

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

TAXATION APPEAL NO. 08 OF 2020

[Arising from Taxation Cause No. 41/2020 & Civil Suit No. 226/2016]

KIRYA G. MAYIMBA :::APPELLANT

VERSUS

YOSHINO TRADING CO. LTD :::RESPONDENT

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this Appeal under Section 62 (1) & Regulations: 2 (a), 3 and 9 of S.I 267-5 for orders that;

- a) Varying a decision of the Learned Taxing Officer, His Worship, Dr. Mushabe Alex Karocho awarding a measly sum of UGX 10,393,400/- in a Bill of Costs vide *Taxation Cause No. 41/2020* by enhancement and/or increment of the sum awarded.
- b) That costs of the appeal be provided for.

The grounds of this application are specifically set out in the affidavit of **Mr. Makoha Devon** which briefly states;

1. The Learned Taxing Officer appears to have acted in the exercise of his judicial discretion with material irregularity or injustice by failure to properly tax all the items claimed in the Bill of Costs in accordance with the appropriate scale of charges in the Advocates (Remuneration and Taxation of Costs) (Amendment Regulations, 2018).
2. The Learned Taxing Officer appears to have erred in the computation of the amounts taxed and allowed in the Bill of Costs aforesaid, and thereby arrived at very unconscionable total sum awarded.
3. An award of a sum of UGX. UGX 10,393,400/- reflected in a certificate of taxation of the said Bill of Costs by the Learned Taxing Officer appear to be unconscionably low.
4. The assessment made by the Learned Taxing Master is erroneous on a matter of principle.
5. The instant appeal has been brought without undue delay.

In opposition to this Appeal the Respondent through **Mr. Asimwe Rogers** the Operations Manager of the Respondent filed an affidavit in reply wherein they vehemently opposed the grant of the orders being sought briefly stating that the matter in dispute was settled on the 7th day of March 2019 between the parties outside Court before the hearing of the case commenced at a sum of Ug.shs. 21,000,000/= (Twenty-One Million Shillings Only). That no formal consent was ever filed before the Court but the Court

ordered that the Respondent pays the Costs of the suit and the Respondent was aggrieved by the said decision and intends to appeal against it.

The parties appeared for taxation on the 17th day of August 2020 before the Deputy Registrar of High Court, on the 21st day of August 2020, the Taxing Master delivered his ruling and awarded a sum of Ug.shs 10,393,400/- to the Appellant.

The Appellant was represented by *Peter John Nagemi* while the Respondent was represented by *Michael Akampurira*.

Both parties filed submissions which have been considered by this court.

In their submissions the Appellant raised the following grounds for court's determination;

- 1. The learned Taxing Officer appears to have acted in the exercise of his judicial discretion with material irregularity or injustice by failure to properly tax all the items in the Bill of Costs in accordance with the legal scale.*
- 2. The learned Taxing Officer appears to have erred in the computation of the amounts taxed and allowed in the Bill of Costs aforesaid and thereby arrived at very unconscionable total sum awarded.*
- 3. The assessment made by the learned Taxing Officer is erroneous on a matter of principle.*

Counsel for the Appellant submitted on ground 2 of the appeal first, then grounds 1 and 3 separately after.

GROUND 2

The learned Taxing Officer appears to have erred in the computation of the amounts taxed and allowed in the Bill of Costs aforesaid and thereby arrived at very unconscionable total sum awarded.

Counsel for the Appellant submitted that the learned Taxing Officer, with due respect committed an error of addition on the items taxed and allowed in the Bill of Costs. The Bill of Costs was computed in a total sum of UGX 38,548,240/= inclusive of a figure of Ugshs. 5,889,240/= representing 18% VAT as legal services are VAT rated under the relevant legal instrument. Subject to the aforesaid, it is worth noting that the learned Taxing Officer disallowed some items claimed in the said Bill of Costs, *to wit*, item numbers 2, 12, 17, 27, 28, 36, 37, 41, 42(b) and 49(b) totaling UGX 25,974,240/=, inclusive of the VAT figure as is evident from the ruling of court in annexure "A" attached to the instant Appeal, if read in conjunction with annexure "B" thereto attached, which is the Bill of Costs.

Counsel for the Appellant finally submitted that the difference between the claimed sum of UGX 38,548,240/= and the disallowed sum of UGX 25,974,240/= would reflect a true and/or accurate figure of UGX 12,574,000/= and not the erroneously certified figure of UGX 10,393,400/= arrived at by the learned Taxing Officer which appears in the said Bill of Costs and thereby invite this Honorable Court to vary the certified figure in the Bill of Costs to UGX 12,574,000/= subject to further additions/enhancement proffered on the other grounds of appeal herein below.

Respondent's counsel submitted that the appeal is arising out of a settlement reached upon by the parties to this suit. There is no consent judgment formally entered in this Honourable court to warrant the Appellant to be granted costs. This matter was filed sometime in February 2016 and the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulation 2018 cannot apply since the law does not act retrospective. My Lord, the principles upon which this Court can interfere with the award of Taxing master are espoused in the case of *Bank of Uganda vs Banco Arab Espanol SCCA No. 23 of 1995* where it was held that an exceptional case is where it is shown expressly or by inference that on assessing and arriving at the quotation of the fee allowed, the taxing officer exercised or applied a wrong principle.

In *Mugenyi vs Hoima District Administration Taxation Appeal No. 35 of 2017*, the Court noted that 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 being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to parties. In the instant Appeal is defective since the Application is supported by an Affidavit of Makoha Devon who deposes in capacity of an Advocate and not a party to this suit. *Regulation 9 of the Advocates (Professional conduct) Regulation* prohibits Advocates from deposing Affidavits in contentious matters. *Order 19 rule 3(1) of the Civil Procedure Rules* allows Affidavit to be confined to such facts as the deponent is able of his or her own knowledge to prove, except in interlocutory application on which statements of his or her belief may be admitted, provided that the grounds therefore are stated. The deponent did not participate in the taxation proceedings and is barred from deposing an Affidavit in such a matter being a contentious one and has not

demonstrated to this Honorable Court how the litigant will be prejudiced by the award given by the Taxing Master.

Respondent's counsel further submitted that the learned Taxing Master was alive at the principles of awarding VAT in Bill of Costs. The Appellant never produced a Certificate of Compliance which is a pre-requisite before the same is awarded. We invite this Honorable Court to uphold the decision of the learned Taxing Master.

In rejoinder, the Applicant Counsel stated that we reiterate our earlier submissions proffered on these grounds of appeal and pray, my Lord, that this Honorable Court be pleased to uphold them by exercising her judicial discretion properly to vary upwards the amount certified by the learned taxing officer to the extent of the amounts of money claimed thereunder, with all due respect.

GROUND 1

The learned Taxing Officer appears to have acted in the exercise of his judicial discretion with material irregularity or injustice by failure to properly tax all the items in the Bill of Costs in accordance with the legal scale.

Counsel for the Respondent submitted that in respect of **item 2**, the Learned Justices of the Supreme Court held in *Patrick Makumbi vs Sole Electric (u) Ltd C.A No. 11 of 1994* that instruction fees should cover Advocates work as well as other work necessary for presenting the case for trial. We submit that perusals are part of the counsel's preparations to represent his client and the Learned Taxing Master rightly disallowed it. In

respect to **items 27 and 28**, the Mediation summary notes are covered under instruction fees and rightly pointed out by the Learned Taxing Master. That the amount of Ug.shs. 300,000/= (Three Hundred Thousand Shillings only) is unfounded since the drawings under schedule 6(2)(a) of the Advocates (Remuneration and Taxation of Costs) SI 267-1 prescribes Ug.shs. 15,000/= (Fifteen Thousand Shillings Only) since the summaries were drafted sometime in 2017 before the amendment of the Advocates rules.

Respondent's counsel further submitted that in respect to **item 41**, Counsel appeared in court sometime in 2016 for hearing the Application. Under **Regulation 5(c), Advocates (Remuneration & Taxation of Costs SI 267-1** attendance of an advocate is Ug.shs. 10,000/= (Ten Thousand Shillings only) amount of Ug.shs. 100,000/= (One Hundred Thousand Shillings only) claimed is not provided for. The Appellant has not adduced proof that he spent 2 hours in court leaving an application. **Item 41(b)**, a sum of Ug.shs 100,000/= (One Hundred Thousand Shillings Only) is reasonable since the attendance was made before the amendment of the Advocates Remuneration Rules and there is no proof that he spent 2 hours in court. That the Learned Taxing Master exercised his discretion to award the said amount. The Appellant did not provide proof of the expenditure incurred, the Taxing Master rightly awarded the amount of Ug.shs. 30,000/= (Thirty Thousand Shillings Only). We invite this Honorable court to uphold the

award given by the Taxing Master since he rightly applied the provision of the law.

GROUND 3

The assessment made by the learned Taxing Officer is on a matter of principle.

Counsel for the Respondent submitted that item 17 was rightly disallowed by the Taxing Master since it is covered under instruction fees. (See the case of **Patrick Makumbi (supra)**. Under **schedule 6(1)(4) of the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulation 2018**, the Appellant is entitled to 85% of fees chargeable. The Appellant is entitled to Ug.shs. 8,834,390/= (Eight Million Eight Hundred Thirty-Four Thousand, Three Hundred Ninety Shillings Only) as provided above and as such we invite this Court to uphold our submission. It is their submission that the Appellant has no basis for which this Honorable Court can grant him costs in a matter which is still pending before court for determination since there was no consent filed, in the taxing master rightly applied the principles to tax the Appellant's bill of costs. The application is incompetent for being supported by a defective affidavit and as such this court should be pleased to dismiss this Appeal with costs.

Court's Analysis

In the Supreme Court, the circumstances under which a Judge of the High Court may interfere with the Taxing officer's exercise of discretion in awarding costs were restated in the case of *Bank of Uganda v Banco Arabe Espanol, Civil Application No.23 of 1999 (Mulenga JSC)* to be the following;

"Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that 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. Consequently, 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.

Secondly, 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 is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.

Thirdly, 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 would cause injustice to one of the parties.

The principles of taxation of Advocates' bills were furthermore outlined in the case of *Nicholas Roussos v Gulamhussein Habib Virani SCCA No. 6 of 1995*, which were taken from the case of *Makula International Ltd v Cardinal Nsubuga and Another [1982] HCB. 11* as follows;

- i. *The court will only interfere with an award of costs by the taxing officer if such costs are so low or so high that they amount to an injustice to one of the parties.*
- ii. *Costs must not be allowed to rise to such a level so as to confine access to the courts only to the rich.*
- iii. *That a successful litigant ought to be fairly reimbursed for costs he or she has to incur.*
- iv. *That the general level of remuneration of advocates must be such as to attract recruits to the profession, and finally,*
- v. *That as far as possible there should be some consistency in the award of costs.*

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 Manufacturers 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.”*

This Court as an appellate court notes that, each case has to be decided on its own peculiar facts and circumstances. In the case of ***Electoral Commission & Another vs Hon Abdul Katuntu HCMA No. 001 of 2009*** which cited the case of ***Patrick Makumbi & Another vs Sole Electronics***. The court stated that there is no mathematical or magic formula to be used by taxing master to arrive at a precise figure. *“Each case has to be decided on its own merits and circumstances. For example, lengthy or complicated case involving lengthy preparation and research will attract higher fees. Fourth, in a variable degree, the amount of the subject matter involved may have a bearing...”*

I have reviewed the awards on the different items as pointed out by counsel and find that the taxing officer rightly applied the provisions of the law. The learned taxing officer properly applied his mind and the law when he disallowed items 2, 12, 17, 27, 28, 36, 37, 41, 42(b), and 49(b). I also find that the some of the items are not tenable or repeated and others were indeed excessive especially photocopies.

The learned taxing officer was alive to the fact that the matter ended in a settlement or an out of court settlement, although the plaintiff's counsel was sidelined in the whole process. The matter was settled in a sum of 21,000,000/= and this is not disputed, it would be an absurdity to tax a bill of costs over and above the amount settled and agreed upon by mutual consent of the parties. The fair value of the bill of costs by the plaintiff for professional work done was arrived at by the taxing officer.

There are no rigid rules to be applied in taxation matters but the circumstances of the case must be considered in order to balance the interests of the parties. Those special circumstances like in the present case are paramount in guiding the taxing officer in order to give a reasonable award. The purpose of taxation is not to redress parties unhappiness in getting so much or paying so low but to ensure fair and reasonable remuneration for work done. So long as a reasonable sum is made, the taxing officer has exercised his discretion reasonably and no party has suffered any prejudice.

On that premise, the appeal is dismissed.

Each party shall bear its own costs for this appeal.

I so order.

SSEKAANA MUSA

JUDGE

18th March 2022