IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, J.S.C.)

CIVIL APPLICAT I ON NO. 17/93

BETWEEN

ATTORNEY GENERAL :::::::::::::::::::::::::::::::::::: APPLICANT

AND

UGANDA BLANKET MANUFACTURERS :::::::::::::::::: RESPONDENT

(Appeal from the Ruling of the Registrar of the Supreme Court
(Mr. B.F.B. Babigumira) upon on taxation of costs in Civil Appeal
No. 15 of 1992.

RULING OF ODOKI, J.S.C:

This is a reference to me under r.109 of the Rules of this Court form the ruling of the Registrar in his capacity as taxing Officer. He taxed the bill of costs of the successful appellant who is the present respondent at she 23,092,000/= out of which she 200,000,000/= was awarded as instructions fee. It is against the award for instructions fee that this reference is brought. There are five grounds of reference, namely:

1. The Registrar/Taxing Officer erred in holding that the Currency Reform Statute No. of 1987 has no relevancy.

2. The Registrar/Taxation Officer erred in holding that the Government benefited from the ejectment of the respondents so as to justify payment of costs from public funds.

3. The Registrar/Taxation Officer erred in holding that the case of Herman Semujju cited by the applicants was not successful.

4. The learned Taxing Officer erred in holding that the value of the subject matter was shillings 3 billion having found that it was difficult to arrive at an exact figure.

5. The bill of costs as taxed is in all circumstances manifestly excessive.

It is necessary to give a brief background to the proceedings giving rise to this reference before considering the grounds of reference. In 1972, following the expulsion of non—citizen Asians', a company known as Uganda Blanket Manufacturers Ltd was left behind. In 1973, the government allocated the company to a group of people who formed themselves into a limited liability company called Uganda Blanket Manufacturers (1973) Ltd., now the respondent. In 1974, the National Textiles Board was established to oversee the textile industries under the Ministry of Industry. The respondent came under the direct control of the Board. At the time of the take over Mr. Oloya was the Production Manager, but later became the General Manager. It was agreed that the six promoters would not purchase more than 49% the total shares in the respondent company, the Government holding the majority of 51%. But the Government did not take up its shares.

The respondent company continued to have its own management and a board of directors. The Minister could not appoint the General Manager directly, except through the Textiles Board whose members he had power to appoint and remove. It was the duty of the Board to organise and control management of any of the specified companies like the respondent. The Minister then took over the factory and evicted the proprietors on 11th June 1987. The respondent company sued the Government seeking a declaration that it was the rightful owner of the business premises, the factory, assets and properties it took over in 1973. It also sought exemplary and general damages for trespass nuisance and inconvenience and loss of business. There was also a claim for an order for taking an account to ascertain the appellant's lost income caused by the applicants' use of the property and assets belonging to the respondent.

The learned trial Judge dismissed the respondent's suit and held that they were not entitled to any relief. On appeal, this court allowed the appeal on 12th January, 1993 and made the following orders:-

a) a declaration that the respondent company was in possession of its business and residential premises at all material times from 11th June, 1987 and was entitled to exclusive possession of them when the judgment of the High Court was delivered on 18th May, 1990, without prejudice to the certificate of repossession of the Minister of Finance dated 3rd April 1991.

b) an order for an account in respect of the respondent's business including the assets since 11th June 1987.

c) general damages for trespass and inconvenience at
shs 200,000/=.

d) costs of the appeal and in the court below with interest at the normal court rates.

On 17th April 1993 a statement of account of the respondent's assets and properties was prepared by Arno Matovu & Co. Chartered Accountants. It stated the total value to be shs. 2,876,983,255/=. The Taxing Officer accepted this figure as the value of the subject matter and used it as a basis for assessment of the instructions fee.

A reference on taxation may be made to this Court on two grounds namely on a matter of law or principle or on the ground that the bill of costs as taxed is in all the circumstances manifestly excessive or manifestly inadequate. This is provided for under Rule 109 of the Rules of this Court whose relevant sub- rules states,

"(1) Any person who is dissatisfied with a decision of the Registrar in his capacity as Taxing Officer may require any matter of law or principle to be referred to a Judge for his decision and the Judge shall determine the matter as the justice of the case may require…….

(2) Any person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or manifestly inadequate, may require the bill to be referred to a Judge and the Judge shall have power to make such deductions or addition as will render the bill reasonable. Save as in this sub—rule provided, there shall be no reference on a question of quantum only."

The principles governing the taxation of costs are contained in the Third Schedule to the

Rules of this Court. The factors to be taken into account in assessing instructions fee are provided for in Para.9 (2) and (3) which state,

"(2) The fee to be allowed for instructions to appeal or to oppose appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances.

(3) the sum allowed under sub-paragraph (2) shall include all work necessarily and properly done in connection with the appeal and not otherwise chargeable, including attendances, correspondence perusals and consulting authorities."

Arguing the first ground of reference, Mr. Chebroin, learned Counsel for the applicant, submitted that the Currency Reform Statute 1987 applied to the Valuation Report because there had been a dealing involving money as provided for under section 2 of the Statute and people had been evicted from the premises. He contended therefore that the total value estimated in 1986 as shs 2,400,849,490/= should have been reduced to two zeros to 24,008,490/= and the instruction fees should have been based on this figure.

The Currency Reform Statute provided in section 1(b) that for the purposes of effecting a currency reform the Bank would "pay for the old currency in the new currency at the rate of one shilling of the new currency for one hundred shillings the old currency." Section 2 provided,

"2. Upon the coming into force of this statute,
(a) every contract, sale, payment bill, note instrument or security for money and every transaction, dealing, matter or thing whatsoever related to money or involving the payment of, or the liability to pay, any money which would have been made, executed, entered into, done or had in relation to the new currency at the conversion rate specified in sub—section (2) of section 1 of this Statute; and

(b) all monetary obligation or transactions shall be deemed to be expressed and recorded and shall be settled in the new currency at the aforesaid rate."
Mr. Tibaijuka submitted that since the account was taken after the order of this court, and the

Valuation Report submitted subsequently, the pre—1987 values were irrelevant and had been included in the report merely to give a comparative view of the claim. It was his contention that the total value of the assets and properties was a indicated in the report to be shs 2,867,851,877/=, and it was this figure which should have been taken for assessing the instructions fee.

The Taxing Officer came to the conclusion that in the circumstances of this case, the Currency Reform Statute had no relevancy; I agree with his decision. It is clear from the Valuation Report of Arno Matovu & Co. Chartered Accountants that the values stated in the new currency and that old values were converted into new currency.

The pre—1987 Valuation Report made by Byokusheka & Co. Chartered Surveyors Valuers and Estates Agents, on May 1986, is not the account that this court ordered to be taken and I do not see how it can be used for determining the current value of the assets and properties of the respondent. The first ground of reference must fail.

On the second ground of reference Mr. Chebroin submitted that there was no evidence to show that the Government benefitted from the action it took, and that the learned taxing officer ought to have taken into account the fact that it was the humble tax payer to pay the costs. But Mr. Tibaijuka for the respondent argued that it is the Government which benefited because it carried on the respondent's business since June 1987 without giving a single cent to the respondent.

It is true under para 9(2) of the third Schedule to the Rules of the Court, in assessing the instructions fee the fund or the person to bear the costs must be taken into consideration.

In the instant case it is the Government to pay costs and ultimately tax payer. But the Government is the one which took over the running of the respondent's business since June 1987 and therefore I do not see why it cannot be deemed to have benefited from their actions. I find no merit in this ground.

As regards the third ground, it was contended for the applicant that the taxing officer should have followed the case of Herman Semujju v. Attorney General Civil Appeal No. 8 of 1991 where the appellant's costs were taxed at shs 6 million. He submitted that the principle in that case was the same as in the instant case because in both cases Government had interfered

with private property, and therefore, although the values were different, the principle was the same, and taxed costs should have been the same. He contended that there was need for consistence in awards of costs as pointed out in Premchand Raichand Ltd v. Quarry Services (1972) EA 162.

Mr. Tibaijuka for the respondent submitted that the taxing officer adequately distinguished the case of Semujju. In his ruling the taxing officer said,

"The present case and Herman Semujju case are not on all fours. One thing they have in common is the high handedness of Government agents. But the subject matter were totally different in nature and amount."

I think the taxing officer was correct in not basing his assessment of the instruction fee on the case of Semujju because the facts were different and the value of the subject matter was different. There was no principle involved in the Semujju's_case which the taxing officer should have followed, but did not do so. As regards the principle of consistency in awards, the taxing officer was alive to it. The third ground of reference must fail.

On the fourth ground of reference counsel for the applicant submitted that the taxing officer was wrong to hold that the value of the subject matter was 3 billion shillings when he found that it was difficult to arrive at the exact figure. He contended that this was an error of principle entitling this court to interfere. He relied on the case of Arthur v. Nyeri Electricity Undertaking (1961) EA 492.

Although the taxing officer did not make a definite finding on the value of the subject matter he seems to have accepted the respondent's submission that the net liability was shs. 2,867,851,877/= as stated in the Valuation Report of Arno Matovu & Co. It is on the basis of this figure that the taxing officer variously referred to the value as well over 2 billion or approximately 3 billion.

Unlike in the High Court where the instruction fee is assessed according to the scale of the value of the subject matter, the assessment of the instruction fee in this Court seems to be in the discretion of the taxing officer taking into account the factors enumerated in para 9 (2) and (3) of the Third Schedule to the Rules of this Court which factors include the value of the subject matter. For this reason I think that the case of Arthur v. Nyeri Electricity Undertaking

(supra) which concerned taxation of costs in the High Court had no relevance to the present case. In these circumstances I do not find that the Taxing Officer's failure to state the exact value of the subject was an error in principle, it being sufficient to state the approximate value. I find no merit in this ground of reference.

The last ground of reference is the substantial one. It complains that the bill of costs as taxed is manifestly excessive. It seems to me that the main item of the bill attacked is the instructions fee which was taxed from shs 360 million to shs 200 million.

The principles governing taxation of costs seem to be well established. They can be divided into two categories: principles applicable on taxation and principles applicable upon review of taxation. The principles applicable on taxation can be restated as follows: First, instructions fee should cover both "solicitor's work" as well as "barrister's work" including taking instructions as well as other work necessary for preparing the case for trial. In Khatijabal Jiwa Hshjam vs. Zanab (1957) EA 255, the Court of Appeal for Eastern Africa said, at page 256.

"An instruction fee under item 6 may notionally be divided into two parts where as here only one advocate is concerned. It covers that part of the brief fee which represents work done before the hearing by the Advocate in his capacity as Counsel. It also covers all "solicitor's work" not included in other items of the bill. But where the respondent is the successful party his solicitor's work on appeal is ordinarily almost nil."

Second, although there is no principle that an appellant is entitled to a higher brief fee than the respondent, an appellant's advocate who has the responsibility to advise his client to attack a judgment should be allowed a slightly higher fee. This principle was stated by the Court of Appeal in Premchand Raichand v, Quarry Services (No.3) (1972) EA 192, at p. 164 as follows:

"We are not aware of any authority for saying that in principle an appellant should be allowed a higher fee than a respondent, nor do we think that there is any such principle. The brief fee is abased on the amount of work involved in preparing for the hearing, the difficulty and importance of the case and the amount involved. These factors apply to the respondent as well as to the appellant. The advocate for the respondent if he is not to be taken by surprise must make just as a thorough study of the case and the relevant authorities as the advocate for

the appellant. The advocate for the appellant does, however, have the responsibility of advising his client to attack a Judgement of a Court and this would we think justify his being allowed a slightly higher fee to include this element."

Third, there is no principle of law to the effect the decision of taxing officer must be subjected to the application of a magic formula which when applied would result in a precise figure being arrived at in an almost automatic manner. Every case must be decided on its own merit and its peculiar circumstances, such prolixity of the case in it preparation and any peculiar complications in its presentation if Court. In every variable degree, the amount of the subject matter involved may have a bearing though this may not always be so. (See Pardhan v. Osman (1969) EA 528.

Fourth, it is well established that the taxing office must exercise judicially and not capriciously Pardhan vs. Osman (supra).

Fifth, while a successful litigant ought to be fairly reimbursed the costs he has had to incur, a taxing officer has a duty to the public to see that costs do not rise to above a reasonable level so as to deprive access to court for all but the wealthy. However the general remuneration of advocates must be such as to attract worthy advocates to the profession. There must be as far as it is practicable consistence in the awards in order to do justice between one person and & another and so that a person contemplating litigation can be advised by his advocate very approximately what, for the kind of case contemplated, is likely to be his potential liability for costs. Premchand Raichand v. Quarry Services (No.3 (supra).

Fifth, an error of principle is only inferred where an award is manifestly excessive but where there is an express error of principle, a judge will normally remit the matter to the taxing office for reconsideration unless he is satisfied that the error cannot materially have affected the assessment. Nanyuki Esso service v. Touring & Sports Cars Ltd (1972) EA 500, Arthur V. Nyeri Electricity Undertaking (1961).

Finally, whereas a judge has discretion to retax the bill himself, where a fee has to be assessed on different principles it should generally be remitted to the same or different taxing officer, but the reassessment of the instruction fee must be to the same taxing officer. (Steel Petroleum v. Uganda Sugar Factory (1970) EA 141, Arthur V. Nyeri Electricity Undertaking (1961) EA 492.

It seems to me that the taxing officer was alive to the principles governing taxation of costs in this court. He considered the principles set out in the Premchand case which is the leading authority on this matter. He also took into account the factors enumerated in para 9 (2) and (3) of The Taxation of Costs Rules contained in the Third Schedule to the rules of the Court. I do not find that the taxing officer expressly erred on a matter of law or principle.

However, it was argued that the sum of shs 200 million allowed as instructions fee is in all circumstances manifestly excessive. The question to be decided is whether it is so excessive as to indicate an error of principle. In Haider Bin Mohamed Elmandry and others v. Khadija Binti Ali Bin Salem (1959) EACA 313, an instruction fee of shs 9,000/= was considered so excessive "as to indicate that it must have been arrived at unjudicially or on erroneous principles."

In Premchand Raichand Ltd v. Quarry Services (No.3), (supra) a certificate was given for two advocates. The case was a difficult one and involved a little over shs 1,000,000/=. the hearing took a day and a half. The respondents who had succeeded in the appeal submitted a bill totalling shs 95,153/= which was reduced on taxation to shs 55,597/30. The main items in this bill were the brief fee to senior counsel for which shs 45,010/= was claimed and shs 27,000/= allowed, and the instructions fee for which shs 32,000/= was claimed and 20,000/= allowed.

The Court of Appeal on reference from a single judge held that the Bill of costs after taxation was so excessive as to require interference. The brief fee for senior counsel was reduced to shs 15,000/= and instruction fee to shs 10,000/= plus shs 1,500/= but leaving other items unchanged. The total instructions fee was therefore allowed at shs. 26,500/=.

The Court said that in assessing the instruction fee, the taxing officer,

"must envisage a hypothetical counsel capable of conducting the particular case effectively but unable or un willing to insist on the particular high fee sometimes demanded by Counsel of pre-eminent reputation. Then one must estimate what fee this hypothetical character would be content to take on the brief. "

After taking into consideration all the above principles and the circumstances of this case I have come to the conclusion that the sum of shs 200 million allowed by the taxing officer as instructions fee is so manifestly excessive as to indicate an error in principle entitling this

Court to interfere. It seems to me that the taxing officer was influenced by the submission of Counsel for the respondent that his original claim of shs 360 million was based on the principle of 10%. The taxing officer then concluded,

"All in all my humble view is that the sum of 360 million claimed by the appellants as instructions fee is rather high and the sum of 6m suggested by Counsel for the respondents is miserably low.

In my humble view, a sum of 200,000,000/= would be reasonable award as instruction fees and I would award the same."

It is not clear on what basis such a high award of instructions fee was made. Even if the appeal involved difficult points of law or the value of the subject matter was large, it is difficult to imagine that reasonably competent advocate would demand shs 200 million to handle the present appeal. Moreover the public interest requires that costs be kept to a reasonable level so as not to keep poor litigants out of courts.

The principle of 10% as a basis for assessing instruction fee was rejected by the Advocates (Remuneration and Taxation of Costs) Rules 1982 (S I No. 123/82) which introduced a sliding scale for charging instructions fees ranging from twelve and a half per centum to one per centum of the value of the subject matter. I know that these rules do not apply to this court as they apply only to taxation of costs in the High Court and Magistrates Courts, but I believe that the intention of the Rules was to strike the right balance between the need to allow advocates adequate remuneration for their work and the need to reduce the costs to a reasonable level so as to protect the public from excessive fees. I think that the spirit behind these rules should provide some general guidance as to what is a reasonable level of advocates fees.

In the result the fifth ground of reference must succeed. I hold that the sum of shs 200 million awarded as instructions fee is manifestly excessive. I reduce it to shs 50 million (fifty million) which I consider fair and reasonable in the circumstances of this case.

Consequently, the taxing officer's award of shs 30 million as C.T.L. is reduced to shs 7.5 million (seven million five hundred thousand) being 15% of the instructions fee I have awarded.

Accordingly, the total bill of costs is reduced from shs 230,092,100/= to shs 57,092,100/=. The applicant will have the costs of this reference.

DATED at Mengo this 15th day of December, 1993.

B.J. ODOKI

JUSTICE OF THE SUPREME COURT