

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

TAXATION APPEAL NO. 006 OF 2022

5 **(ARISING OUT OF ELECTION PETITION NO. 013 OF 2021)**

MUTEGEKI RONALD ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

TIBAKUNIRWA ROBERT ::::::::::::::::::::::::::::::::::::::: RESPONDENT

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BEFORE HON. JUSTICE VINCENT WAGONA

JUDGMENT

Introduction:

15 The appellant brought this appeal under section 62(1) of the Advocates Act,
Regulation 3(1) of the Advocates (Taxation of Costs) (Appeals Reference)
Regulations S.I 276-5 for orders that:

(a) An appropriate deduction be made to the Certificate of Taxation issued by His
Worship Matenga Dawa Francis, the Taxing Officer at the High Court of
20 Uganda at Fort Portal on 9th February 2022.

(b) That costs of taking out the application be provided to the Appellant.

Background:

The Appellant lost an Election Petition No. 013 of 2021 that was dismissed with
costs awarded to the Respondent. The Respondent filed a bill of costs, which was
25 taxed and allowed at a sum of UGX 53,460,000/= on the 9th of February 2022. The

Appellant being aggrieved with the decision of the Taxing Master lodged this appeal. The grounds of appeal are contained in the Appellant's affidavit and are:

- 5 (a) That the sum of UGX 30,000,000/= allowed by the Taxing Officer in respect of item 2 (instruction fees) was manifestly excessive and unjustified considering the circumstances of the said petition.
- (b) That no matters of complexity, novelty or great importance were proved to have existed to allow such a huge departure from the lower limit of UGX 5,000,000/= set by the remuneration rules for such a petition.
- 10 (c) That the Respondent did not prove that any extraneous, cumbersome or unusual circumstances or difficulties were encountered considering the time, place of hearing, nature of the petition and any other relevant considerations would justify the said order.
- (d) That an amount of UGX 3,000,000/= allowed for item 11 of the bill being costs of transport for two Counsel and facilitation for interviewing witnesses was awarded contrary to the provisions of the remuneration rules since no certificate of two Counsel was awarded in the petition.
- 15 (e) That a sum of UGX 5,000,000/= allowed under item 14 was contrary to the remuneration Rules as well as a sum of UGX 4,000,000/= awarded under item 41.
- 20 (f) That the Taxing Master erred in law and fact when he failed to tax the bill in accordance with the remuneration rules and the principles of taxation to wit, fair value for work and a sense of proportion in order to reach a reasonable, fair and proportionate fees as well as other fees in the bill.
- (g) That the learned Taxing Master failed to exercise his discretion judiciously when he awarded costs that were excessive, unjustifiable and disproportionate
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in the circumstances. That it is fair and equitable to revise the decision of the taxing officer and reduce the costs awarded substantially.

The Application was opposed by the Respondent who intimated that he will raise a point of law when the application comes up for hearing on ground that the summons served had expired. That without prejudice to the same, he averred as follows:

(a) That the learned registrar considered the complexity of the election petition and reduced instruction fees from UGX 70,000,000/= to UGX 30,000,000/= That the Respondent spent more than UGX 30,000,000/= on instructing his lawyers to defend him.

(b) That he also paid in excess of UGX 3,000,000/= on facilitating his two lawyers on record from Kampala to Bundibugyo to interview the witnesses and draft their respective affidavits. That his lawyers were in Bundibugyo for three days where he had to cater for their accommodation, feeding, transport and facilitation throughout their stay. That the sum of UGX 5,000,000/= under item 41 was sufficient in consideration of the circumstances.

(c) That the Respondent and his team were in Fort Portal town throughout the trial where he was spending on feeding, fuel and other expenses where he spent more than the sum allowed in the bill. That the taxation was done fairly and in accordance with the relevant laws and he thus asked court to dismiss the application with costs.

Representation:

The Appellant was represented by M/s Premier Advocates while the Respondent was represented by M/s Newark Advocates. The Appellant filed written submissions while the Respondent did not. I thus considered the submissions by the Appellant and the pleadings extensively in this ruling.

From the pleadings and the submissions, the following issues arise for determination:

(1) Whether the summons served by the Appellant had expired.

5 **(2) Whether the taxation was conducted in accordance with the Remuneration Rules.**

(3) Remedies available.

Resolution of issues:

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Issue One: Whether the summons served by the Appellant had expired.

Summons must be served within 21 days after issuance by Court. In this case there was delay in fixing the application for hearing by Court and thus Court issued an order on the 27th September 2022 extending the Summons and ordering for service
15 of the application together with the submissions upon the Respondent together with the schedule for filing the written submissions. Thus the summons were validated by an order of Court dated 27th September 2022 and thus they were not expired Summons.

20 **Issue Two: Whether the taxation was conducted in accordance with the Remuneration Rules.**

Section 62 (1) of the Advocates Act provides that: *“Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations
25 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.”

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**).

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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. Application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low. (See **Gulu Institute of Health Science versus Bwomu Gerald HCCA No. 163 of 2016**).

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In **The Administrators of the Estate of the Late Barbara Lakeli Vs. JWB Kiwanuka & 3 others, Taxation Appeal No. 003 of 2013**, the Hon. Lady Justice **Emmaculate Busingye Byaruhanga** held thus: *“In this particular case the law granting discretionary power to the taxing master to award costs taking into consideration “all other relevant circumstances” was repealed. It means in my humble view that the taxing master is restricted now only to apply schedule six of the current regulations and award costs only as set out under those regulations. Nothing more nothing less.....In my view a taxing master cannot award costs less than what is stipulated under the rules. What has to be ascertained therefore is the fee chargeable in contentious matters in High Court under the current rules.”*

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I agree with the above position that under the current legal framework, where parties are represented by advocates, the taxing master must conduct the taxation of a bill of costs in strict compliance with the Advocates (Remuneration and Taxation of Costs) Regulations as amended in 2018. Any taxation conducted contrary to the remuneration rules should be corrected and aligned in accordance with the prevailing remuneration rules.

Where the rules allow the taxing master the leverage to determine the amount or set an amount not otherwise provided for in the rules, the taxing master is guided by the case law to ensure the exercise of discretion fairly and judiciously and only make awards that are fair, reasonable and proportionate to the expenses incurred by a successful party in defending or prosecuting a given suit. In the case of **Makumbi and another v Sole Electrics (U) Ltd [1990–1994] 1 EA 306**, Justice Manyindo DCJ, JSC (as he then was) set out the general principles of taxation. In that case, the Taxing Master taxed the fees and disbursements, including the Commercial Transaction Levy at UGX 13,854,000/=. At pages 310 – 311 Manyindo DCJ JCS stated thus: *“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. In a fourth, variable decree, the amount of the subject matter involved may*

have a bearing. Fifth, the Taxing Master has discretion in the matter of taxation but he must exercise the discretion judicially and not whimsically. Sixth, while a successful litigant should be fairly reimbursed the costs he has incurred, the Taxing Master owes it to the public to ensure that costs do not rise above a reasonable level
5 so as to deny the poor access to Court. However, the level of remuneration must be such as to attract recruits to the profession. Seventh, so far as practicable there should be consistency in the awards made.

In this case, I have reviewed the awards complained of against Schedule VI of the
10 Advocates (Remuneration and Taxation of Costs) Regulations as amended in 2018.

Item 2:

The main contention of the appellant on **Item 2** was that that it is excessive. Counsel for the appellant argued that the election in issue where the bill of costs arose fell
15 under the Local Government Act and that the fees chargeable is provided for under Schedule 6 of the Advocates (Remuneration and Taxation of Costs) Regulations. That rule 6 of the regulations provides that the amount chargeable as instruction fees should not be less than UGX 5,000,000/=. Counsel submitted that a sum of UGX 30,000,000/= which was awarded by the registrar was excessive. The Respondent
20 on the other hand maintained that the said amount is fair and that he spent more than the amount awarded.

Consideration by Court:

Rule 6 of the six schedule states thus: “For instructions to present or oppose an
25 election petition, the fee shall be as the taxing officer considers reasonable, taking into consideration the nature, importance, complexity and novelty of the petition, the place where and the circumstances in which work or a part of it was done, the time

expended, the public interest and all other relevant circumstances, but the fees shall not be less than 5,000,000 shillings for petitions under the Local Governments Act and shall not be less than 10,000,000 shillings for petitions under the Parliamentary Elections Act”

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It is clear from the said rule, that the least amount that a taxing officer should award as instruction fees is UGX 5,000,000 for election petitions under the Local Government Act. The Rule empowers the taxing master to award any amount above 5,000,000/= taking into account the nature, importance, complexity and novelty of the petition, the place where and the circumstances in which work or a part of it was done, the time expended, the public interest and all other relevant circumstances. Therefore, the taxing master has the discretion to set any amount that appears reasonable taking into account those considerations.

15 It should be noted that election petitions, not being matters of a routine nature, are considerably technical, they are time bound and require a lot of research. Therefore, in assessing the amount payable as instruction fees, the taxing master should consider these, among other factors.

20 Further, in my view, to ensure consistency in the amounts awarded for matters of this nature, the taxing master should make reference to the range of awards that the Judges of the Court of Appeal have been awarding to parties with similar claims to ensure consistency and make awards within such ranges while being mindful of changed circumstances as applicable. In this regard, I have reviewed a number of
25 decided cases. In **Obiga Kania Vs. Wadri Kassiano Ezati and Anor C.A Civil Reference No. 32 of 2004** the court of appeal upheld a sum of UGX 8,000,000/= as instructions in election petition. In **Lanyero Sarah Ocheng& Anor Vs. Lanyero**

Molly, Court of Appeal Ref No, 225 of 2013, the court of appeal reduced instruction fees of the lead Counsel from 50,000,000 to 15,000,000 and the assisting Counsel from 35,000,000 to 8,000,000/=. In **Dr. Isamat Abraham Vs. Dr. Epetait Francis, Misc. Application No. 43 of 2015**, the **Hon. Lady Justice Walayo** 5 reduced instruction fees from 70,000,000/= to 30,000,000/= as being appropriate. In **Jinja High Court Misc. Appeals No. 1 of 2009 and 2 of 2010 , Electoral Commission & Anor Vs. Hon Abdu Katuntu, the Hon. Lady Justice Mulyagonja** (High Court Judge as she then was) reduced the award of instructions from 60,000,000/= to 25,000,000/-. In **Taxation Reference No. 7 of 2012, Brenda** 10 **Nabukenya Vs. Rebecca Nalwanga Balwana**, the Court of Appeal reduced instructions fees awarded from 120,000,000/= to 15,000,000/= and these were for parliamentary election petitions.

I am alive to the reality that the above were petitions of several years back involving 15 differing places and circumstances in which the work was done, including economic, social and all other relevant circumstances, and it would be unrealistic to apply those amounts to today, except as a guiding benchmark. With the above cited ranges of awards made several years back, I find that the award of UGX 30,000,000/= by the taxing master for work done in recent times and prevailing economic and other 20 operating circumstances, in an election petition under the Local Government Act, was fair, reasonable and proportionate in the circumstances. The award of **UGX 30,000,000/=** under **Item 2** is thus upheld.

Other items

25 **Item 10:** In my view instruction fees per the remuneration rules cover perusals. Under the notes to the 6th schedule, it provides thus: *Unless otherwise provided in this scale, the instruction fee allowed under items 1 to 10 of this*

Schedule, shall include all the work necessarily and properly done in connection with the case which is not otherwise chargeable, including perusals.

The items from 1 to 10 includes item 6 which covers election petitions and the instruction fees includes **perusals**. Therefore, **Item 10** where the taxing officer awarded UGX 1,000,000/= as perusals is contrary to the remuneration rules. This amount of UGX 1,000,000/= awarded under **Item 10** is accordingly set aside.

Item 11: I consider a sum of UGX 3,000,000/= reasonable for a lawyer(s) from Kampala to Bundibugyo to cater for accommodation, feeding, transport and facilitation for three days. These are not provided for under the Remuneration Rules but are covered under disbursements since it is costs that were incurred by the Respondent. I uphold UGX 3,000,000/= awarded under **Item 11**.

Item 14: I consider a sum of UGX 3,000,000/= fair and reasonable to cater for transport for the days Counsel appeared in the petition. This award is upheld.

Items 23 and 33: I consider a sum of UGX 700,000/- for each reasonable to cater for Counsel's transport and attendance to receive a judgment and for taxation of the bill of costs.

For **Items 36 and 37:** there is no evidence on record that Counsel appeared in person to file the answer to the petition. Under **Item 5**, its indicated that it is the clerk who attended court to file an answer to the petition and that amount was awarded by the registrar for the clerks' attendance to file the same. Therefore, allowing items **36 and 37** would be double taxation and the same are hereby taxed off.

Item 41: I find that the sum of UGX 4,000,000/= awarded is harsh and excessive. The Respondent did not attach to the bill evidence of expenditure of the said sum either through receipts for fuel or accommodation and feeding. Bundibugyo is not very far from fort portal where the hearing took place. In the premises I consider a
5 sum of **UGX 1,500,000/=** fair, reasonable and proportionate as transport and lunch for the Respondent throughout the trial.

Item 42: The sum of UGX 2,000,000/= is on the high end and there was no evidence of expenditure of the said amount. I thus consider a sum of UGX **1,000,000/=** as
10 appropriate for the cost of transporting witnesses from Bundubugyo to Fort Portal which is just 80 kilometers.

Items 43 and 45: There was no evidence to support the same. For item 46, the Respondent paid UGX 4500/= plus bank charges as stamp duty for the bill per the
15 receipt attached. I thus tax off 43,000/= from the same and award of **7,000/=** instead.

Item 47: The stamp duty payable and which was paid is UGX 9,000 plus bank charges bringing it to UGX 13,000/=. I thus tax off 7,000/= from the sum allowed and award **UGX 13,000/=**.

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Based on the adjustments made herein above, I accordingly set aside the award made by the Assistant Registrar of UGX 53,460,000/= on the grounds indicated above.

I hereby grant a final award of **UGX 43,533,700/=** as the taxed costs in Election
25 Petition No. 013 of 2021.

The appeal therefore partly succeeds with no orders as to costs.

I so order.

5 Vincent Wagona
High Court Judge
FORT-PORTAL
31.10.2022