

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**(FAMILY DIVISION)**

**TAXATION APPEAL No 04 of 2018**

5                   **(ARISING FROM HCT-00-FD-MA-250 OF 2015)**

**(ARISING FROM HCT-00-FD-CS-108 OF 2011)**

**NABANJALA GORRETI.....APPLICANT**

**VS**

**NABUKALU HELLEN.....RESPONDENT**

10   **Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

**RULING**

The applicant brought this taxation appeal under S. 62 of the Advocates Act Cap 267, the Advocates (Taxation of Costs) (Appeals and References) Regulations SI 267-5 and Part III of the Advocates (Remuneration and taxation of costs) Regulations seeking  
15 orders that:

- 1) The taxing master's taxation ruling and hence certificate arising in HCT-00-FD-CS-108 OF 2011 be set aside.
- 2) Costs of the application be provided for.

The grounds for the application were stated as follows:-

- 20 1) That the award of costs of Uganda shilling 3,056,500/= as costs to the defendant in HCT-00-FD-CS 108 OF 2011 be quashed and set aside because it is excessive, unconscionable and oppressive and was made in disregard of the relevant applicable legislations.
- 2) That the learned taxing officer erred in law and fact when he held that the defendant  
25 was represented and hence proceeded to award instruction fees yet there was no

agreement and no concrete proof of any such counsel's participation/ attendance of any proceedings at court, further to which no basis for ascertainment of the same existed hence constituted condoning an illegality.

3) That the learned taxing officer erred in law and fact when he awarded costs in respect of items (15 to 23), (24 to 31) and (35 to 38) which are falsehoods given the fact that items (15 to 23) are as per the bill, purported to have been carried out or occurred before the would be prior instructions were given, which is practically impossible and then (24 to 31) and (35 to 37) relate to activities that actually never took place since there was a single sitting of the matter.

4) That the learned taxing officer erred in law and fact when according to the bill, it appears that he taxed it on the 22<sup>nd</sup> April 2015, which was three months before the 14<sup>th</sup> July, 2015 when the defendant's counsel appears to have signed and hence filed into the registry for the purpose, further to which he never signed upon which is contrary to Rule 8 of Order XXI of the Civil Procedure Rules, hence rendering the same fatally defective and hence a nullity.

5) That the learned taxing officer erred in law and fact when he in disregard of the applicable principals / regulations awarded overstated costs for items vide No. 6,7,8,9,10,11,32 and 33 some of which are not even catered for specifically under the applicable sixth schedule,

6) That it's in interest of justice that the award of costs aforesaid by the taxing master to the defendant / respondent herein, is reversed accordingly.

The application was supported by the affidavit of the applicant Ms Nabanjala Gorreti sworn on the 11<sup>th</sup> of April 2018.

The respondent, Nabukalu Hellen in opposition to the appeal filed an affidavit of reply sworn on the 14<sup>th</sup> of September 2018. In her affidavit in reply, the respondent averred that her advocates requested a taxation hearing date ex parte by letter on the 15<sup>th</sup> day of July 2014, which request was denied. The letter was attached and marked 'B'. The bill was fixed for taxation on the 11<sup>th</sup> day of September 2014 and on several subsequent

occasions. Although the applicant was always effectively served with taxation hearing notices she did not attend. Further, that after numerous adjournments, court on the 18<sup>th</sup> of March 2015 after being convinced that indeed there was effective service heard the matter and thereafter the learned Registrar delivered a taxation ruling on the 22<sup>nd</sup> April, 5 2015 where an award of only UGX 3,056,500/= was made to the respondent from an initial bill of UGX 14,319,500/=. The respondent averred that this appeal did not raise any question of law and fact warranting judicial consideration.

At the hearing of the appeal, the appellant represented herself and the respondent was represented by Counsel. Oral submissions in support and opposition of the application 10 were made by the parties.

### **1. Background to Appeal**

The background of this appeal is that the applicant filed HCT-00-FD-CS-108 OF 2011 against the respondent in 2011 and at the single sitting of the matter before Hon. Justice Lugayizi Edmund on the 18<sup>th</sup> June 2012 it was dismissed for lack of jurisdiction 15 with costs to the defendant/respondent. On the 15<sup>th</sup> July 2014 and on several subsequent dates the defendant/respondent's counsel proceeded to move court to tax the defendant/respondent's bill of costs ex parte since efforts to have the applicant in court for the taxation hearing were unsuccessful. The bill was taxed in the applicant's absence and she averred in her affidavit that she was availed the already taxed bill of 20 costs on 13<sup>th</sup> July 2015 by the respondent through her then lawyer MS Wameli and Co. Advocates. The applicant averred that the taxed bill of costs should be set aside since it was excessive, unconscionable and oppressive and was made in disregard of the relevant applicable legislations.

It was the duty of this court to determine this appeal by resolution of the issues below:

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- a. Whether the ruling of the taxing master is a nullity.**
  - b. Whether the Taxation award given by the Taxing Officer should be set aside**

Regarding the first issue, the applicant averred in her affidavit to the application, under Paragraph 18, that the taxing master's ruling was not signed contrary to Or 21 r 8 of the Civil Procedure Rules which renders it a nullity. She further reiterated the same in her submissions before this Court.

5 I had the opportunity of reading through the proceedings on the file for taxation before the taxation master and I discovered that the ruling on record which was hand written was adequately signed and dated. It was an authentic decision of the court. The fact that typed version was not signed nor certified did not render the original version any less reliable. This issue is answered in the negative. I must state that it was the  
10 applicant who moved this Court to file this appeal on the basis of the taxing master's ruling on the bill of costs. It was her duty to ensure that the ruling was duly certified. This Court could not import that oversight on the respondent who was not contesting the bill in the first place.

**b. Whether the Taxation award given by the Taxing Officer should be set aside.**

15 According to the Advocates (remuneration and taxations of Costs) Rules, it is stipulated under rule 37 that a bill of costs incurred in contentious proceedings in the High Court and the magistrates' courts shall be taxable according to the rates in the sixth schedule of the Rules. 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 by the  
20 Supreme Court in the case of Bank of Uganda v Banco Arabe Espanol, S.C. 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  
25 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 allowed would cause injustice to one of the parties.

Furthermore, the principles of taxation of advocates' bills have time and again been stated by the courts on references. The same were outlined in the case of Nicholas Roussos v Gulamhussein Habib Virani SCCA NO 6 OF 1995 cited by Counsel for the Respondent that where were taken from the case of Makula International Ltd v. Cardinal Nsubuga and Another(1982) HCB.11 as follows :-

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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.

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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,

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v) That as far as possible there should be some consistency in the award of costs.

It is against these principles that this court shall resolve the issues.

i. Instruction Fees

The applicant averred in her affidavit that the respondent was not represented since there was no concrete proof of any agreement between her and her counsel and as  
5 such the value of the subject matter could not be ascertained in any way subject to the relevant law. Further that the respondent's counsel did not attend any court proceedings since he did not appear in court at the only sitting when the matter was dismissed. Counsel was therefore not entitled to any instruction fees under Item 1. Counsel for the respondent in his submissions stated that they requested for UGX 10,000,000 as  
10 instruction fees for a subject matter of land measuring 2 acres at Masooli however the taxing master through the exercise of his discretion awarded UGX 1,438,500 which was a fair award.

It is an undisputed fact that pleadings on behalf of the respondent were filed on court record pertaining to the civil suit by her counsel. In the case of Hon. Abiku Jessica V Eriyo Jessica Osuna Miscellaneous Civil Application No.4, 31 and 37 of 2015, Hon.  
15 Justice Stephen Mubiru stated as follows...*An advocate who files pleadings on behalf of a litigant or an unqualified notice of instructions will be deemed to have been retained to render full, extended representation of the litigant giving the instructions.* The absence of a written agreement pointing to an advocate -client relationship could not per se imply  
20 that Counsel had no instructions to act on the respondent's behalf. Filing of pleadings on her behalf was sufficient proof of the advocate- client relationship, an indication that Counsel was under instructions.

Regulation 13 of the Advocates (Remuneration and Taxation of Costs) Regulations S.I 267-4 gives the taxation master power to exercise discretion in the process of taxing  
25 costs by allowing costs as authorized which appear to him or her to have been necessary for defending the rights of any party. The issue of instruction fees was dealt with in the case of Alexander Okello v. M/s Kayondo & Company Advocates, S/C Civil Appeal No.1 of 1997 where it was held that an instruction fee is manifestly excessive if it is out of proportion with the value and importance of the suit and the work involved. The

taxing officer therefore in this instance used his discretion to assess the instruction fees having warned himself of the fact that the value of the subject matter could not be ascertained and there was no judgment spelling out the same or any award, however on the basis that 2 acres of land was to be recovered. This matter proceeded in court  
5 for one sitting upon which it was dismissed.

The applicant insisted that the non-appearance of Counsel on the only date the case was entertained by the court and the absence of a court order did not warrant that sum awarded as instruction fees. This court disagrees with the applicant and finds that the award of UGX 1,438,500/= was not excessive in view of the subject matter.

10 ii. Item 2

The civil suit giving rise to this taxation appeal had only one sitting where it was dismissed according to the certified proceedings. Court shall not interfere with the UGX 200,000 assessed by the taxing master.

iii. Item 3

15 The applicant in her submissions prayed for UGX 70,000 however as rightly submitted by the respondent's counsel, the taxing master had awarded UGX 50,000. In my opinion, this was an oversight by the applicant hence it shall remain as is in the bill of costs.

iv. Items 6 & 7

20 The applicant submitted that there was only one page of the summary of evidence therefore Item 6 and 7 should not be included. Similarly in her affidavit, she averred that the same is not provided for in the relevant sixth schedule. However counsel for the respondent in his submissions stated that a summary of evidence is a pleading and therefore it's provided for in the regulations. The sixth schedule of the Regulations as  
25 cited herein provides for all pleadings, under Item 2(a), the summary of evidence is provided for in the schedule. Court documents are notoriously filed in triplicate, therefore since there was a copy of a summary of evidence on the file HCT-00-FD-CS-

108 OF 2011 which I had the opportunity of perusing, items 6 and 7 were rightly taxed by the taxing master.

v. Items 8 -11

I agree with the applicant that there were no annexures to the written statement of  
5 defence neither did counsel for the respondent produce copies of the same in Court.  
Therefore Item 8 to 11 of the Bill of costs was unjustifiably taxed by the taxation master.

vi. Items 15 - 23

The applicant averred that the preparation and subsequent filing and service of the  
written statement of defence were indicated as having been undertaken a month earlier  
10 in May 2011 yet instructions to defend by counsel for the respondents were recorded as  
having commenced on the 27<sup>th</sup> June 2011 which highlighted the falsehoods in the taxed  
Bill of Costs. Further she averred that service of the written statement of defence upon  
her was indicated as having taken place on Sunday 15<sup>th</sup> May 2011 therefore an award  
should not accrue from the same. She also submitted to this court that she was not  
15 served with the written statement of defence as alleged by the respondent's counsel.

The respondent in her affidavit in reply alluded the referencing of wrong dates on the Bill  
of Costs to an inadvertent error on her former lawyers who drafted the same. She also  
averred that it was not in dispute that she filed a written statement of defence which was  
served upon the applicant and an affidavit of service was as well filed in court by the  
20 same clerk.

Upon perusal of the court record, I agree with the submission of the respondent that  
indeed a written statement of defence was filed in that matter therefore Items 15 and 16  
were rightly taxed by the taxation master. However there is no record on file to show  
that the applicant was served since there is no affidavit of service on the court file to  
25 confirm this position. Therefore in my opinion, items 17,18,20,21,22 and 23 were  
erroneously awarded.



vii. Items 24 - 31

Counsel for the respondent enjoined this court to exercise its discretion and ascertain the truthfulness of the applicant's claim that an application for a temporary injunction was not filed by her. I perused the court record pertaining to this matter and I have  
5 found no evidence of an application by the applicant for a temporary injunction arising from HCT-00-FD-CS-108 OF 2011 and neither did counsel for the respondent avail copies of the same to this. It is therefore my opinion that Items 24 - 31 of the Bill of Costs were unjustifiably awarded to the respondent.

viii. Items 34 -37

10 According to Item 5(c) of the rules, advocates are entitled to UGX10,000/= for attendance to court on routine matters however the respondent was awarded UGX 50,000/= for the same on Item 34 of the Bill of Costs. In my opinion this was done erroneously. Furthermore, as rightly submitted by the applicant, the matter proceeded for only one sitting when it was dismissed on the 18<sup>th</sup> of June 2012 in the absence of  
15 counsel for the respondent according to the court record. It is therefore my view, that Items 35 - 37 were taxed erroneously since they never took place to begin with.

ix. Items 41 - 46

In the opinion of this court, these items were properly taxed by the taxation master.

The applicant prayed for costs in this matter. However, given that this taxation appeal  
20 has not been wholly successful and has failed in some respects, each party shall bear its own costs.

25 In conclusion the application partly succeeds and I order as follows:

1. Items 8 to 11, 17 to 23, 24 to 31 and 34 to 37 are expunged from the bill of costs.
2. Each party to bear its own costs.

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5 **Olive Kazaarwe Mukwaya**

**JUDGE**

**Dated at Kampala this 31<sup>st</sup> day of October 2018**