

On all these, the 1st Respondent's specific reply is that the taxing master was right in the exercise of his jurisdiction; and properly taxed the bill.

I have carefully looked at the bills as taxed. I have also looked at law applicable. I agree with Respondents that appeals in the High Court regarding taxation matters are governed by "the Advocates Remuneration and Taxation of costs Rules SI 267-4. I agree with Respondents that the quoted case of **AG. V. Uganda Blanket Manufacturers Civil App. 17/93 of the SC**, was reviewing an appeal arising from the Registrar of the Supreme Court as a taxing Master. The law applicable was hence SI 267-5, which are not applicable to the Taxing Officer in the High Court.

The items complained of are therefore to be examined subject to the rules as stated in SI 267-4. I do not find the items listed under 2, 3, 4, and 5 excusable as separate from instruction fees. The supreme Court decision of **Patrick Makumbi & Anor. V. Sole Electrics (U) Ltd SCCA 11/94** (unreported) held that:

"Instruction fee should cover the Advocates work including taking instructions as well as other work necessary for presenting the case for trial or appeal."

Ordinary preparatory steps taken like perusal of petition, answer to petition, copies thereof are included in the work an Advocate does in order to prepare and present a case for trial. If an award of instruction fees is given, it normally covers such expenses. I will therefore allow the appellant's contention that these items ought to have been disallowed, as they were catered for under the award of instruction fees.

As for items 8, 12 and 18, they were drawn according to the Rules; and Registrar's discretion was properly exercised.

The items were well within the provisions of Rules 13 of the Law (SI 267-4), these were necessary for attainment of justice and this court will not interfere with the Registrar's discretion.

Regarding items 19 an award of shs. 100,000/= for attending court.

I agree with the rationale in ***General Parts U Ltd v. Non Performing Assets Recovery Trust Sc. Civil App. 21/2000*** (unreported, for the view that inflation be considered in the assessment of costs. The case of Chandran v. Kengrow Industries Ltd SC C/App, observed that:

“Inflation has to be borne in mind when taxation of costs is done; though it should not be a basis for awarding exorbitant costs.”

I consider the award of Shs. 100,000/= to counsel to attend court to receive judgment a reasonable award in the circumstances of this case.

Items 30-42, are expenses which are incidental to the trial. These include items like Clerk’s transport, phone calls etc. These are within the tax master’s discretion. I have not found justifiable convincing reason why I should interfere with the Taxing master’s finding or use of discretion. The amounts are not excessive, or irrational. The record cannot show whether the taxing master called for evidence or not but they were considered and taxed. I have no basis upon which to interfere with what was awarded.

Items 30-36, and 37-42 I find that there is no evidence of unfairness or failure to follow the rules. The Registrar under Rule 13 of SI 267-4 is granted a discretion to allow costs, charges and expenses which appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party.

The use of that discretion is guarded and only interfered with only if the award is manifestly excessive, or there is misdirection, or arrived at using wrong principles- (See ***AG. V. Uganda Blanket Manufacturers Ltd*** (supra). None of the above has been shown by the appellant.

I do not therefore find the taxation under the said items wanting. I decline to interfere with the awards.

In arguing the appeal the appellant raised under ground 3 that the 2nd Respondent was not awarded costs at all or the award was excessive and unreasonable.

The 2nd Respondent did not contest this appeal. This is taken that he conceded to the above ground of appeal, which in any case is found proved.

In the judgment of the High Court dated 30.6.2011 by **Hon. J. Chibita**, it is stated;

“The Petition is therefore dismissed with costs to the 1st Respondent.”

There were no awards of costs to the 2nd Respondent. It was erroneous for the taxing master to receive the 2nd Respondent’s bill of costs and proceed to tax it. Costs must be awarded by a competent court. They are not assumed.

Under Section 27 of the CPA, *“costs of any action or cause or matter shall follow the event unless the court or Judge shall for good reason otherwise order.”* The Judge in this case aware that there were two Respondents.

This ground succeeds in whole.

Finally on the question of Approbation and Reprobation, I agree with the statement of the law by Respondent’s counsel. I however note from the pleadings and especially paragraph 7 and 8 of Kasibbo Joshua’s affidavit that he raises issues of illegality regarding the 2nd Respondent’s taxed bill. The matters deponed do not point to any benefit enjoyed by appellant as a result of the said taxation. He raises a question as to the legality of the taxation award.

I do not find the arguments on approbation and Reprobation sustainable in view of the facts above.

Having determined all the grounds as above I hold that this appeal succeeds in whole as against the 2nd Respondent. I hold that the 2nd Respondent’s taxed bill of costs is null and void as he was never granted any costs by court. It is hereby nullified and set aside.

The appeal succeeds in part against 1st Respondent in that only items 2, 3, 4 and 5 be taxed off wholly from the amounts allowed.

This means that the bill of costs is further taxed and adjusted under items

Item 2 by taxing it off by shs. 15,000/=.

Item 3 taking off shs. 50,000/=.

Item 4 taking off shs. 50,000/=.

Item 5 taking off shs. 600,000/=.

The amount of shs. 15,000,000/= instruction fees was not contested and is not altered.

The 1st Respondent's bill of costs is accordingly adjusted and allowed as above.

Having found as above, the appellant is granted full costs of the appeal against 2nd Respondent and will bear his own costs as against the 1st Respondent. I so order.

Henry I. Kawesa

JUDGE

16.12.2016