

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**TAXATION APPEAL NO. 18 OF 2020**

**(ARISING FROM Taxation NO.91 OF 2018 Itself arising from Civil Suit No. 110 of 2018)**

**HON. MWINE MPAKA RWAMIRAMA----- APPELLANT**

**VERSUS**

- 1. MTN (U) LTD**
- 2. BANK OF UGANDA----- RESPONDENTS**
- 3. UGANDA COMMUNICATIONS COMMISSION**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is a reference under section 62 of the Advocates Act, from a decision of the taxing officer in arising from Taxation No. 91 of 2018, wherein the 1<sup>ST</sup> respondent's bill of costs was taxed and allowed at the total sum of Shs 6,374,300/=.

In this reference the appellant contested the entire award of the bill wit;

The decision of the Assistant Registrar/Taxing Master to tax and allow the Bill of costs in the sum of 6,374,300/= be set aside.

The grounds upon which this application is premised are set out in the chamber summons and also in the affidavit of EDDY OKUMU a lawyer working with Akampumuza & Co. Advocates briefly states as follows;

1. There is an error apparent on the face of the record.

2. That the learned Taxing Officer erred in law and fact when she abdicated her public duty to tax the 1<sup>st</sup> respondent's bill of costs judicially in accordance with the law.
3. That the Learned Taxing Officer erred both in law and in fact in awarding costs of Shs. 6,374,300/= which were not ordered in Civil Suit No. 110 of 2018.
4. That the Learned Taxing Officer erred in law and fact in awarding the Respondent the sum of 6,374,300/= as cost which were manifestly excessive in the circumstances

The background to this Appeal/application is that the plaintiff sued the respondents and filed along an application for temporary injunction. The court heard the temporary injunction and dismissed the same with costs.

The appellant after the dismissal of the application for temporary injunction decided to file a withdrawal with no order as to costs and indeed the court endorsed the same.

The 1<sup>st</sup> respondent decided to file a bill of costs in respect of Miscellaneous Application 162 of 2018.

The appellant was represented by *Dr James Akampumuza* while the 1<sup>st</sup> respondent was represented by *Ferdinand Musimenta* holding brief for *Micheal Mafabi*.

The appellant had contended that the court did not award any costs in the matter after it had been withdrawn by counsel for the appellant. This is not in dispute that the withdrawal was made without costs, however, the earlier application for temporary injunction was dismissed with costs to the respondents and the same was taxable.

The argument of counsel for the appellant is totally misconceived and devoid of merit and it is intended to mislead or confuse court in respect of a clear order made by this court.

Some of the pertinent principles applicable to review of taxation in applications of this nature are as follows;

Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer consider being a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters which the taxing officer is particularly fitted to deal, and in which he/she 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 the 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 ***Bank of Uganda vs Banco Arabe Espanol Supreme Court Civil Application No. 23 of 1999***

The appellant is contesting the sum of 6,374,300/= awarded for the entire bill as being excessive. This was an application for temporary injunction and there is no consideration for the award based on the value of the subject matter. The taxing officer was merely exercising her discretion in arriving at the award. This court as an appellate court in this matter finds the award of 6,374,300/= as being a reasonable and fair award. It is not manifestly excessive as counsel for the appellant has contended.

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...”*

In the final result the award of 6,374,300 for the entire bill of costs is a fair and reasonable award.

In the final result for the reasons stated herein above this appeal/application fails and is dismissed with costs.

It is so ordered.

**SSEKAANA MUSA**

**JUDGE**

**31<sup>st</sup> March 2023**