitive damages amounting to USD 10,000,000 (United States dollars ten million) respectively against the respondents for the violation of the petitioner’s human rights.

The petition was dismissed against all the Respondents in the petition. The Appellant/Respondent (Kateera & Kagumire Advocates) sent an invoice to the 1st Respondent/1st Appellant(International Aids Vaccine Initiative-IAVI) demanding for United States dollars 287,083 as instruction fees for partially representing the Appellants based on the compensatory and exemplary damages as the value of the subject matter of the petition. The Respondents/Appellants disputed the sum billed as excessive. The Appellant/Respondent filed an advocate-client bill of costs and the learned taxing master allowed the bill of costs and awarded

UGX 455,863,014 to the Respondents based on the value of the subject matter of the petition being compensatory, punitive and exemplary damages. Court ordered that the Respondent/Appellant had partially represented the respondents in the petition and awarded them 60% of the said value of the subject matter.

The Respondents/Appellants also appealed against the decision of the taxing master as being erroneous in law since the taxing master awarded the Appellant/respondent instruction fees based on the petitioner's wrongly quantified and awarded claim for general damages as the value of the subject matter.

The Appellant/Respondent (Kateera & Kagumire Advocates) was dissatisfied with the decision of the registrar's award and sought orders that;

1. The Registrar's award of UGX 453, 000,000/= as instruction fees due to the appellant for representing the Respondents in Human Rights Petition No. 305 of 2017, be further enhanced by an additional sum of UGX 86,663,100/=
2. The respondents are liable to interest on the costs awarded to the appellant at the rate of 6% per annum from November 25, 2018 until payment of the said costs in full;
3. The Respondents are liable to pay Value Added Tax on the costs awarded to the appellant;

The Respondents/Appellants, being dissatisfied with the ruling of the learned taxing master filed this appeal supported by an affidavit on the following grounds;

1. The learned taxing master erred in law when she awarded the respondents instructions fees based on the petitioners quantified general damages and awarded the claim on the basis of general damages as the value of the subject.
2. The learned taxing master erred in principle when they failed to apportion instruction fees amongst all the 11 respondents in the petition that the respondents acted for
3. The ward of UGX. 455,863,014 to the respondents as instructions fees for partial representation of the appellants was manifestly excessive inferring an error in principle.

The respondent also filed a cross appeal opposing grant of the application whose salient grounds were are

1. The respondents (appellants herein) are liable to pay interest on the costs awarded to the appellant (respondents herein) at the rate of 6% per annum from November 25th 2018 until payment of costs in full.
2. The registrar's award of UGX 453,000,000 as instruction fees due to the appellant be further enhanced by an additional sum of UGX 86,663,100
3. The respondents are liable to pay value added tax (VAT) on the costs awarded to the appellants

Both parties prayed for the award of costs of the appeal. However, in the course of appeal, the parties entered a partial consent without prejudice to the appeal. The appellants paid USD 42,000 in part settlement of the costs awarded to the respondent by the registrar which also stayed execution of the award pending the determination of this appeal.

The following issues were raised and agreed upon by the parties;

1. What is the value of the subject matter upon which the taxation should be based?
2. Whether the instruction fee allowed should be apportioned between all the respondents in the petition, and if so how?
3. Whether the Advocates are entitled to an award of interest and VAT on the taxed costs?

However counsel for the respondents submitted that during the court hearing the parties agreed that three issues (2, 3 and 4) would be submitted to court for resolution under the appeal and cross appeal. The Respondents submissions were then prepared to answer to three specific issues agreed.

The Appellant was represented by *Mr. Patrick Turinawe* in MA 197 of 2021 and Respondent in Miscellaneous Taxation appeal no. 05 of 2021 while the Respondent was represented *Mr. Dennis Wamala* in MA 197 of 2021 and Appellant in the taxation No. 05 of 2021

What is the value of the subject matter upon which the taxation should be based?

Counsel submitted that the **Advocates (Remuneration and Taxation of costs) Rules**, provides that fees for instructions to defend or oppose a petition where the claim or value of the subject

matter can be determined from the pleadings, settlement, a valuation or the judgment, shall be in accordance with the scale provided.

Rule 9(1) of the 6th schedule of the Rules provides that the basic fee where the value of the subject matter is not ascertainable shall not be less than UGX. 2,000,000.

In **Ezeemoney (U) Limited v. MTN (U) Limited (Taxation Appeal No. of 2016)**, the taxing officer declined to award the instruction fees claimed on the ground that the subject matter of the claim could not be ascertained. The Court ruled that in a claim for damage, the value of the subject matter would be the resultant damage for any cause of action. In that case the subject matter could be discerned from the judgment on the basis of the award of the “resultant damages”

The fact that the appellant wrongly quantified sums for compensatory and punitive damages in her pleadings, the petition was dismissed and not awarded damages; this is because compensatory and punitive damages are assessed and awarded by the court and therefore does not form as subject matter of the petition where they have not been awarded by the court

Damages

Counsel submitted that for general damages the petitioner prayed for reasonable compensation of USD 10,000,000. Damages by their nature are compensatory to an aggrieved party. (**See Brothers SS Co. Ltd v. Young [1939] 1 KB 748 at 756 Black’s Law Dictionary at page 390** describes *compensatory damages as damages such as will compensate the insured injured party for injury sustained and nothing more. General damages are awarded at Courts discretion based on evidence adduced as to the suffering and pain that cannot be computed in monetary terms and pleaded specifically.* .

Counsel further submitted that it was extremely erroneous for the taxing master to consider that the claimed general damages from the subject matter of the petition, when they were not awarded by the court. The petitioner claiming an entirely unprecedented and grossly exaggerated sum for wrongly quantified damages can now be the gift horse for counsel to charge and justify costs against a former client even if the client had not been represented. To allow the

Respondents, the awarded costs would send a wrong signal to clients to be slow in instructing counsel in such matters.

Punitive and exemplary damages

Counsel submitted that the petitioner sought punitive and exemplary damages of the USD 2,000,000. The taxing master did not include the punitive and exemplary damages prayed for in the petition to form part of the subject matter while taxing the bill of costs and did not give reasons why. The punitive damages are meant to punish the violators of the rights and are also determined at the discretion of the court, according to the **Black's Law Dictionary at page 390 and Davis v. Shah (Mohanlal Karamshi) [1957] EA 352, 354 (CA)**

Counsel submitted that an aggrieved party cannot assess and claim such an award as the subject matter of their suit or petition as in the petitioner's case. The said damages are not assessed by the aggrieved party but Court upon assessing the evidence before it. It was therefore wrongful for the petitioner to claim the sum and it cannot be basis of the subject matter of the petition.

Counsel for the Respondents cited **Regulation 57 of the Advocates (Remuneration and Taxation of costs) Regulations [IS 267-4]**. The Regulations No. 1 provides that in all causes or matters in the High court, an Advocate shall be entitled to charge as against his/her clients the fees prescribed in the 6th Schedule of the said regulations. The taxing master is further clothed with authority to tax an advocate client bill of costs under **Regulation 10 (1) of the said Regulations**

Rule 1 (1) (g) 6th schedule (as amended) sets out in plain, unambiguous and unadulterated language, the scale applicable by a taxing master in determining the instruction fee due to an advocate for defending a case commenced by way of petition, where the claim is disclosed in the amount up to UGX. 100,000,000 plus 2% of the amount exceeding UGX. 100,000,000. In **Western Highland Creameries and Anor v. Stanbic Bank Uganda Ltd [No.2] Madrama J**, (as then was) held, *"in relation of the rules under the 6th schedule that where the value of the subject matter can be ascertained, how instruction fees is calculated is prescribed by the rules..."* where the value of the subject matter can be ascertained from the judgment or claim, there is no discretionary power in the award of instruction fees which can be precisely calculated accordingly to the formula.

The taxing master relied on the principle under the 6th schedule in computing the instruction fee allowable under the petition. To the extent therefore, the taxing master did not commit any error of principle. The taxing master however acted contrary to the principles governing taxation as set out above, when restricted her assessment of the appropriate instruction fee, only to the claim for compensation in petition to the sum of US\$ 10,000,000 (UGX. 37,250,000) and wrongly failed to take into account the additional claim disclosed. It is in such regards the sum arises to UGX. 899,220,000 as allowable instruction fees

After evaluating the quantum of legal work expended by the Respondent on behalf of the Appellants in defending the petition prior to withdrawal of instructions, the taxing master found that the Respondent was only entitled to 60% of the allowable instruction fee. On applying the 60% the respondents are entitled to the sum of UGX. 539,532,000 and not that UGX. 453,000,000, thus entitled to an additional sum of UGX. 86,532,000 over and above the amount allowed by the taxing master as the portion of instruction fees due to the respondent.

Counsel submitted that a minimum instruction fee awarded on the basis of the 6th schedule and the monetary claim disclosed in the pleadings cannot be said to be manifestly excessive, where an advocate has appeared in court to represent a party. An award of instruction fee can only be said to be manifestly excessive, if it is well above the minimum threshold set out in the 6th schedule. The respondent does not seek in the cross appeal any award beyond the minimum instruction fee allowed under the said schedule. And pray that because of the circumstances the taxing master's award of UGX. 453,000,000 be enhanced by a further sum of UGX. 86,532,100/=

ANALYSIS

The taxing master correctly in my view determined the value of the subject matter from what the petitioner had speculatively set out in his petition as general damages and punitive damages. The subject matter of the suit is to be determined and later taxed using the prescription under the sixth schedule of the **Advocates (Remuneration and Taxation of Costs) Regulations. Regulation 2** provides as follows:

"The remuneration of an advocate of the High Court by his or her client in contentious and non-contentious matters, the taxation of the remuneration and taxation of costs as between party and

party in contentious matters in the High Court and in magistrate's courts shall be in accordance with these regulations."

And thoroughly explained in the case of **Stanbic Bank Uganda Ltd. v. Western Highland Creameries Ltd & Anor (Taxation Appeal No. 5 of 2013)**.

The appeal at hand, and the submissions by the Appellant show that the amount claimed can be determined from the petition itself. The Appellant claimed for USD 10,000,000 as general damages and USD 2,000,000 as punitive and compensatory damages. As far as the claim for compensatory to an aggrieved party and punishing the violators of the rights, the loss claimed in the petition is Uganda shillings (UGX. 37,250,000) /=. (Take note that this is before the punitive and exemplary damages are added). The conclusion comes from a very clear and simple reading of the Advocates (Remuneration and Taxation of Costs) Regulations, sixth schedule, item 1 (a) (iv) which provides as follows:

"To sue or defend in any 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."

Justice Madrama in **Stanbic Bank Uganda Ltd. v. Western Highland Creameries Ltd & Anor (Supra)** states that;

"The appellant's defended a suit where the value of the subject matter can be determined from the amount claimed in the plaint. For emphasis, the amount claimed is the amount claimed by the plaintiff. The value of the subject matter cannot be determined from the judgment because there was no judgment for the plaintiff and against the defendant."

According to this appeal, the petitioner was not awarded damages in the petition however she had a claim, which now determines the subject matter of the suit, on which the Appellant/Respondent (Kateera & Kagumire Advocates) is basing their appeal. It will be unfair to an advocate not to be paid according to that value specifically stated in the petition all though it have been improper.

The taxing master also erred in law and fact by not determining the subject matter of the suit from the petition i.e. by using the sum of US\$ 10 million plus US\$ 2 million as the value of the

subject matter when the petitioner clearly pleaded the amount claimed in the particulars of damages. The taxing master clearly erred and misdirected herself by discounting the claim for punitive and exemplary damages without giving any explanation of why, remember item 1 (a) (iv) of the sixth schedule to the Advocates (Remuneration and Taxation of Costs) Regulations is mandatory and not discretionary.

The issue is whether an amount has been claimed in the petition, if an amount has been claimed in the petition, the next question is what the amount is? There is no discretionary power given to the taxing master to discount what is claimed. However the taxing master should always be mindful that failure to follow the clear provisions of the law results into the taxing master allowing figures that are too excessive as well as making awards not provided for by the law which may be too low.

Whether the instruction fee allowed should be apportioned between all the Respondents in the petition, and if so how?

Counsel for the Appellant submitted that the taxing master awarded the Respondent 60% of the chargeable instruction fees being UGX. 453,000,000 based on the value of the subject matter being the compensatory damages. Counsel cited the case of **Attorney General v. Uganda Blanket Manufacturers Supreme Court Civil Appeal No. 17 of 1993**, that held, “... *the public interest requires that costs be kept to a reasonable level as not to keep poor litigants out of Court...*” in this case the Respondents partially represented the Appellants in **Misc Application No. 523 of 2020** until the scheduling stage. To award the respondents UGX. 453,000,000 is manifestly excessive in itself and more so when awarded against only the three Appellant an error by the taxing master. The Appellant proposed a sum of UGX. 309, 238, 904 as reasonable and also prayed that the award of the taxing master was being manifestly excessive.

Counsel for the Respondent submitted that there is no legal basis for the Appellant’s submissions that the instruction fee ought to be apportioned between all the 11 respondents to the petition. In the Respondent’s advocate client bill against the Appellant’s, the taxing master was in terms of Regulation 57, only required to consider the monetary value of the claim in the petition vis-à-vis the work done by the Respondent on the Appellant’s behalf. In opposing the petition before

instructions were withdrawn, since the other 8 Respondent to the petition were not parties to the taxation and are not parties to this appeal/cross appeal.

In the alternative and without prejudice to the foregoing, it is not disputed that the 9th Respondent to the petition was unrepresented and did not file any pleadings in answer to the petition. The 2nd, 3rd, and 8th Respondents to the petition were represented by the Attorney General, who not being an advocate, is not entitled to instruction fees under the regulations **(The Inspector General of Government v. Godfrey Magezi (EACJ) taxation Case No. 1 of 2015)**

In the event that the Respondents contend that the Appellant's argument that the instruction fee should be apportioned between all the 11 respondents in the petition defies logic and lays bare the insecurity of their submission under their issue No.1, to the effect that the taxing master erred in relying on the monetary claim disclosed in the petition in arriving at the allowable instruction fee under the petition.

Counsel prayed for the court to equally apportion the costs among the 11 respondents that the Respondent acted for during the course of this matter bearing in mind that the Respondents only partially represented the appellants until the scheduling stage of the petition.

Analysis

In litigation there are winners and losers. When court awards costs to a successful party, it does so to indemnify him for the expense to which he has been put in having to initiate or defend litigation and not to make a profit in litigation to either the litigant or the advocate. Advocate and own client costs are remuneration that an advocate i.e entitled to, in terms of an agreement or mandate with the client.

The purpose of advocate-client costs is not merely to punish the losing party, but to ensure that the successful party will not be out of pocket in respect of the expenses caused to him by litigation. In other words, one purpose of this kind of costs award is to indemnify the successful party in respect of expenses he would normally not be able to recover. However, even costs on the advocate and client scale will not cover all legal expenses of the successful party.

In my view there should be a distinction between costs charged between Advocate and client and costs charged between party to party. The advocate charges his client for his professional services, as well as for his disbursements regardless of whether the client has won or lost the case. Therefore, the advocate is entitled to demand for payment from his client for the professional services performed by him in accordance with the agreement reached between him and his client when the latter hired him. The fee for professional services is the fee which is negotiated between the advocate and the client. When the client first consults with the advocate, the advocate will (or should) explain to his client the basis on which he charges for his services.

The fee for professional legal services will include extra work done which may not be captured in the scale of advocate remuneration and the scale rarely keeps up with inflation. Some advocates charge on basis of time i.e hourly rates while others may charge per execution of the assignment and it may be higher than what the scale provides. The taxing master may have to consider what the advocate agreed with the client in determining the advocate-client bill of costs. An advocate who agreed to a specified sum as fees for work to be done cannot turn around to claim over and above what was agreed by filing an advocate-client bill of costs. Generally speaking, the market dictates the amount of fees a particular attorney is able to charge his client, whatever method of assessment he uses. The clients are at liberty to 'shop around' for a another competent advocate who may offer cheaper rates

The primary principle applicable to a taxation of a bill of costs is that a successful party gets costs as an indemnification for its expense in having been forced to litigate, but that a moderating balance must be struck to afford the innocent part adequate indemnification only within reasonable bounds. In assessing what is reasonable, all circumstances must be taken into account. See ***Hon Ababiku Jesca vs Eriyo Jesca Osuna Misc Applications No. 0004 of 2015, 0031 of 2015 and 0037 of 2015.***

An award of costs on the advocate-client scale may be seen as a 'half-way-house' between an award of costs on the party-and-party scale and an award of costs on the advocate-and own-client scale. Definitely, an advocate-and client costs gives 'little more than a taxation between

party and party' since it will include more legal work not chargeable under the scale like consultations, letters, attendances at chambers and spending long hours explaining something to ones clients by telephone, sending copies of pleadings for perusal and it may include certain 'luxury' services a client has agreed to pay for.

The appellant/respondent (Kateera & Kagumire Advocates) received instructions from the same group of respondents including the present Respondent/Appellants and accordingly filed their responses to the petition. It would only be fair that all respondents they represented share the awarded costs in equal proportion instead of demanding the same from only the three respondents. The liability of the legal costs should be divided equally among them as this will be within the bounds of reasonableness in the circumstances of the case. The court will not lightly interfere with exercise of discretion of the taxing master's and will do so only when the taxing master's view is so materially different to that of the court reviewing the decision as to vitiate the decision.

The appellant/Respondent should have filed one comprehensive bill of costs to enable the court make a meaningful assessment of what every party represented (respondent) would be entitled to pay instead of breaking up the instruction fees among parties. This distorts the sum figure to be paid by each respondent to the advocates.

In order to conclusively deal with matter, it is fair that the award made by the taxing master be maintained without considering the extra amount of \$2,000,000 which would have increased the award significantly.

Whether the Advocates are entitled to an award of interest and VAT on the taxed costs?

Counsel for the Appellant's submitted that the Respondents represented 11 Respondents in the Human Rights Petition No. 305 of 2017 and only partially represented the Appellants in the said petition. In the petition, the Respondents initially represented all the 11 Respondents and later 8 for the respondents. The order of the taxing master is to treat the Appellants as if they were the Respondent's only clients in the matter and to heap all the costs on their heads. (**See Bank of Africa Uganda Limited v. Kayonza Distributors Limited (Civil Appeal No. 21 of 2013)** thus

disclosure should be made as to what the other parties represented by the Respondents have paid.

Counsel for the Appellants submitted that the Respondent prayed for the court to award interest on the unpaid sum at the rate of 6% per annum from 25th November 2018 till payment in full. The taxing master exercised her discretion and declined to award interest on the awarded costs. **Regulation 8 of the Advocates (Remuneration and Taxation of Costs) Regulations** provides for the discretion of the taxing master to award interest on costs. The legal principle is that costs must not be allowed to rise to such a level as to confine access to the courts to the wealthy and the public interest should be taken into consideration in awarding costs (**Ezeemoney (U) Ltd v. MTN (U) Ltd, in Attorney General v. Uganda Blanket Manufacturers Supreme Court Civil Appeal No. 17 of 1993**)

To award interest on costs from November 2018 until full payment of the costs would be excessive and unconscionable in a case where the Respondents partially represented the appellants.

Counsel cited the case of **Kimanywenda Boniface v. Brukam Limited High Court Civil Suit No. 21 of 2015**, the plaintiff sought to be awarded costs with interest thereon at the rate of 24% per annum from the date of taxation of the bill of costs till payments. This led to counsel praying that court follows the decision with emphasis that it is not a normal practice to award interest on costs and doing so would be against public interest that requires costs to be reasonable and also prayed for costs of the appeal and in the court below.

Counsel for the Respondent cited Regulation 8 that an advocate may charge interest at a rate of 6% per annum on his/her disbursements and cost, whether by scale or otherwise, from the expiration of one month from the date of delivery of his/her bill to the client, submitting that the Respondent is entitled to interest on its bill under the above regulation and the taxing master errand in principle in failing to award the same. The Appellant's argue on the basis of **Hassanali v. City Motor Accessories Ltd & Others**, however this decision is wrongly applied to the circumstances of the present matter in so far as it relates to circumstances under which interest may be granted on costs awarded to a successful party under a judgment. It would indeed be

improper and unjust to award interest on costs at the time of judgment. When such costs are yet to be assessed by the taxing master. For the said reasons, interest is rarely awarded on cost due to a successful party under a judgment.

The case cited does not in any way related to interest sought under Regulation 8 during the taxation bill. In such a case, the discretion only granted to an advocate whether or not to claim interest on the taxed costs. The taxing master is not clothed with discretion to award or not to award interest where the same is sought by the advocate. Court ought to grant interest on the taxed costs which have remained unpaid without explanation, for a period of over 2 years since submission of the bill to the appellants. The Appellants have at all material times admitted that the Respondent is entitled to at least UGX. 309,000,000 but they have never bothered to pay the said amount to the respondent on the basis of the foregoing, we invite this court to award the advocates interest of 6% per annum from November 25th/2018 till payment in full.

Counsel submitted that the Respondent's prayer for an award of VAT under the cross appeal has not been challenged at all either in the appellants' written submissions or by way of affidavit in reply and the same is thus deemed to be admitted. The Supreme Court noted that the Finance Act levy 18% on professional fees charged by the advocate and the registrar during taxation is expected to subject such fees to VAT. By reason thereof, the Respondents' cross appeal ought to, in any event, be allowed to the extent of the prayer for an order of award of VAT on the taxed costs.

Analysis

The Appellant/respondent argued that they entitled to interest on the costs as provided by Regulation 8 of the Advocates (Remuneration and Taxation of Costs) Regulations as follows;

An advocate may charge interest at a rate of 6% per annum on his or her disbursements and costs, whether by scale or otherwise, from expiration of one month from the date of delivery of his or bill to the client.

The Taxing Master did not make any pronouncement on the issue of interest and it can be rightly deduced that she ignored it and did not find any merit in the claim for interest.

The court will not lightly interfere with exercise of discretion of the taxing master's and will do so only when the taxing master's view is so materially different to that of the court reviewing the decision as to vitiate the decision. The denial of interest was a question of exercise of judicial discretion considering the peculiar circumstances of this case and this court would exercise restraint in allowing the same on appeal. The interest could not be allowed because the Appellant/Respondent has not produced any evidence on the court record to show that the said amount was ever demanded from the respondents in November 2018.

The demand for VAT ought to have been a consideration if the Appellant/Respondent is registered VAT taxpayer under section 8 of the Value Added Tax Act. The Appellant/Respondent is entitled to VAT on the instruction fees only and not the disbursements embedded in the awarded total costs.

The appeals partially succeed.

The award of costs by the taxing master is maintained or upheld and the same shall attract VAT on instruction fees.

The Respondents/Appellants shall pay VAT on the Instruction/professional fees awarded to the Appellant/Respondent (Kateera & Kagumire Advocates now *H & G Advocates*).

Each party shall bear its own costs for this appeal.

I so order.

SSEKAANA MUSA
JUDGE
22nd August 2022