

IN THE HIGH COURT OF UGANDA AT SOROTI

MISC. APLIC. NO. 79 OF 2014

ARISING FROM SOROTI LAND CLAIM NO. 18 OF 2006

OPOLOT JUSTINEAPPLICANT

V

AURA LIVINGSTONE.....RESPONDENT.

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

The suit from which this appeal arises was determined by HW. Joshua Maruk Chief Magistrate as he then was , on 3rd July 2006. On appeal to the High Court vide HCCA. No. 29 of 2009, the decision of the trial magistrate was confirmed and costs of the appeal and the trial court awarded to the respondent Aura Livingstone.

This application therefore arises from the taxation of costs of the trial court by the Ag. Assistant registrar HW Rwatooro, as he then was. The bill was taxed at 14,669,500/ under a certificate of taxation dated 21st November 2014.

Apart from the bill of costs and the certificate of taxation, I have no proceedings and taxation ruling that would form the basis of evaluation as I am bound to do on appeal.

Both Opio, Ossoto & Co . Advocates and Erabu & Co. Advocates for the applicant and respondent respectively, filed lengthy written submissions that I have read.

These submissions are based on guesswork of what the taxing officer considered because as mentioned earlier, there are no proceedings nor a ruling on record.

Counsel Erabu suggests that the bill of costs was taxed by consent and the only items where counsel differed were the item1 on instruction fees and items on attendance .

Counsel Issoto concedes that the item on which there was no agreement is instruction fees. He also submits that counsel for the respondent did not attend court on 8.9.2006; 6.12.2006; 10.1.2007; 15.10.2008; 19.11.2008; 29.6.2009; 29.6.2009; 3.7.2009. It is counsel Ossoto's contention that this is unjust enrichment.

I have examined the court record and found that the typed record is from 5.12.2007 when the trial commenced. In the interests of fair play, I will take the typed record as the evidence of court attendance. Therefore items for court attendance on 8.6.2006; 6.12.2006; are struck out. Attendance on 29.6.2009 is duplicated therefore one is struck out. The rest of the items are confirmed by the court record.

I will now determine if the 150,000/ allowed for court attendances is reasonable. Counsel Erabu correctly cites r.5(h) (ii) of the 6th schedule to the Advocates Remuneration and Taxation of costs rules as the standard. The rules prescribes 50,000/ for the first six hours.

Counsel Erabu contends that the 150,000/ includes transport but I find this an erroneous application of the principle because transport is claimed as a disbursement.

Taking account of inflation and the loss in value of the shilling over time since the rules came into force, I consider a sum of 100,000/ reasonable as court attendance fee. Therefore, all items on court attendance will be allowed at 100,000/.

With respect to instruction fees, counsel Ossoto submitted that 6,000,000/ was excessive. No reasons were given for the award of 6,000,000/. Nevertheless, considering that this was a case over land within the municipality, the various documents that had to be analysed and the work that had to go into preparation and research, I consider the sum of 6,000,000/ reasonable.

Item 2 will be disallowed because it is covered by item 3.

In conclusion, 19 items on court attendance are reduced to 100,000/ therefore 950,000 is deducted from the bill and 150,000 under item 2 is also deducted. The bill is allowed at 13,569,000/.

DATED AT SOROTI THIS 8TH DAY OF JULY 2016.

HON. LADY JUSTICE H. WOLAYO