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The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Taxation Reference No. 0024 of 2021

(Arising out of Misc. Cause No. 010 of 2021)

10 Adupo Florence ..... Applicant

Versus

Atuto Jacinta ..... Respondent

Before: Hon Justice Dr Henry Peter Adonyo

Ruling:

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The Application:

This is an application brought under section 98 of the Civil Procedure Act, Order 50 Rule 8 and Order 52 rules 1 & 2 of the Civil Procedure Rules for orders that the taxing masters taxation ruling arising out of Miscellaneous Cause No. 10 be set aside and costs of this application be provided for.

20 The grounds of the application as stated in the application and further expounded in the supporting affidavit are that the award of costs of Ug. Shs. 11,640,000 to the respondent in Misc. Cause No. 10 of 2021 was made in disregard of the relevant applicable laws and the amount is manifestly too high and excessive.

25 That the learned taxing master erred in law and fact when she awarded costs in respect of item 1 of the bill of costs at Ug. Shs. 10,000,000 without considering that Misc. Cause No. 10 of 2021 was an application for a recount not an election petition.

5 In reply, the respondent stated that the application was a non-starter and would at the earliest moment raise preliminary objection on points of law. That the amount of 10,000,000 was arrived at as instruction fees by consent of the applicant's counsel.

10 That the taxing master strictly observed the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations and Misc. Cause 10/2021 was a parliamentary election matter and was treated as such by the taxing master.

In submissions, counsel for the applicant M/s Omongole & Co. Advocates submitted on three issues; to wit;

- 15 1. Whether the applicant's application for a vote recount amounts to an election petition?
2. Whether the learned taxing master erred in law in awarding the respondent Ug. Shs. 10,000,000 as instruction fees for defending an applicant in a vote recount?
- 20 3. What remedies are available to the applicant?

Counsel for the applicant on the first issue submitted that the applicant's application for a vote recount does not fit in the definition of an election petition since it was filed before the Soroti Chief Magistrate Court by way of Notice of Motion, brought under section 55(1)(2)(3) of the Parliamentary Elections Act 2005, section 98 of the CPA and Order 52 of the CPR and not a petition in the High Court as required under section 60 of the Parliamentary Elections Act 2005. Counsel relied on section 1, 60 & 55 of the Parliamentary Elections Act, Rule 3(c) and 4 of the Parliamentary Election (Interim Provision) (Election Petitions) Rules S.I  
30 141-2.

5 Counsel prayed that court finds that the application was a vote recount and not an election petition and the costs awarded for an election petition were wrongly awarded.

Regarding the second issue counsel submitted that Rule 6 of the Sixth Schedule to the Advocates (Remuneration and Taxation of Costs) Regulations S.I 267-4 as amended in 2018 provides inter alia that

**“For instructions to present or oppose an election petition, the fee...shall not be less than 10,000,000 shillings for petitions under the Parliamentary Elections Act”**

Counsel further submitted that the applicant in her affidavit under paragraphs 6,7,8 & 9 states that the taxing master delivered her ruling on taxation on the 24<sup>th</sup> of May 2021 awarding the 2<sup>nd</sup> respondent a total of Ug. Shs. 11,640,000 as costs and specifically awarding Ug. Shs. 10,000,000 as instruction fees to defend the application for a vote recount. Counsel prayed that having resolved that the application for recount does not amount to an election petition, this court finds that the taxing master wrongfully awarded instruction fees of Ug. Shs. 10,000,000.

Finally, with regard to remedies available to the applicant counsel submitted prayed for a variation of the instruction awarded under rule 9(1) of the Sixth Schedule to the Advocates (Remuneration and Taxation of Costs) Regulations S.I 267-4 as amended in 2018.

Counsel additionally submitted that it is trite that a judge should not interfere with the assessment of what the taxing officer considers to be a reasonable fee save in exceptional circumstances.

30 Counsel relied on *Nalubale Ssali v J.W.B Kiwanuka & 3 Ors Taxation Appeal No. 003 of 2013 (2020) UGHCLD* and *Gulu*

5 ***Institute of Health Science v Bwomu Gerald HCCA No. 163 of 2016.***

Counsel submitted that the taxing master applied the wrong principle by awarding an excessive amount for defending an application for a vote recount instead of the 2,000,000 provided under Rule 9(1) of the Sixth  
10 Schedule to the Advocates (Remuneration and Taxation of Costs) Regulations S.I 267-4 as amended in 2018 and this is an exceptional case with warrants interference by a Judge of the High Court.

Counsel for the respondent did not file submissions despite being notified of the same.

15 Resolution of Application:

This taxation reference arises from Misc. Cause No. 10 of 2021 filed in the Chief Magistrates Court of Soroti, this was an application by the applicant for a vote recount of all ballots in Kapelebyong District Parliamentary elections held on 14<sup>th</sup> January 2021.

20 The application was dismissed with costs to the respondent and the bill of costs was taxed and allowed at Ug. shs. 11,640,000 with the instruction fee allowed at Ug. Shs. 10,000,000.

The applicant dissatisfied with the taxed costs specifically the instruction fees filed this tax reference.

25 The main issue here for determination is whether the taxing master was right to award Ug. Shs. 10,000,000; an amount reserved for election petitions as instruction fees for defending an application for a vote recount.

Counsel for the applicant distinguished an application for a vote recount  
30 from a petition under the Parliamentary election laws.

5 **Section 1 of the Parliamentary Election Act** defines an election petition as a petition filed in accordance with section 60 of that Act.

Section 60 provides inter alia that an election petition shall be filed in the High Court.

Further the **Parliamentary Elections (Interim Provisions) (Election Petition) Rules under Rule 3(c)** define a petition to mean  
10 an election petition supported by an affidavit.

**Rule 4** further provides for the form of the said petition to be in Form A in the schedule to the Rules.

From the foregoing it is clear that the Parliamentary Election laws are very  
15 specific as to what constitutes an election petition and where it may be filed.

The matter from which this taxation reference arises was a Miscellaneous Cause, an application for a vote recount under **section 55 of the Parliamentary Election Act** and it was by way of Notice of Motion  
20 supported by an affidavit filed in the Chief Magistrates Court, not a petition in Form A filed in the High Court.

There is a latent difference between an application for a vote recount under **section 55** and an election petition under **section 60 of the Parliamentary Election Act**. The Taxing master ought to have  
25 considered these differences when awarding costs in Misc. Cause No. 10 of 2021.

The **sixth schedule to the Advocates (Remuneration and Taxation of Costs) Regulations S.I 267-4** as amended in 2018 under **Rule 6** provides thus;

5           **“For instructions to present or oppose an 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  
10           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  
15           shillings for petitions under the Parliamentary Elections  
Act”

This clearly applies to election petitions and what amounts to an election petition has already been discussed above.

The taxing master therefore ought not to have used this provision in taxing the bill of costs arising from an application for a vote recount, rather she  
20           should have used **Rule 9 (1) of the Sixth Schedule** which covers other matters not specified in the schedule such as an application for a vote recount.

**Rule 9 (1) of the Sixth Schedule** provides that;

25           **“For instructions to sue or defend in any case not provided for in this Schedule, the fees shall be reasonable but shall not be less 2,000,000 shillings.”**

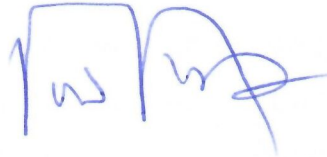
With the guidance from the above rule and her discretion she would have granted a less amount as opposed to an excessive Ug. shs. 10,000,000 she awarded when she considered that the application for a vote recount fell  
30           under the ambit of an election petition.

5 The taxing master while acknowledging that the **Advocates (Remuneration and Taxation of Costs) Regulations** were silent on vote recounts should have gone further to **consider Rule 9(1) of the Sixth Schedule** which covered other proceedings not provided in the schedule.

10 Arising from the clear provision of the two laws above and their distinctive provisions and relevancy, I would accordingly find that the award of Ug. Shs. 10,000,000 as instruction fees in the taxed bill of costs arising from Misc. Cause No. 10 of 2021 was excessive and not in accordance with the law.

15 The sum the award of Ug. Shs. 10,000,000 as instruction fees in the taxed bill of costs arising from Misc. Cause No. 10 of 2021 is consequently set aside and a sum of 2,000,000 awarded in its place.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

17<sup>th</sup> January 2023

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