

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**TAXATION APPEAL NO. 019 OF 2022**

**Arising From Taxation Application No. 31 of 2022)**

**ARISING FROM ELECTION PETITION NO. 004 OF 2021**

**MUHUMUZA SIMON KATEEBA :::APPELLANT**

**VERSUS**

**UGANDA NATIONAL EXAMINATIONS BOARD :::::::::::::::::::::::RESPONDENT**

**BEFORE: HON. JUSTICE VINCENT EMMY MUGABO**

**JUDGMENT**

This appeal is made under section 62 of the Advocates Act and Regulation 3 of The Advocates (Taxation of Costs) (Appeals and References) Regulations S.I 267-5, wherein the appellant seeks to set aside an award of **UGX 25,251,500/=** following the taxation of the bill of costs, as being manifestly excessive and contrary to the taxation rules in the circumstances of the case.

The background to the appeal is that the appellant filed Election Petition No. 004 of 2021 against the respondent, Hon. Tom Butime Ateenyi and The Independent Electoral Commission contending that Hon. Tom Butime who was the elected Member of Parliament for Mwenge Central County was illegally nominated based on an alleged inconsistent academic verification letter issued by the respondent. The petition was heard and dismissed with costs to the respondent which filed its bill of costs that was taxed and allowed at UGX 25,251,500/=. This award is sought to be set aside.

The supporting affidavit of Muhumuza Simon Kateeba brought out the following grounds of appeal;

- i. The learned taxing officer erred in law and in fact when he failed to exercise his discretion judiciously awarding a sum of UGX 20,000,000/= as instruction fees which was excessive in the circumstances and contrary to the taxation rules
- ii. The election petition No. 004 of 2021 was not complex to warrant an award of UGX 20,000,000/= as instruction fees
- iii. The learned taxing officer erred in law and in fact when he allowed items 18, 19, 24, 29, 30, 31, 32, 37, 38, 40 and 41 of the bill with no dates indicated when the alleged activities occurred thereby rendering the bill fatally defective
- iv. That the respondent has threatened the appellant with execution in respect to the

The respondent filed an affidavit deposed by Mikka Eriya, an Advocate with MMAKS Advocates in reply to the appeal and contended among others that;

- a. In the election petition, the respondent was not a nominal party but a necessary party whose statutory power to issue verification letters was in dispute which was the central issue for determination
- b. The taxing officer applied well settled and reasoned taxing principles in arriving at the instruction fees being contested
- c. The award on items 40 and 41 of the bill for the amounts of UGX 3,000,000/= and UGX 500,000/= was in consideration of the number of times counsel for the respondent and a clerk had to travel from Kampala to Fort Portal to attend to the petition which is not disputed
- d. Items 37, 38, 39, 40 and 41 of the bill relate to disbursements for expenses incurred on the respective dates indicated in the bill of costs
- e. Items 18, 19, 24, 29, 30, 31 and 32 were incurred and thus rightfully awarded and a misnomer in the dates cannot be visited on the respondent.

## **Representation and hearing**

At the hearing of this appeal, the appellant is self-represented as an advocate from KRK Advocates. The respondent is represented by Mr. Kizito Derrick of MMAKS Advocates. Upon the direction of this Court, both parties filed written submissions which are considered in this judgment.

## **Preliminary matters**

In his written submissions, counsel for the respondent stated that the Chamber Summons in this appeal was served on the respondent out of time. That the summons was endorsed on 29<sup>th</sup> March 2022 by the registrar of the court but the same was served on 24<sup>th</sup> January 2023, over 300 days from the date of its issuance which contravenes the provisions of **Order 5 rule 2 of the Civil Procedure Rules** on service of summons with 21 days of issuance. Counsel prayed that the appeal be struck out with costs.

I have considered the submissions of the respondent's counsel on this point and I note that the requirement for timelines within which to serve summons is to guide the speedy administration of justice. The requirement to serve summons within 21 days under **Order 5 Rule 1(2)** of the Civil Procedure Rules is mandatory. An applicant who does not comply with this requirement does not entirely lose the right to serve the summons. He may apply to the court to extend the time under that rule within a period of 15 days from the date of expiry of the summons. The applicant is required to furnish sufficient reason for his failure to serve the summons within the stipulated time.

However, it has been recorded in several decisions including the case of **Rashida Abdul Karim & Another Vs Suleiman Adrisi HCMA No. 009 of 2017** that in a deserving case, the court may rightly exercise its discretion to overlook the failure to comply with the rules of procedure,

upon such conditions as it may deem fit to guard against abuse of its process and to avoid a multiplicity of proceedings. The present appeal could be such a deserving case. It appears that the registrar of the court endorsed the summons before the date for hearing the same was appended. I will overlook this objection and determine the appeal on its merits.

### **Consideration of the appeal**

#### The scope of an appeal from a taxation order;

The circumstances in which a Judge of the High Court may interfere with the Taxing Officer's exercise of discretion in awarding costs generally are;

- i. Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters which taxing Officers are particularly fitted to deal with and the court will intervene only in exceptional circumstances.
- ii. The fee allowed was higher than seemed appropriate, but in a matter which must remain essentially one of opinion; it was not so manifestly excessive as to justify treating it as indicative of the exercise of a wrong principle. (See ***Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492*** and ***Bank of Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999***).

Taxation of bills of costs is not an exact science. It is a matter of opinion as to what amount is reasonable, given the particular circumstances of the case, as no two cases are necessarily the same. The power to tax costs is discretionary but the discretion must be exercised judiciously and not capriciously. It must also be based on sound principles and on appeal, the court will interfere with the award if it comes to the conclusion that the Taxing Officer erred in principle, or that the award is so manifestly excessive

as to justify treating it as indicative of the exercise of a wrong principle or that there are exceptional circumstances which otherwise justify the court's intervention.

The fundamental principle of costs as between party and party is that they are given by the court as an indemnity to the person entitled to them; they are not imposed as punishment on the person who must pay them. Party-and-party costs are in effect damages awarded to the successful litigant as compensation for the expense to which he has been put by reason of the litigation (see ***Malkinson v. Trim [2003] 2 All ER 356***). The rationale for the award was explained by Justice Cumming in ***Fullerton v. Matsqui, 74 B.C.L.R. (2d) 311***,

Having stated as above, I now delve into the particular grounds upon which this appeal lies.

Excessive instruction fees:

The appellant argued that under **Regulation 6 (6<sup>th</sup> Schedule) of The Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018** (hereinafter the regulations) provide an amount not less than UGX 10,000,000/= as instruction fees to defend an election petition but the learned taxing officer awarded UGX 20,000,000/= without justification which amount is manifestly excessive when the petition was an ordinary one with only four issues for determination with nothing novel or complex. Counsel relied on the case of ***Lanyero & another Vs Lanyero Court of Appeal Reference No. 255 of 2013*** where Justice Kakuru (RIP) stated that costs which are excessive have a chilling effect on persons present and future who have an interest in standing for election.

Counsel for the respondent argues that the amount of UGX 20,000,000/= as instruction fees is reasonable considering the importance and novelty of

the question to be determined in the petition and the taxing officer also took into account that the respondent is based in Kampala and hired legal counsel in Kampala. Counsel relied on the case of ***Bank of Uganda Vs Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999*** to argue that save for exceptional circumstances, a judge should not interfere in the assessment of what the taxing officer considers to be reasonable.

I agree with the authority cited by counsel for the respondent. See also ***Auditor General vs. Ocip Moses and Others Taxation Reference No. 089 of 2014***. It is a well-established guiding principle, that in all taxation appeals, the Judge ought not to interfere with the assessment of what the taxing master considered to be a reasonable fee unless the award is considered manifestly excessive, exorbitant and without any legal or factual justification. It is generally accepted that questions which are of quantum of costs are matters which the taxing master is particularly suited to deal with and in which he or she has more experience than the Judge. The Judge will not alter a fee allowed by a taxing master merely because in the Judge's opinion he or she should have allowed a higher or lower amount.

I am alive to the fact that **Regulation 6 (6<sup>th</sup> Schedule) of the Regulations** provide for a minimum of UGX 10,000,000/= as instruction fees to defend an election petition. In his ruling, the Taxing Officer stated that the instruction fees at UGX 20,000,000/= are fair and that he would not interfere the same.

In the case of ***Attorney General Vs Uganda Blanket Manufactures SCCA No. 17 of 1993***, court 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".*

It is my considered opinion that an award of UGX 20,000,000/= to defend a petition where the rules provide for a minimum of UGX 10,000,000/= is not excessive and I will not interfere with this assessment.

#### Items 40 & 41

Item 40 is in respect of counsel's transport to and from Kampala to fort portal and accommodation on four occasions. On these occasions, there was the scheduling and hearing of the petition, to tax the bill and to receive a taxation ruling. Allowed at UGX 3,000,000/=. Item 41 is in respect to a clerk's transport to and from Kampala to serve court process on all parties on several occasions. Allowed at 500,000/=.

The appellant argued that there was no evidence from the respondents that they ever incurred such expenses and the dates they were incurred were not mentioned.

Counsel for the respondent argued that the items were taxed in accordance with **Regulation 47(2)** of the regulations. In addition, that **Regulation 51** of the regulations only enjoins a party to produce vouchers for disbursements where the taxing master orders so. Counsel noted that the taxing master judiciously exercised his discretion.

I agree with the submission of the respondent's counsel that under Regulation 51, the vouchers shall be produced if required by the taxing officer. Their absence when not required does not invalidate the taxation. Unless the appellant contends that counsel for the respondent never appeared for scheduling or hearing of the petition or that he did not appear for taxation or that the clerk did not serve the court process, transport and

accommodation must have been incurred. Again, the assessment of the taxing officer will not be interfered with in this regard.

The costs allowed under items 18, 19, 24, 29, 30, 31, 32, 37, 38, 39, 40 and 41 did not indicate dates when they took place.

The appellant submitted that the items listed above did not indicate when the events took place and it is therefore impossible for anybody to verify and satisfy himself that the alleged activities ever took place. He relied on regulation 47 that provides for the manner in which a bill of costs should be presented and argued that the dates are a must. He also relied on the case of ***Nalunga Norah Vs Sendegeya & Nalugwa Safina HCCA No. 71 of 2008*** to argue that failure to indicate the dates rendered the bill fatally bad because there is no way a taxing officer could tell whether the events claimed ever took place.

Counsel for the respondent argues that the appellant's assertion is diversionary since items were charged on 25<sup>th</sup> March 2022 when they were incurred. Further that items 37, 38, 39, 40 and 41 relate to disbursements for expenses incurred throughout the course of the hearing of the petition such as counsel's transport. Counsel argued that in any case, a misnomer in the dates cannot be visited on the respondent.

I note that it is critically important for a drafter of a bill of costs to indicate dates when the expenses captured in the items were made. This is to assist the taxing officer to ascertain that they were actually incurred as claimed in the bill.

I will consider each item as disputed by the appellant to confirm whether they were taxed in accordance with the Regulations. I need to re-emphasize that the Regulations provide a guide to be followed by the taxing officer but



the officer still retains the discretion to award amounts that he considers reasonable and for expenses reasonably spent in litigation.

- Items 18-19 – the order was actually extracted and is on court record. Item allowed as taxed
- Item 24 – the bill of costs was actually drawn and there is no need to state the date when it was drawn when the appellant appeared and was heard on the same. Item allowed as taxed.
- Item 29-32 – on item 29, counsel for the respondent attended court to tax the bill. Regulation 12 (6<sup>th</sup> Schedule) provides for UGX 100,000/= per hour of attendance. Item 30 was not allowed. Certificate of taxation was extracted and the taxing officer rightly allowed the same.
- Item 37, 38, 39 – 37 and 38 relate to filing fees. Unless the appellant argues that they were not paid, they are allowed. 39 was not allowed by the taxing officer.
- Items 40, 41 – earlier discussed.

I find that most of the items on the respondent's bill of costs drawn and taxed to scale and I have no reason to interfere with the taxing officer's award of the same.

In the final result, this appeal fails and is hereby dismissed with no order as to costs. The award of the taxing officer is upheld. The appellant's prayer for stay of execution is declined.

It is so ordered

Dated at Fort Portal this 28<sup>th</sup> day of April 2023



**Vincent Emmy Mugabo**

**Judge.**

Court: The Assistant Registrar shall deliver the judgment to the parties.

A handwritten signature in black ink, appearing to read 'Mugabo', written in a cursive style.

**Vincent Emmy Mugabo**

**Judge**

28<sup>th</sup> April 2023