THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

TAXATION APPEAL NO. 434 of 22

(Arising from Misc. Cause No. 112 of 2020 and Civil Suit No. 818 of 2017)

SUGAR CORPORATION OF UGANDA LTD ::::: APPELLANT

VERSUS

NSUBUGA CHRISTOPHER BLASIO :::::::::::: RESPONDENT

(Administrator of the estate of the late Stephano Sirasi Mubiru)

BEFORE HON. JUSTICE TADEO ASIIMWE.

RULING

This application is brought under section 62 (1) of the advocates Act Cap 267 Regulation 3 of the Advocates (Taxation of Costs) (Appeals and References) Regulations and Section 98 of the Civil Procedure Act.

The applicant filed this application seeking the following orders;

1. The taxation award of Uganda Shillings 100,000,000/= as instruction fees in Miscellaneous cause no.112 of 2020 arising out of Civil Suit No.818 OF 2017 and VAT of 18777600/= be set aside for being excessive and legally untenable.
2. Cost of Appeal be provided.

This Appeal was brought on the following grounds;

1. That the taxing master erred in law and in fact when she found that miscellaneous cause No.112 of 2020 is an application for consequential orders is an independent suit that does not arise from Civil Suit No.818 of 2017 and hence erroneously awarding 100,000,000/= million as instruction fees and VAT of UGX. 18,777,600/=

2. That the learned taxing master erred in law and factor taken into account that neither the value of the suit land nor its recovery was an issue or question of determination in the application for consequential orders thus erroneously awarding 100,000,000/= million as instruction fees and VAT of UGX. 18,777,600/=.

3. That the learned taxing master erred in law and in fact when she failed to take into account the 6th schedule, paragraph 9 (2) of the Advocates (remuneration and taxation of costs) (amendment) Regulations and the established Principles thus erroneously awarding 100,000,000/= million as instruction fees and VAT of UGX. 18,777,600/=.

In the submissions, the Appellant's Counsel submitted at length but briefly that following civil suit No. 818 of 2017, the respondent filed an application for consequential orders wherein costs were awarded.

That the respondent went ahead to tax the bill of costs in Miscellaneous cause No.112 of 2020 and 100,000,000/= was awarded as instruction fees for the said miscellaneous cause.

That the said application had nothing to do with recovery of land nor the value of land since the same had been conclusively determined by the civil suit.

That therefore, the award by a taxing master was excessive and exorbitant as it disregarded paragraph 9 of the 6th schedule.

In reply, the respondent submitted that a miscellaneous cause is an independent suit and as such instruction fees for the recovered land and is the same value attached to the suit land.

That clearly vacant possession is a substantive cause of action and not a miscellaneous. He concluded by stating that the taxing master in regard to all rules of taxation awarded the right amounts as instruction fees.

RESSOLUSION

From the pleadings and submissions for counsel, the contention in this appeal is the award of excessive instruction fees in an application for consequential orders.

The first question court ought to determine is whether costs can be varied. The established position of judicial practice is that, save in exceptional cases, 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- per **Mulenga JSC, as he then was, in Bank of Uganda v Banco Arabe Espaniol Supreme Court Civil Application No. 23 of 1999.** He further stated that, 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 can be inferred from an award of an amount which is manifestly excessive or manifestly low. And that even if it is shown that the taxing officer erred on 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 Mugenyi vs Hoima District Administration TAXATION APPEAL No. 35 OF 2017.**

For this court to be able to resolve the subject of this appeal, one needs to answer whether an application for consequential orders is an independent suit to consider the value of the land or an interlocutory application to consider paragraph 9 of the 6th schedule.

I agree with the case **of Gladys Nangire kakumu vs mohanal kalisa and another** *where court held that in the premises the only issue is whether an action or consequential relief pursuant to a declaratory order in a concluded suit should be filed in a subsequent fresh suit or maybe commenced as in the current application. This is purely a procedural question of whether the application was properly*

commenced for seeking a consequential order of eviction by notice of motion which is interlocutory instead of by plaint.

The applicant never sought the relief of vacant possession which is a cause of action that accrues to a landlord from time to time where there is someone in illegal occupation of his or her premises.

In the premises, the application was wrongly commenced as an interlocutory application and ought to have been filed instead as a fresh action for vacant possession of premises".

I entirely agree with the above holding. However in the instant appeal although the consequential orders related to vacant possession, counsel for the respondent instituted an application for consequential orders as a miscellaneous cause and not a fresh suit by way of a plaint and he cannot run away from the effect of an interlocutory application as regards instruction fees. Therefore the taxing master erred when he considered the value of the subject matter in a miscellaneous cause.

I find that the taxing master disregarded Rule 1 Part C of the Sixth schedule hence the award is subject to deduction. I will therefore award UGX 2,000,000/= as instruction fees.

Failure to follow the clear provisions of the law resulted into the Taxing Officer allowing figures that were too excessive as well as making awards not provided for by the law.

The mandatory rules of taxation should be followed in taxation proceedings. Odoki JSC as he then was, in the case of **Attorney General vs Uganda Blanket Manufactures SC Civil Application**

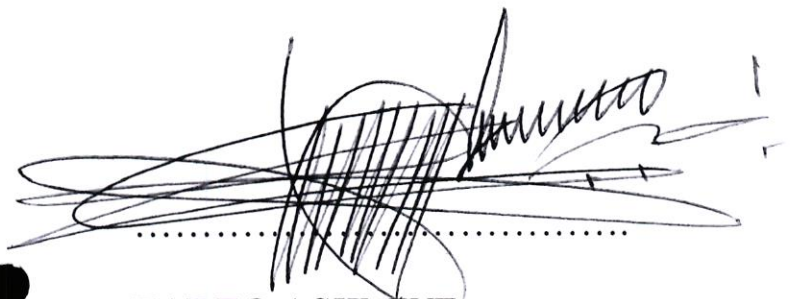
17/1993 observed that, "the intention of the rules is to strike the right balance between the need to allow advocates adequate remuneration for their work and the need to reduce the costs to a reasonable level so as to protect the public from excessive fees…The spirit behind the rules is to provide some general guidance as to what is a reasonable level of Advocates' fees".

On that premise, the appeal is allowed.

In conclusion, the award of 100 million as instruction fees is substituted with an award of 2 million as instruction fees.

Each party shall bear its own costs for this appeal.

I so order.



TADEO ASIIMWE

JUDGE

27/10/2022