

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA

AT MENGO

CIVIL APPLICATION NO. 7 OF 2003

BETWEEN

HABRE INTERNATIONAL TRADING CO. LTD. ::::: APPLICANT

AND

FRANCIS RUTAGARAMA BANTARIZA ::::::::::: RESPONDENT

BEFORE: HON. JUSTICE KANYEIHAMBA, J.S.C.

PROCEEDINGS

Mr. Eriya Kategaya of Byamugisha and Rwaheru and Co. Advocates, for the applicant.

Ms. Sitina Cherotic of Nyanzi, Kiboneka and Mbabazi & Co. Advocates, for the respondent.

Mr. Kategaya:

This is a reference to a single judge under Rule 105(2) of the Rules of this court. Following a successful appeal in this court in favour of the respondent, the court awarded him costs which were claimed and taxed. In his ruling, the learned taxing officer allowed the sum of Shs.48,000,000/= as instructions fee which we are challenging as too excessive. Our grounds of reference are that,

1. *The award of Shs. 48,000,000/- is manifestly excessive.*
2. *The award of Shs. 120,000/= for lodging of record of appeal in disbursements by the taxing officer was manifestly excessive.*

Counsel argued that whereas there are no magic in determining what are reasonable costs, nevertheless courts have held from time to time that such costs must be reasonable and should conform to the rules of this court and judicial precedents. Mr. Kategeya submitted that there were no complicated issues involved in the appeal before the Supreme Court and if there were any in the case, they had been raised and resolved in the Court of Appeal.

Counsel further contended that according to the rules of this court the fee to be allowed for instructions should take into account, *inter alia*, the nature, importance and difficulty of the subject matter of the appeal, other costs to be allowed and the persons to bear the costs. These factors were ignored by the taxing officer. For instance, the applicant is a pauper who has failed to pay taxed costs in other suits, such as in Civil Application No. 4 of 1999 where he failed to pay a mere three million shillings and has no property to sell. He is also a sickly person.

It is our contention that if costs are too prohibitive, this will deter would be litigants. Counsel abandoned ground 2 of the reference.

Ms. S. Cherotic:

It is the respondent's contention that considering the circumstances of this case, the instructions fee was reasonable.

The case was an important one since it determined the ownership of the suit property. Counsel for the respondent had to revive some of the matters in this court which the Court of Appeal had ignored. For instance, the court had ignored the issue of fraud on which counsel for the respondent specifically made research so as to have it addressed

in this court. All the same I do not mind this court using its discretion to revise the amount slightly downward. It would have helped if counsel for the respondent had suggested some figure on which I could have commented. In the absence of any proposal from counsel for the applicant, I support the ruling of the taxing officer as reasonable.

Court:

I will give my ruling on a date to be notified to the parties.

RULING OF KANYEIHAMBA, J.S.C.

This is a reference to me under rule 105 of the Rules of this court, from a decision of the Registrar as a taxing officer.

The background to this reference is that following the judgment of this court in Civil Appeal No. 3 of 1999, the respondent was ordered to pay costs to the appellant in this court and in the courts below.

Before determining this reference, I am constrained to comment on the casual and inattentive manner in which both counsel and the taxing officer of the Supreme Court handled the taxation application before the Registrar of this court. The papers presented to me show that contrary to what was subsequently submitted to court, the matter was filed as Civil Appeal No. 3 of 1999. Admittedly, there was a tentative attempt to alter it in ink with the words "Civil Application No. 7 of 2002" with a question mark, whatever that means. Whereas the applicant before me turned out to be a Mr. Francis Rutagarama Bantariza and the respondent, Habre International Trading Co. Ltd., the actual reference heading was marked as either Civil appeal No 3 of 1999

or Civil Application No. 7/2002? between Habre International Trading Co. Ltd. as Appellant and Francis Rutagarama Bantariza as Respondent. There is no citation of the law or rules under which the reference is made. Then out of the blue comes a heading displaying grounds of the Reference. Apparently, Francis Rutagarama Bantariza on the 8th November, 1999, required the Registrar to refer the bill as taxed by him to a Justice of the Supreme Court for being manifestly excessive and the same had not, up to now been referred to a Justice of the Supreme Court. The learned Registrar did not explain why there had been so much delay. Neither he nor counsel for the appellant/respondent raised the issue or objected as to whether such a delay was in the interests of justice or justifiable. Be that as it may, the document is dated and stamped by the court's registry on 14th April, 2003. It was not brought up for hearing until 19th April, 2004.

The proceedings before the learned taxing officer if correctly recorded show lack of depth and seriousness on the part of counsel who appeared before him. For clarity purposes, I will reproduce the whole submissions of both counsel made to the taxing officer. According to the latter's record of proceedings, this is all that counsel for the applicant said,

"The bill of costs is as per Supreme Court rules. According to paragraph 9 of the Third Schedule to the Supreme Court Rules, the appeal involved complex points of law. On the authority of Attorney General v. Uganda Blanket Manufacturers, Civil Appeal No. 1 of 1993, the instructions fees of Shs.90,000,000/= is reasonable."

There is also General Industries v. Non-Performing Assets (Civil Appeal No. 5 Of 1998). With regard to the cases quoted and the complexity of the appeal, involving ownership of property, instructions fee is reasonable and should be granted. The rest of the items are reasonable and calculated according to the rules. There is no exaggeration, so I pray that costs be granted."

Counsel for the applicant (or respondent?) said this in opposition,

"I oppose the whole Bill of costs. It is excessive and not in accordance with principle. On item (1), there was nothing complex or important in the law involved. The cases cited by my learned friend mitigate against the excessive costs of Shs.90,000,000/= In the High Court, I agreed with Kayondo, then representing the appellant at Shs.1,500,000/= and it was paid. That was the nature and importance of the case."

On the basis of the above submissions and arguments, the learned taxing officer of the Supreme Court used his discretion to award the sum of Shs.48,000,000/= as a reasonable instructions fee. I will be returning to this amount of money and the criteria used by the taxing officer for his ruling. Suffice to say that very little, if any, factual or legal assistance was forthcoming from the participating counsel to guide the taxing officer.

The law and rules on taxation of costs are well known and freely available. These are effectively buttressed by principles and precedents on taxation. The powers of the Registrar of the Supreme Court to tax bills of costs are derived from Rule 104(1) and rule 9 of the 3rd Schedule of the Rules of this Court.

Paragraph (2) of Rule 9 of the 3rd Schedule provides that:-

"The fee to be allowed for instructions to appeal or to oppose an appeal shall be a sum that a taxing officer considers reasonable having regard to the amount involved in 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 circumstances."

Consequently, whether or not the award by the taxing officer is reasonable must be determined in reference to all the matters enumerated in Rule 9(2) of the 3rd Schedule to the Rules of this court. For more than a decade now this court has, in many of its decisions on taxation, laid down or referred to principles, precepts and precedents which govern taxation of costs. A sample of these cases include the **Attorney General v. Uganda Blanket Manufacturers**, Civil Application No. 17/93, **Patrick Makumbi**

and Nakibuuka v. Sole Electrics (U) Ltd., Civil Application No. 11/94, **The Registered Trustees of Kampala Institute v. Departed Asians Property Custodian Board**, Civil Application No. 3 of 1995, **Ebrahim A. Kassam Sherali Ahmed Kassaw and Onali Allarakhia v. Habre International Ltd.** Ref No 16 of 1999, **Departed Asians' Property Custodian Board v. Jaffer Brothers Ltd.**, Civil Application No.13 of 1999; **Bank of Uganda v. Banco Arabe Espanol**, Civil Application No. 23 of 1999, **General Parts (U) Ltd. v. Non-Performing Assets Recovery Trust**, Civil Application No 21 of 2000 and **Attorney General v. K. Ssemwogerere and Zachary Olum**, Civil Application No. 20 of 2000.

In all these authorities reference is made to other principles and leading authorities. Yet, every time another taxation of costs case arises or a reference is made to a court, ignorance or reluctance are shown amongst counsel and taxing officers to utilise these leading and in some cases, binding authorities. The same phenomena is true of the application/submissions of counsel and rulings of the learned taxing officer in this reference. I would not wish to hazard the reason as being the fact that nearly in all these decisions of the Supreme Court, huge amounts claimed by applicants or awarded by taxing officers are drastically reduced to small sums of which the Supreme Court believes to be reasonable. Thus, in the last mentioned reference, the parties' colossal claim of shs.1,551,959,000/= with the equally high award of the taxing officer at shs.350,000,000/= were found by the court to be manifestly excessive and reduced to a mere Shs.30,000,000/=. In the **Bank of Uganda v. Banco Arabe Espanol**, (*supra*), the award by the taxing officer of Shs.200,000,000/= was reduced to a mere Shs.7,000,000/= and in **General Parts (U) Ltd. v. Non-Performing Assets Recovery Trust**, (*supra*), or reference, we reduced the award of Shs.188,927,427/= allowed by the taxing officer to a mere Shs. 15,000,000/=. There appears to be a good reason for compiling these taxation decisions and references in a volume to be made available to advocates and registrars.

I will now consider the reasonableness of the award of instructions fee by taxing officer in this case.

As Odoki, J.S.C, (as he then was) observed in the case of **Attorney General v. Uganda Blanket Manufacturers**, (*supra*),

"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."

In that case the learned Lord Justice reduced the amount of Shs.230,092,100/= awarded by the taxing officer to Shs.,57,092,100/=.

In my view, in making his ruling in this reference, the learned taxing officer appears to have been guided by wrong principles. When counsel submitted that there was nothing complex or important points of law involved in the appeal to justify a higher award of costs, the taxing officer reasoned for a higher award by observing that the leading judgment of the court reveals that it was detailed and involved and that both sides had submitted detailed written submissions. With respect this is not what makes a case complex or involve complicated points of law. Nor do I believe that the issue of fraud and the law applicable or its interpretation *per se*, necessarily make a case complex as ruled by the taxing officer. It is certainly a wrong principle applied by the learned taxing officer to say that counsel for the applicant had failed to suggest the amount of award other than the Shs.48,000,000/= which was reasonable. The same point is made by counsel for the respondent when reluctantly supporting the award of instructions fee by the taxing officer. In my view, had the taxing officer taken into account relevant factors and been guided by the correct principles, he would have awarded a much smaller sum as instructions fee.

It is clear that certain matters contended before me by counsel for the applicant and which are reflected in Rule 9(2) of the 3rd Schedule to the rules of this court were not taken into account by the taxing officer. These included the interest of the parties, other costs to be allowed, the fund or person to bear the costs and all other circumstances. Mr. Eriya Kategaya, who represented the applicant before me submitted that the applicant who is the party to bear the costs is a sick and poor person who has previously failed to pay taxed costs in other suits. Before the learned taxing officer, counsel for the applicant contended that the then appellant had been taxed the sum of Shs. 1,500,000/= which the taxing officer did not take into account. The taxing officer cites the lengthy and involved judgment of the court as one of the justifying grounds for a higher award of costs. In my view, the nature and style of a judgment does not necessarily reflect the actual work done by counsel who appeared before the court. This is yet another wrong principle applied by the taxing officer.

All in all, it is my view that the amount allowed as a fee for instructions are grossly excessive and in light of my findings in this reference, the amount should be drastically reduced. I would therefore disallow the instructions fee of Shs.48,000,000/= and order that it be reduced to Shs.5,000,000/=. I would order that the sum of shs.500,000/= be awarded to the applicant as costs for this reference in this court.

Dated at Mengo this 26th day of May 2004.

G.W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT