

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

MISC. APPEAL NO. 0004 OF 2017

**THE REGISTERED TRUSTEES OF
KAMPALA ARCHDIOCESE:::APPLICANT**

V E R S U S

KEN PAPERS (E.A) LIMIT:::RESPONDENT

BEFORE HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Applicant moved this Honourable Court for orders that the taxing officer's ruling and Certificate in Civil Suit No. 504/2012 be set aside for being manifestly and/or inadequate in accordance with the taxation rules and principles. The application is supported by the affidavit of Edwin Busulwa.

The application was opposed by the Respondents who filed an affidavit of Edward Nakabaalae Kigongo in reply. This application basically appeals against the award of instruction fees. In reply, the Respondents put across a counterclaim under paragraph 14 of the affidavit.

I have looked at this application in view of the above and do find as follows:

This application is grounded on the assertion that the taxing master awarded the Applicant inadequate instruction fees contrary to the rules.

(TAX MISC. APPEAL NO. 004/17): THE REGISTERED TRUSRESS OF KL'A ARCHDIOCES VS KEN PAPER EA LTD.

Counsel claimed that according to the 6th schedule of the **Advocate's (Remuneration and Taxation of Costs) Regulations, Regulation 1(a)(iv)**, the subject matter is determined from the amount claimed. He averred that Court ought to have looked at the plaint or the schedule. Counsel argued that the award should be between 8% - 10% (eight to ten percent); and referred to decided cases. He further argued that given the subject matter of shs. 554,275,000/- (*five hundred fifty four million, two hundred seventy five thousand shillings only*) a rate of 10% (*ten percent*) would entitle them to shs. 55, 427,500/- (*fifty five million, four hundred twenty seven thousand, five hundred only*) as instruction fees. He prayed that this Court should apply the said formula and enhance the award accordingly.

In reply, Counsel for the Respondents opposed the above position and prayed that the Bill of Costs ought to be set aside; since it was heard *ex parte*). In further reference to the Bill of Costs, he cited areas which needed to be revisited.

He argued that there is no law requiring that instruction fees be taxed using the 8-9% (*eight to nine percent*) formula but each case is taken on its own facts. He also informed Court that the claim was for damages, and there was no basis for the award since the damages were not proved.

In rejoinder, the Applicant's Counsel insisted on his position that according to the 6th schedule of the Rules – **Rule 1(a)(iv)** looks at either the plaint or what's in the judgment.

Arising the above arguments and focusing on the law, I note that **Regulation 1(a)(iv), schedule six of the Advocates Regulations** provides that;

'to sue or defend in any case or to present or oppose an appeal where the value of the subject matter can be determined from the amount claimed or the judgment'.

I have noticed that the Applicant attached a copy of the judgment on his application but did not attach a copy of the plaint. I have also not been provided with the original record of HCCS NO. 504/2012. However, from the judgment, it is clear that the subject matter was in recovery of damages for breach of contract. The value of the claim is stated in the sums totalling to about shs. 700,000,000/- only (*seven hundred million*).

From the ruling of the Registrar, she followed the 6th schedule (*supra*) and allowed shs. 10,000,000/- only (*ten million*).

I do agree with the Applicant that in arriving at this figure, the Registrar did not show the formula employed to arrive at the same.

There being no plaint to guide my assessment, I will follow the figures in the applicant's own application. This is however, the Applicant's figure of shs. 554,275,000/- (*five hundred fifty four million, two hundred seventy five thousand only*) which is also indicated in the judgment, which discusses the claim in detail. Using that figure therefore and taking the provisions of Regulation (1)(iv)(e), the formula to apply is that;

'where the amount exceeds shs. 20,000,000/- (twenty million shillings), 1% (one percent) on the excess of shs. 20,000,000/-'

This rule when applied here, would mean shs. 554,275,000/- (*five hundred fifty four million, two hundred seventy five thousand only*) which the Applicant gives as, the subject matter (though it is given as shs. 700,000,000/-) (*seven hundred million*) in the bill of costs; I will subtract shs. 20,000,000/- only (*twenty million*) which is the starting point, then multiply the difference with 1% and add this, results to shs. 20,000,000/- so as to get the right figure of instructions fees allowable.

This translates to;

$$(554,275,000/-) - (20,000,000/-) = \underline{534,275,000/-} \times 1/100$$

$$\text{Apply 1\%} \quad \quad \quad = 5,342,750/-$$

$$\text{Fees allowable} \quad \quad \quad = 20,000,000/- + 5,342,750/-$$

$$= \underline{25,342,750/-}$$

I therefore do find that following schedule 6 of the Rules, the Applicant would be entitled to shs. 25,342,750/- (*twenty five million, three hundred forty two thousand, seven hundred and fifty shillings*) as instruction fees.

Regarding the issues under the items raised by the Respondent by way of counterclaim, this Court finds the procedure adopted irregular.

I would have considered them if the Respondent's prayer was not for outright rejection of the bill on grounds that they were not heard at the taxation.

This being an appeal on instruction fees, I cannot use the same application to set aside the taxation on the grounds raised by the Respondents in reply.

I decline so to do.

For reasons above, I grant the application with an order that the taxation award be set aside and be replaced with a finding that the Applicant's instruction fees is taxed off and allowed at shs. 25,342,750/- (*twenty five million, three hundred forty two thousand, seven hundred and fifty shilling*). The rest of the taxed items remain as awarded by the taxing master.

I so order.

Each party to bear its own costs of this appeal.

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Henry I. Kawesa

JUDGE

22/2/2018

22/02/2018:

Christine Namwanje holding brief for Busulwa for Appellants

Respondents present.

Counsel Bazirengedde – absent.

(TAX MISC. APPEAL NO. 004/17): THE REGISTERED TRUSSESS OF KL'A ARCHDIOCES VS KEN PAPER EA LTD.

Christine: I am here to receive a taxation ruling.

Court: Ruling delivered to the parties above.

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Henry I. Kawesa

JUDGE

22/2/2018