

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISC. APPEAL NO. 13 OF 2014

(Arising from HCCS NO. 325/2006)

JOHN MATOVU MUTALYANKYA ::::::::::: APPELLANT

VERSUS

DAMALIE ROSEMARY BABIRYE ::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE J.W. KWESIGA

JUDGMENT:

The Respondent (hereinafter referred to as Babirye) sued the Appellant Mutalyanka under High Court Civil Suit 325 of 2006 over Kyando Block 214 Plot 212 at Kisaasi, approximately 2 Acres.

Judgment was given to the Plaintiff/Respondent on 20th June 2013 plus costs. The plaintiffs' Bill of costs were taxed and allowed at Shs. 58,221,000/= by the Registrar of this court.

- (a) The Registrar granted Shs. 8,221,000/= on several items in the Bill of costs that were not contested.
- (b) The item of Plaintiffs' Advocates instruction fees that had been presented at Shs. 150,000,000/= was taxed and the Registrar awarded Shs. 50,000,000/= as instruction fees after the taxation.

The Registrar held "-----I have taken into account the amount of work involved. I have considered the location of the suit property. I find that an amount of Shs. 50,000,000/= would be appropriate for instruction fee. Most of the rest of the items were not disputed by Counsel for the Defendant The rest have been taxed and allowed as per schedules. Total bill is allowed at Shs. 58,221,000/=

M/s. Katura & Kagumire Advocates filed an appeal (Chamber Summons) under Section 62(1) of Advocates Act and Regulation 3 of the Advocates (Taxation of Costs) (Appeals & Reference) Regulations. This appeal seeks setting aside the taxation award of Shs. 50,000,000/= and that an appropriate award be made plus costs of this appeal. The grounds of

appeal are;-

1. That the award of Shs. 50,000,000/= as instruction fees to the Respondent was premised on wrong principles of taxation.
2. That the Learned taxing Master wrongly exercised her discretion in making an award of Shs. 50,000,000/= as instruction fees to the Respondent.
3. That the award was excessive and amounted to injustice to the Appellant.
4. That it is in the interest of justice that the said award be set aside and an appropriate award of instruction fees be made.

The appeal is supported by the Appellants' affidavit which basically repeats, as facts, the above grounds of appeal, as advised by his Advocates whom he verily believes.

On the other hand, the Respondent supports the Taxing Masters' award that she properly applied the law and acted judiciously and she arrived at a correct decision in awarding Shs. 50,000,000/= as instruction fees.

I have considered all the above contentions by both the Appellant and the Respondent. I have had the benefit of being guided by the decision in **M/s. Alcon International Ltd. Versus Standard Chartered Bank of Uganda & 2 Others - Reference No. 1 of 2014** where the following were settled;-

- (i) A court hearing a reference against a ruling involving the exercise of a Taxing Officer's discretion in a taxation cause, will not normally interfere with the ruling merely because it thinks it would have awarded a different figure had it been one taxing the bill.
- (ii) Interference by the court would only be justified where;-
 - (a) There is a proof that either the amount taxed was manifestly excessive or so manifestly low as to amount to an injustice.
 - (b) The taxing Officer followed wrong principles or that applied wrong consideration coming to his/her decision. In **Joreth Versus Kigone Associates (2002) EA 92** settled the factors to be considered;-
 - a) Importance of the matter.
 - b) General conduct of the case.
 - c) Nature of the case.
 - d) Time taken for it's dispatch and the impact of the case on parties.

In my view, where the Taxing Officer can not determine the value monetary value he /she is

entitled to use his or her discretion in assessing the instruction fees and in so doing take the above factors in consideration. The fact that the Taxing Officer of the land does not mean it was the only factor. She also considered the amount of work involved and in my view, her consideration. The fact that the Taxing Officer considered location of the land does not mean it was the only factor. She also considered the amount of work involved and in my view her consideration of location of the suit property measuring 2 Acres at Kisaasi, it is understood to refer to high value land.

I have considered the Appellants' criticism of Taxing Officer's reference to the location of the suit land. This was not the only factor that she considered and I have not found any justification to interfere with the Taxing Officers' discretionary award since she did not apply wrong principle and there is not proof that this was excessively high or excessively low aware} it is hereby confirmed. This Appeal is dismissed with costs.

J.W. Kwesiga

Judge

29th June 2016

In presence of:-

- > Ms. Atugonza Scovia, holding brief for Mr. Birungi for the Respondent.
- > Nobody for the Appellant.