

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

MISCELLANEOUS APPEAL No. 003 of 2022

(ARISING FROM HIGH COURT CIVIL REVISION NO.2015 OF 2015)

**(ARISING FROM CIVIL SUIT NO.10 OF 2003 AT NAKAWA HOLDEN AT MWANGA
HOLDEN AT MWANGA II COURT)**

SSEMAKULA STEPHEN..... APPELLANT

VS

KIBUUKA HERBERT.....RESPONDENT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

The Appellant brought this taxation appeal under section 62 of the Advocates Act Cap 267 and Rule 3(1) and 2 of the Advocates (Taxation of Costs) (Appeals and References Regulations) seeking orders that:

1) The award of the Taxing Officer of UGX 6,790,000/= (Six Millions Seven Hundred and Ninety Thousand Shillings only) in M.A No.261 of 2021 be set aside and/or be reduced.

2) Costs of this application be awarded to the Applicant.

Grounds For The Appeal

1) The learned Taxing Master/Deputy Registrar erred in fact and law when she awarded the amount of UGX 5,000,000/= as instruction fees which was manifestly excessive and inconsistent with the principle of award in Uganda without considering the Applicant's income and value of the subject matter.

2) In the alternative without prejudice to the foregoing, the learned Taxing Master erred in law and fact when she taxed and allowed items 1,4,5,6,13,14,15,16,19 and 20 of the

Respondent's Bill of Costs contrary to the Advocates (Remuneration and Taxation) of costs Amendment Regulation SI No.7 of 2018.

3) It is in the interests of justice that this application be allowed and the award of the Taxing Master/Deputy Registrar of total sum of UGX 6,790,000/= be set aside and the
5 items complained about be set aside and/or reviewed.

The appeal was supported by the affidavit of the Appellant, Mr. Ssemakula Stephen sworn on the 8th day of February 2022.

The Reply

Mr. Kibuuka Herbert, the Respondent swore the affidavit in reply and averred briefly as
10 follows;

1. The learned Taxing Master acted appropriately and in accordance with the Taxation and Remuneration Rules and that is why the taxation hearing of the bill of costs occurred and the award of UGX. 6,320,000/= was granted.
2. He was informed by his lawyers that that is their rate for instruction fees thus the
15 learned Taxing Master took that into consideration when she awarded UGX 5,000,000/= as instruction fees.
3. The Applicant was served with a taxation hearing notice and indeed appeared on the days the matter was fixed for taxation.
4. The Applicant's lawyers declined to attend Court for taxation and failed to create
20 avenues for a pre-taxation hearing.
5. The Applicant was in Court on the day the bill was taxed and did not raise any objections or challenge any item on the bill.
6. The Applicant has over the years resorted to delaying tactics to prevent him from realizing the fruits of his judgment.
- 25 7. It is in the interests of justice that this application be dismissed by this Honourable Court with costs.

Representation

The Appellant was represented by M/S Kajeke, Maguru and Co. Advocates while the Respondent was represented by Mr. Mukasa Twaha.

Both parties did not file any written submissions.

5 **Issue**

Whether the award of the Taxing Officer of UGX 6,790,000/= (Six Millions Seven Hundred and Ninety Thousand Shillings only) in M.A No.261 of 2021 ought to be set aside and/or be reduced?

10 The Sixth schedule of the Advocates (Remuneration & Taxation of Costs) Regulations (Regulations 37, 57), provides for the scale of fees in High Court, Magistrates Courts, Tribunals and Arbitration Matters.

The circumstances under which a Judge of the High Court may interfere with the Taxing Master's exercise of discretion in awarding costs were restated by the Supreme Court in the case of Bank of Uganda v Banco Arabe Espanol, S.C. Civil Application No. 23 of
15 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 officer is particularly fitted to deal, and in which he has more experience than the judge.
20 *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
25 *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.'

- 5 The items complained of by the Applicant as allowed outside the Regulations are; Items 1,4,5,6,13,14,15,16,19 and 20. I will review each item in line with the principles elucidated.

Item 1 is instruction fees. The subject matter was estimated at above UGX20,000,000/=. It was a vague estimate in my view because it did not indicate by how much it exceeded UGX 20,000,000/=. In this case, it was safer to use the stated estimate as the precise
10 estimate. And the scale as contained in item 1(d) of the 6th schedule, where the value of the subject matter exceeds UGX 10,000,000 but does not exceed UGX 20,000,000/=: which comes to **UGX 2,320,000**. The award of UGX 5,000,000 is revised accordingly.

Item 4 is drafting an affidavit in reply in an interlocutory application under item 10(2) of the 6th schedule is **UGX 200,000/=** and it is accordingly revised from UGX 300,000/=

- 15 Item 5 is making 3 copies of the Affidavit in Reply which under item 10(2) comes to **UGX 90,000/=** and it is accordingly revised from UGX 150,000/=

Item 6 is commissioning all (3) copies of the Affidavit in Reply at UGX 30,000/= is **UGX 90,000/=** and it is accordingly revised from UGX 120,000/=

Item 13 is drafting a bill of costs for taxation is maintained at **UGX 200,000/=**

- 20 Item 14 is making three copies (of the bill of costs) is maintained at **UGX 150,000/=**

Item 15 is drawing a hearing notice is maintained at **UGX 50,000/=**

Item 16 is making three copies of the hearing notice is maintained at **UGX 60,000/=**

Item 19 is drafting affidavit of service of the taxation hearing notice is maintained at **UGX 50,000/=** under item 10(3) of the 6th Schedule.

In conclusion, I am persuaded that the Bill of Costs ought to be revised to bring the quantum in line with the Advocates (Remuneration and Taxation of Costs) Regulations. Accordingly, the award of the Taxing Officer of UGX 6,790,000/= (Six Million Seven Hundred and Ninety Thousand Shillings only) in M.A No.261 of 2021 is hereby set aside and reduced as highlighted above.

I so order.

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Olive Kazaarwe Mukwaya

JUDGE

4th November 2022

Delivered by email to Counsel to the Parties.