

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA**  
**AT MENGO**

**REFERENCE NO. 16 OF 1999**

**BETWEEN**

- 1. EBRAHIM A. KASSIM**
- 2. SHERALI AHAMED KASSAM**
- 3. ONALI ALLARAKHIA::::::::::::::::::::::::::::: APPLICANTS**

**AND**

**HABRE INTERNATIONAL LTD) ::::::::::::::::::::::: RESPONDENT**

*(Arising from Supreme Court Civil Appeal No. 4 of 1999)*  
**BEFORE S.W.W WAMBUZI, C.J, A.N KAROKORA, J.S. C., AND**  
**L.E.M MUKASA-KIKONYOGO, J.S.C)**

**RULING**

This is a reference to me on taxation under Rule 105 of the Rules of the Supreme Court. It is brought against the Ruling of the Registrar in his capacity as a taxing master. He taxed a bill of costs of the successful appellant in Civil Appeal No. 4 of 1999 at shs.47.992.500/= out of which shs.30.000.000/= and shs15.000.000/= were instruction fees for taking, instructions and arguing additional grounds respectively.

The background leading to the reference is that, Habre International Co. Ltd hereinafter to be called the respondent successfully sued ***Ebrahim Allarakhia and Others*** hereinafter to be referred to as the Applicants for a sum of shs.70.000.000/= spent on development on the suit premises. When the suit premises were destroyed by fire in 1985 the Custodian Board allowed the Respondent to rebuild and construct new structures on the site. The plans were approved by Kampala City Council.

Later in 1992 the applicants repossessed the suit premises as former owners under the Expropriated Properties Act 9 of 1982. When the Respondent was served with notice to quit, it asked the applicants to pay Shs.70.000.000/= as compensation for the developments carried

out on the suit premises. The applicants agreed to compensate the Respondent but offered to pay Shs. 10 million only. The Respondent rejected the offer. It instead sued the applicants in the High Court and won the case.

Aggrieved by the decision of the High Court the applicants successfully appealed to the Court of Appeal, which reversed the decision of the High Court. The Court of Appeal held inter alia that the High Court had no original jurisdiction to entertain the claim because the Respondent had not complied with the provisions of **Sections 11(2) and 14(1) of the Expropriated Properties Act and Regulation 8(1) of the Expropriated Properties (Repossession and Disposal) Regulations 1983.**

Dissatisfied with the judgment of the Court of Appeal the Respondent lodged an appeal to the Supreme Court on two grounds but which could be reduced to one ground namely that:

The Court of Appeal erred in law when it held that the High Court had no original jurisdiction to entertain a claim for improvements in respect of property to which the Expropriated Properties Act applies. The appeal was allowed with costs in the Supreme Court and courts below.

The Respondent filed a bill of costs in the total sum of Shs, 87.470.500/ but the Registrar taxed it at a total sum of Shs. 47.992.5001=. The applicants were dissatisfied with the taxation and, hence, filed this reference to a single judge of the court.

The reference is based on the following seven grounds.

- 1. That the taxing master erred in law when he taxed a bill of costs presented by an applicant who did not have judgment and decree in its favor.*
- 2. That the taxing master was in error when he awarded shs.30 million as instruction fee under item 3 which was manifestly excessive and amounted to a misdirection of principle.*
- 3. That the taxing master was in error when he took into account the time taken when the advocates had not handled the case right from the High Court.*
- 4. That the taxing master was in error and misdirected himself when he took into account a counter claim that was not considered by the High Court and Supreme Court*

. 5. *That the taxing master was in error and misdirected himself on Principle when he awarded Shs.15 million on item 12 purportedly for arguing additional grounds over appeal. The award is manifestly excessive and extravagant and amounts to a misdirection on principle.*

6, *That the taxing master was in error and misdirected himself when he found that the appeal was complex when it involved simple interpretation of Section 11 of The EPA No. 9 of 1982.*

7. *That the taxing master was in error and misdirected himself when he failed to find that perusals and written submissions are part of the instruction fee*

. Mr. Babigumira learned counsel for the applicants, hence, asked the court to make orders that: -

*(a) The taxing master's award be set aside*

*(b) In the alternative but without prejudice to the foregoing, that the taxing master's award be set aside and be substituted with such a sum that justice of the case requires.*

***(c) The Respondent pays the costs of this reference and before the taxing master.***

This court will entertain a reference on taxation on two grounds namely on a point of law or principle or on the ground that the bill of costs as taxed is in all circumstances manifestly excessive or manifestly inadequate. This is contained in Rule 105 (1) and (3) of The Rules of this court.

Rule 105(1) reads that:

***“Any person who is dissatisfied with the decision of the Registrar in his capacity as a taxing officer may require any matter of law or principle to be referred to a judge of the court for his or her decision and the judge shall determine the matter as the justice of the case may require***

Sub Rule 3 states that:-

***“Any person who contends that a bill of costs taxed is, in all the circumstances manifestly***

***excessive or manifestly inadequate, may require the bill to be referred to a judge and the judge may make such deductions or addition as will render the bill reasonable.***

The principles governing taxation of costs by a taxing master are well settled. Firstly the instruction fee should cover the advocates' work including taking instructions and any other work necessary for presenting the case for trial or appeal. Secondly it would be proper to give a slightly higher award to the counsel for the appellant although there is no rule of law requiring the court to do so. Thirdly, the taxing master is expected to tax each bill on its merits. Nobody could pretend that by any mathematical calculation the taxing master will arrive at an exact award of costs. Fourthly, the taxing master will have to take into account the value of the subject matter. Fifthly, although the taxing master has discretion he has to exercise it judicially and not whimsically or capriciously. Sixthly, whilst the successful litigant is entitled to a fair reimbursement of the costs he has incurred, the taxing master must take into consideration the public interest. As it was held in the case of **Premchand Raichand Ltd & Another Vs. Quarry Services of East Africa Ltd & Others No.3 1972 E.A. 162** costs must not be allowed to rise to such a level as to confine access to the courts to the wealthy. On the other hand, the general level of remuneration of advocates must be such as to attract recruits to the profession.

Further the Registrar of this court has to tax the bill in accordance with the Third Schedule to the Rules of this court, for Rule 104(2) provides that:

***“The costs shall be taxed in accordance with the Rules and scale set out in the Third Schedule to these Rules’***

I will next proceed to consider the submissions of the counsel for the parties on the seven grounds of reference. The first observation I wish to make is that as Mr. Babigumira did not make any submissions on grounds 3 and 6, I take it that they are both abandoned. I do not know what he wanted to say particularly as it appears these grounds could have very easily been argued under the remaining grounds. Basing myself on the aforesaid principles I propose to start with ground 1, followed by grounds 4 and 7. I intend to take grounds 2, and 5 together and to consider them last.

On the first ground of reference Mr. Babigumira criticized the learned taxing master for taxing a bill of costs presented by a stranger who did not have judgment. He referred the court to paragraph 2(1) of the Third Schedule to the Rules which reads that:-

***“Where costs are to be taxed the advocate for the party to whom the costs were awarded shall lodge his or her bill with the taxing officer and shall, before, or within seven days after lodging it serve a copy of it on the advocate for the party liable to pay it”***

Mr. Babigumira’s contention is that it is only a party who has been awarded costs that can lodge a bill of costs. On perusal of the record at Page 41 whilst it is **Habre International Ltd** which lodged the bill of costs to be taxed, the decree on Page 39 shows that it was made in favor of a different party namely **Habre International Company Ltd.** To him no matter how slight the mistake was it should have been amended before the taxation was done.

In reply, Mr. Mbabazi, for the Respondents who opposed the reference explained that the same issue had been raised before the Supreme Court. The objection to the name has already been rejected.

In my view this was not a fatal mistake on the part of the taxing master. Both parties know who they are. They started from the High Court up to the Supreme Court. There is no mistake as to the identity of the parties. The Courts of law are enjoined by **Article 126 (2) (e) of The Constitution of Uganda 1995** to administer substantive justice without undue regard to technicalities. I see no merit in this ground. It must fail

On the **4<sup>th</sup> ground** Mr. Babigumira submitted that the taxing master erred and misdirected himself when he took into account a counter claim which had not been considered by the High Court and Supreme Court. The trial judge did not make a decision on it nor WS **it** an issue before the Supreme Court. Worse still the advocates who argued the appeal did not participate in the proceedings before the High Court and hence there was no work done by them. Mr. Babigumira referred the court to paragraph 2(3) of the Third Schedule which reads that:

***“A bill of costs may not be lodged by an advocate who is not on record”***

As far as he was concerned, the taxing master acted without due care when he awarded costs for the counter claim.

In reply Mr. Mbabazi contended that it did not matter that the counter claim was not considered by the High Court. The prayer in the Supreme Court was for restoration of the judgment of the High Court. The counter claim was part of the proceedings. As for the criticism that costs were awarded to an advocate for work done by other advocates in High Court, Mr. Mbabazi pointed out that costs are not awarded to advocates but to a successful party.

On the counter claim it is true as submitted by Mr. Mbabazi it may have been part of the proceedings but it was not considered by the trial court. I agree with Mr. Babigumira that no costs should have been awarded on it. With regard to the complaint that the present advocate was awarded costs for work done in the High Court by other advocates the position on change of advocates is clearly stated under paragraph 16 of the Third Schedule.

It provides that:

***(1) If there has been a change of advocates, the bill of costs of the first advocate may be annexed to that of the current advocate and the total shown as a disbursement.***

***(2) The bill shall be taxed in the ordinary way, the current Advocate being heard on i4 but the taxing officer may require the first advocate to attend***

The position is self-explanatory and does not need much comment, moreover this item was awarded under instructions fee so it will also be considered under grounds 2 and 5. However, in my view no costs should have been awarded on the counter claim, which was not considered by the court. This ground must, hence, succeed.

On the 7<sup>th</sup> ground, Mr. Babigumira referred this court to paragraph 9(3) of the Third Schedule which provides for quantum of costs.

It reads that:-

***“The sum allowed under sub paragraph (2) (that is fees for instructions to appeal) shall include all the work necessarily and properly done in connection with the appeal and not otherwise chargeable including attendances, correspondence, perusals and consulting authorities.”***

It was the contention of Mr. Babigumira that it was a misdirection for the taxing master to allow sums of money claimed for writing submissions as a result of which at the end he awarded an extravagant sum of shs.47.992.500/. I do not accept Mr. Babigumira's submission, there was no misdirection on the part of the taxing master. He considered and properly awarded his other claims complained of by Mr. Babigumira under paragraph 9 of the Third Schedule. The only valid complaint would perhaps be on the issue of quantum. In my view Mr. Babigumira's main complaint was under ground 2 and 5 which I think take care of all these little complaints on the taxing master awards on items, 1, 2, 18, 19 and 20 of the Respondent's bill of costs. This ground was superfluous and unnecessary. It must fail.

I now proceed to consider grounds 2 and 5 which I think are the main grounds of this reference. The gist of these grounds is that the taxing master erred in law when he awarded instruction fee of 30 million shillings for taking instructions to lodge an appeal and shs. 15 million for arguing additional grounds of appeal which awards were manifestly excessive and extravagant which amounted to misdirection on principle. In his submission Mr. Babigumira argued that the appeal was not so complex to justify grant of such big awards. The appeal involved only one ground namely interpretation of **Sections 11(2), and 14(1) of The expropriated Properties Act and Regulation 8 supra.** To him the fact that it was the first time for such issue to be considered by the Supreme Court did not in itself make the appeal complex and difficult. It was a simple one without any ambiguity. He referred the court to the case of **Attorney General Vs. Uganda Blanket Manufacturers Civil Appeal No. 17/93** and proposed a sum of shs. 1.500.000/= as instruction fee to lodge appeal under item 3.

On the claim under item 12, that is instruction fee to argue additional grounds Mr. Babigumira argued that this was not a cross appeal. It was notice for arguing additional grounds under **Rule 87(1) of the Rules of the Supreme Court** which reads that

***“A respondent who desires to contend on an appeal in the court of Appeal should be affirmed on grounds other than or additional to those, relied upon by court, shall give notice to that effect, specifying the grounds of his or her contention.***

“.

Citing the case of **Bishari t/a Isaac Trading Store Vs. Vita foam (U) Ltd Civil Application No. 13/95** Mr. Babigumira argued that similarly the award of shs. 15.000,000 granted by the taxing master was excessive and extravagant. He proposed, that it should be reduced to

shs.600.000/= or such sum which the court will consider appropriate in the circumstances of this case.

In reply Mr. Mr. Mbabazi supported both awards under items 3 and 12. He submitted that they were not excessive. To him this appeal involved interpretation of difficult provisions of the ***Expropriated Properties Act***. The issues argued were not simple as Mr. Babigumira wanted this court to believe. The appeal was complex to justify the awards. The court did not easily come to a decision on the interpretation of ***Sections 11(2) and 14(1) of EPA Supra***. Mr. Mbabazi further submitted that the courts must strike a balance between public interest and the legal profession. The awards for costs should be kept at a reasonable level so as to attract recruits to the profession but not to drive them away. Further the court has to consider the work put in, papers, written submissions and the research carried out by the advocate, He asked the court to uphold both awards.

On the complaints under these two grounds; 2 and 5, there is no doubt the taxing master was alive to the principles governing both taxation in general and in this court. He carried out the taxation in accordance with Rule 105(2) and the Third Schedule to the Rules of the Supreme Court. He particularly addressed himself to the provisions of paragraph 9(2) and (3) of the said Third Schedule. He correctly stated the position of the law. I cannot fault him on that. He also perused and correctly stated the principles laid down in the relevant authorities on taxation.

However, the problem with these two awards is that in all circumstances of this case they were both manifestly excessive. In his Ruling the taxing master stated inter alia that:

***“..... turning to the present case I don’t agree with Mr. Orachi for the Respondents that the nature of this claim was a simple liquidated demand for costs of repairs on Custodian Board property. The issues involved were more complex and rotated around whether the lower court misquoted and misapplied Section 14(1) of The Expropriated Properties Act 1982 and the Regulations of the Expropriated Properties (Repossession & Disposal Regulations 1983. “***

With respect I do not agree that the appeal was that entire complex to justify such generous award of shs.30 million for taking instructions. The appeal was not all that difficult. It



did not take the Supreme Court very long to reach a decision. The issues involved were clear and without any ambiguity. Their lordships quickly reached an agreement on the decision. A case in point is **Bishari t/a Isaac Trading Store Vs. Vita foam (U) Ltd Supra** where an award of shs. 8 million was found to be manifestly extravagant and as such amounted to a misdirection on principle. It was accordingly reduced to Shs. 2.500.000/=. I agree that the taxing master guided by the principles laid down in the case of **Premchand Raichand Ltd and Another Vs. Quarry Services of East Africa and Others No. 3 1972 E.A 162** Supra was justified to give counsel for the Respondent slightly a higher award for the responsibility of advising his client to attack the judgment of the Court of Appeal. However, such award had still to be reasonable and not excessive. Further he rightly took into account other factors like interest of the parties, the period of 6 years the matter has been pending in court but I would still find the two awards excessive.

I accept the submission of Mr. Mbabazi that, on item 12 the taxing master rightly took into consideration the industry, put in by the counsel and research carried out by him. That notwithstanding, I would still consider the present award, of shs.15.000.000/ too high even with those factors taken into account. I agree with the taxing master that unlike in the High Court where assessment is done according to the scale of the value of the subject matter the assessment of the instruction fee in the Supreme Court is in his discretion. Be that as it may, the taxing master has to exercise his discretion judicially. He has to take into account factors under paragraph 9 of the Third Schedule which include the amount involved in the appeal. In the instant case the award of shs. 15.000.000/= for arguing additional grounds in my view was not reasonable. It was no doubt excessive, considering the fact that the value involved in the appeal was only shs. 70.000.000/=.

All in all a total of Shs,47.992.500/= awarded in the present case by the taxing master was too high. In the case of **Attorney General Vs. Uganda Blanket Manufacturers** Supra where the value of the subject matter was shs.2.8 billion an award of costs of shs.200.000.000/= was considered to be excessive by Odoki, JSC. It was reduced to Shs.50.000.000/=. See also **Bashiri's Case Supra.**

In the instant case the sums of Shs.1.500.000/ on item 3 and shs.600.000/= on item 12 suggested by Mr. Babigumira are in my view manifestly inadequate in the circumstances of this case. I consider a sum of Shs. 15 million as instruction fee under item 3 and Skis. 5

million under item 12 respectively as appropriate and reasonable awards of instruction fees.  
In the result grounds 2 and 5 would succeed.

Consequently the taxed bill of Shs.47.992,500/= would be adjusted according to the deductions made by me to leave a balance of shs.22.992.500/=. Each party should bear its own costs of this application and those before the taxing master.

Dated at Mengo this 12th day of July... 2000.

**Laetitia E. M.Mukasa-Kikonyogo**

**Justice of the Supreme Court**

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