# THE REPUBLIC OF UGANDA

## IN THE SUPREME COURT OF UGANDA

## AT KAMPALA

**TAXATION REFERENCE NO. 0001 OF 2023**

**(Arising from Tax Applications No. 6 and 7 of 2022 and Civil Appeal No. 07 of 2020)**

**BANK OF UGANDA :::::::::::::::::::::::::::::::::::::::::::: APPLICANT**

**VS.**

**1. SUDHIR RUPARELIA**
**2. MEERA INVESTMENTS LTD :::::::::::::::::::::: RESPONDENTS**

***(Reference arising out of the rulings of the Registrar, Her worship Ssali Harriet Nalukwago in Taxation Applications No. 6 and No. 7 of 2022 in the taxation of costs for Civil Appeal No. 7 of 2020)***

**RULING OF CHIBITA, J.S.C**

This is a reference under r. 106(1) and (3) of the Rules of this court from the ruling of the Registrar in her capacity as taxing officer. She taxed two bills of costs of the successful appellants (now respondents), each at 54,185,433,421/= making a total of **108,370,866,842/** (*One Hundred Eight Billion, Three Hundred Seventy Million, Eight Hundred Sixty-Six Thousand, Eight hundred forty-five Shillings.*

The reference was premised on the following grounds;

1. **The taxing officer erred in law when she taxed and allowed double awards of costs to the same law firm which represented both respondents in the appeal.**

2. **The taxing officer erred in law and fact when she taxed and allowed amounts in the bills of costs which were manifestly excessive thus arriving at wrong decisions thereby occasioning a miscarriage of justice.**
3. **The taxing officer erred in the computation of the total amount of costs in the sum of UGX 54,185,433,421/=.**
4. **The taxing officer applied wrong principles in assessing and allowing quantum of instruction fees of UGX 45,860,682,725.90/= for each bill of costs in the appeal, which was manifestly excessive in the circumstances.**
5. **The taxing officer applied wrong principles in assessing and allowing the quantum of instruction fees of UGX 50,000,000= in Miscellaneous Application No. 33 of 2020, which was manifestly excessive in the circumstances.**
6. **The taxing officer applied wrong principles in assessing and allowing the quantum of instruction fees of UGX 50,000,000= in Miscellaneous Application No. 32 of 2020, which was manifestly excessive in the circumstances.**
7. **The taxing officer applied wrong principles in assessing and allowing the quantum of instruction fees of UGX 50,000,000= in Miscellaneous Application No. 39 of 2020, which was manifestly excessive in the circumstances.**
8. **The taxing officer applied wrong principles in assessing and allowing the quantum of instruction fees of UGX 50,000,000= in Miscellaneous Application No. 02 of 2020, which was manifestly excessive in the circumstances.**

9. **The taxing officer erred in law and fact in assessing and allowing amounts for drawings, copies thereof, attendances and perusals.**
10. **The taxing officer erred in law in assessing and allowing Value Added Tax in the absence of a tax certificate of registration on the file.**
11. **The taxing officer erred in law and fact in assessing and allowing amounts for disbursements which were not proved.**

The applicant sought for orders that;

a. *The decision of the taxing officer overruling the preliminary objection be set aside.*
b. *The decision of the taxing officer of making double awards of fees be set aside.*
c. *The Honorable Court makes such deductions and / or variations as will render the bills of costs reasonable.*
d. *The decision of the taxing officer in awarding Value Added Tax be set aside.*
e. *The decision of the taxing officer in assessing and awarding costs to the 2nd Respondent in proceedings to which it was not a party be set aside.*
f. *The decision of the taxing officer in awarding amounts for drawings, copies thereof, attendances and perusals be set aside and / or varied.*
g. *The respondents pay the costs of this reference to the Applicant.*

I find it necessary to give a brief background to the proceedings giving rise to this reference before considering the grounds of reference.

Crane Bank Ltd was licensed by the Bank of Uganda to carry out the business of a financial institution. On the 20th October, 2016, the bank was placed under statutory management by the Bank of Uganda pursuant to sections 87(3) and 88(1) (a), (b) of the Financial Institutions Act, 2004. On 20th January, 2017, the Bank of Uganda pursuant to s. 94 of the Financial Institutions Act placed the Crane Bank Ltd under receivership. On 30th June, 2017, Crane Bank Ltd filed High Court Civil Suit No. 493 of 2017 against the respondents wherein, it sought recovery of money allegedly misappropriated by the 1st respondent as a director and shareholder of Crane Bank Ltd. Crane Bank Ltd also sought the delivery of freehold certificates of titles to 48 properties and a refund from the 2nd respondent for payment made on "Void leases". On 3rd August 2017, the respondents filed their defence. In their written statement of defence, they denied the allegations made against them and stated that they would raise preliminary objections against the then plaintiff Crane Bank Ltd to the effect that the Plaintiff had no *locus standi,* no cause of action and that the suit property was barred in law.

The respondents later filed H.C Misc. Application 320 of 2019 seeking orders that: Crane Bank Ltd had no locus standi to commence actions under HCCS No. 493 of 2017 against the respondents, the plaint in HCCS No. 493 of 2017 did not disclose a cause of action against the respondents, that the orders sought in the suit were barred in law with costs; and costs of the application be provided for.

David Wangutusi, J, allowed the application and dismissed HCCS No. 493 of 2017 for lack of cause of action, locus standi and for being barred in law. He also ordered Bank of Uganda to pay costs of the application.

Being dissatisfied with the decision and orders of the High Court, Crane Bank Ltd (in receivership) unsuccessfully appealed to the Court of Appeal. Still being dissatisfied with the decision of the Court of Appeal, Crane Bank Ltd (in receivership) filed civil appeal No. 07 of 2020 to this honorable court.

With the decision of the Court of Appeal, the respondents' counsel, Kampala Associated Advocates wrote a letter to the Registrar, Uganda Registration Services Bureau dated 28th September, 2020, informing him that the receivership of Crane Bank (U) Ltd had ended on 20th January, 2018. The registrar was further informed that the Bank of Uganda no longer had any legal authority over the affairs of Crane Bank Ltd and that the Board of Directors and shareholders of Crane Bank Limited are back in full control of the company and its affairs. The letter therefore required the Registrar to adjust the official records accordingly.

Pursuant to the letter, Crane Bank Ltd (in receivership) made an application vide Misc. Appl. No. 32 of 2020 and 33 of 2020 to this court seeking orders to restrain the 1st respondent from claiming, taking control, repossessing or in any way interfering with the management of Crane Bank ltd (in receivership) or its receiver until the hearing and determination of the SCCA No. 7 of 2020 that was

pending before this court. The applications were dismissed with costs.

On 9th November, 2020, the BOU issued a memo stating that it was recommended that the 1st respondent be progressed into liquidation and indeed, on 13th November, 2020, in exercise of its powers under section 99(1) & (2) of the Financial Institutions Act, 2004, placed the 1st respondent under Liquidation and ordered for the winding up of its affairs.

Following this development, the 1st respondent filed Misc. Appl. No. 39 and 40 of 2020, for a mandatory injunction and an interim injunction restraining the 2nd respondent, their agents or any one from placing the 1st respondent under liquidation and continuing the liquidation process pending the determination of SCCA No. 7 of 2020. Application No. 40 was dismissed but No.39 was allowed with costs. The Applicant also filed Miscellaneous Civil Application No.02 of 2021 seeking to amend the record by substituting the name, Crane Bank ltd (in Receivership) with Crane Bank ltd (in Liquidation). The application was dismissed with costs.

On 15th September 2021, the appellant lodged a notice of withdrawal of the appeal to which the respondents demanded that the appeal be dismissed with costs. The court allowed the withdrawal of the appeal with costs to the respondents.

Pursuant to that, the respondents separately filed 2 bills of costs for taxation vide Taxation Application No. 6 of 2022 and No. 7 of 2022. At the hearing, the applicant raised a preliminary objection to the effect that filing of 2 separate bills of costs was illegal. The taxing

officer dismissed the P.O and gave a ruling in favor of the respondents. The taxing officer further delivered her ruling in the two applications wherein he taxed the bills of costs at 54,185,433,421/= each. Being dissatisfied by the above rulings, the applicant filed the present reference to me.

At the hearing, the applicant was represented by **Mr. Albert Byamugisha and Ms. Goretti Asiimwe, PSA** whereas the respondents were represented by **Mr. Peter Kabatsi, Mr. Bruce Musinguzi and Ms. Barbara Musimenta.**

They both filed written submissions.

The grounds of reference raise 3 issues, which I believe shall resolve the whole case. They are;

1. **Whether it is permissible to file separate bills of costs where the same counsel represented more than one parties.**
2. **Whether the taxing officer erred in law or principle when taxing the bills of costs.**
3. **Whether there was an error in assessing and allowing amounts for drawings, copies thereof, attendances, perusals, disbursements and VAT.**

**Issue one**

**Whether it is permissible to file separate bills of costs where the same counsel represented more than one parties.**

The thrust of the applicant's counsel's submissions was that the taxing officer erred when she held that the filing of two separate bills of costs by the same counsel who represented both respondents did not offend Paragraph 17 to the third schedule of the rules of this

court. He argued that under that law, the taxing officer is not only prohibited from taxing two bills of costs, his/her jurisdiction is limited to establishing whether separate proceedings were taken by or on behalf of any two those parties and consider whether the separate proceedings were necessary and proper. Counsel prayed court to set aside the ruling on the preliminary objection and one of the bills of costs.

In response, it was counsel for respondents' contention that paragraph 17 to the third schedule makes no such prohibition for the taxing officer to allow the filing of two bills of costs, but rather, that it simply allows her to review the bills of costs and disallow any costs which were unnecessarily incurred.

Counsel further argued that the 2nd respondent was not party to some proceedings, therefore, this was a case where separate proceedings were taken out. He explained that the respondents were two independent parties and therefore were entitled to file separate bills of costs as was done in the case of **John Kafeero Sentongo v Shell and Uganda Petroleum Co Ltd Civil reference 1 of 2008**.

**Consideration.**

Before delving into the merits of this issue, I shall first reproduce the key part of the registrar's ruling which is subject to contention. She observed as follows;

**"....Paragraph 17 of the 3rd schedule to the Judicature Supreme Court Rules does not bar the registrar from taxing 2 bills of costs.... I therefore find no merit in the preliminary objections and dismiss the same with costs."**

It is clear from the above submissions that resolving this issue would require court to interpret Paragraph 17 of the 3rd schedule.

**Paragraph 17 to the Third Schedule of Rules of this court** provides for taxation of costs in cases that involve two or more parties being represented by the same counsel. It reads as follows;

**"Where the same advocate is employed for two or more parties and separate proceedings are taken by or on behalf of any two of those parties, the taxing officer shall consider in the taxation of that advocate's bill of costs whether the separate proceedings were necessary and proper; and if he or she is of opinion that any part of the costs occasioned by them has been unnecessarily or improperly incurred, then that part shall be disallowed."**

In statutory interpretation, it is trite that where statutory words are plain and unambiguous, the judge is required to give the words of the statute, their natural and ordinary meaning. **See Lord Diplock in; Abley v Dale, 20 L. J.C.P (N.S) 233 [1851], Duport Steel vs Sirs, QBD 1980.**

I shall break down the above provision to give it its ordinary meaning.

"Where the same advocate is employed for two or more parties and separate proceedings are taken by or on behalf of any two of those parties, (emphasis mine)

The word "**and**" has generally a cumulative sense requiring the fulfillment of all the conditions that it joins together. **See: Ishwar Singh Bindra v State of U.P, AIR 1968 SC 1450, 1454.**

The use of the word "**and**" in the above excerpt means that the provision is to be applied only in situations where separate

proceedings have been taken out by any two of the parties. This also falls under the common law principle for construing legislation of *Expressio unius exclusio alterius,* a maxim which means "the express mention of one thing excludes others". It follows that, because the law expressly provides that separate proceedings must have been taken, excludes the reverse.

The other piece of the provision reads as follows;

"the taxing officer shall consider in the taxation of that advocate's bill of costs whether the separate proceedings were necessary and proper;

and

"if he or she is of opinion that any part of the costs occasioned by them has been unnecessarily or improperly incurred, then that part shall be disallowed."

The remaining piece of the provision provides for steps to be taken by the taxing officer after establishing that separate proceedings were taken.

From the wordings of the provision, it is clear that under no circumstances may counsel representing two or more parties file more than one bill of costs. The law only requires the taxing officer to firstly, examine whether it was necessary and proper for the parties to take separate proceedings. Secondly, If the taxing officer is of the opinion that any part of the costs has been superfluously or wrongly occasioned, he or she is required to disallow that part.

The advocate is required to include the extra costs arising from the separate proceedings in the bill of costs for the taxing officer to examine and tax.

I shall now examine whether the present case falls within the ambits of the law in issue.

The taxing officer erred in law when she taxed 2 bills of costs. It is on record the 2nd respondent was not a part of some interlocutory matters and this would only entitle the 1st respondent to the extra costs involved in those proceedings. The Registrar's ruling on the P.O is hereby set aside. Consequently, the bill of costs under taxation Application no. 06 is hereby struck off the record and the holdings of the registrar on the same are thus set aside. I shall allow the bill of costs under Tax Application No.7 because it embraces all the costs. Issue one is therefore answered in the negative.

**ISSUE TWO**

**Whether the taxing officer erred in law or principle when taxing the bills of costs.**

This issue embraces grounds 2,3,4,5,6,7and 8.

Learned counsel for the applicant, submitted that the taxing officer erred in law and principle when she failed to follow the well settled principles of taxation hence awarded excessive instruction fees. He argued that it was wrong for the taxing officer to rely on the monetary value of the subject matter in assessing the instruction fees which was not in issue before this court. That the appeal in this court involved interpretation of sections of the Financial Institutions Act

regarding receivership. He relied on the cases of ***Bank of Uganda v Banco Arabe Espanol [1999]2EA 45 at 50, Attorney General v Uganda Blanket Manufacturers, Civil Application No. 17/93, Concorp International ltd v Eastern and Eastern and Southern Africa trade and development Bank, S.C.C reference No. 1 of 2013.***

It was counsel's further contention that the taxing officer wrongfully awarded excessive instruction fees of 50,000,000/ for each application to the respondents in miscellaneous applications nos. 32, 33, 39and 02. He submitted that those interlocutory matters were not complex at all to warrant such exorbitant instructions fees. He recommended that court considers an amount of 2,000,000/ as instruction fees for each application.

In response, learned counsel for the respondents, submitted that the taxing master considered the principles of taxation in her ruling as she relied on decided cases of this court which all espouse the principles of taxation in the appellate courts. He argued that she correctly considered the value of the subject matter of the appeal against the respondents and correctly followed the principle of consistency regarding 8-10% of the subject matter as a basis for the award of instruction fees.

Counsel further stated that the appeal before this court was against the Court of Appeal 's decision which upheld the High Court decision to dismiss the suit for recovery of money and freehold titles from the respondents. That the taxing officer was therefore right to base her decision on the value of the subject matter. Counsel also argued that

the fee was awarded deservedly because the appeal was long and drawn out with 8 applications.

It was his further contention that any error in the computation of the costs did not significantly alter the total award and as such does not go to the root of the award.

Regarding the interlocutory matters, learned counsel submitted that it was evident from the bills of costs that the taxing officer reduced the amounts sought for significantly thereby arriving at a reasonable sum. He concluded by citing the case of *Bank of Uganda (supra)* and urged court not to interfere with the registrar's decision as she was the best fitted to handle taxation matters.

**Consideration.**

It is well settled law that a reference on taxation may be made to this court on two grounds i.e. a matter of law or principle or on the ground that the bill of costs as taxed is manifestly excessive or manifestly low in the circumstances. This is rooted in **R.106(1)** and **(3)** of the Rules of this court. It provides that;

**(1)Any person who is dissatisfied with a decision of the registrar in his or her 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.**

**(3) 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 may make such deduction or addition as will render the bill reasonable.** Emphasis mine.

The circumstances under which a Judge may interfere with the Taxing officer's exercise of discretion in awarding costs were restated in the case of **Bank of Uganda v Banco Arabe Espanol, Civil Application No.23 of 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. 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 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 would cause injustice to one of the parties.**

The principles that govern the quantum of instruction fees as regards appeals are well laid in **Paragraph 9(2)** and **(3) of the Third schedule to the Rules of this court.** It reads as follows;

**"(2) The fee to be allowed for instructions to appeal or to oppose an appeal shall be a sum that the taxing officer considers 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. (emphasis mine)**

**(3) The sum allowed under subparagraph (2) of this paragraph 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.**

This court has labored in numerous authorities to explicate the above law and set out general principles of assessing of instruction fees as follows;

- *The instruction fee should cover the advocates' work, including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be.*
- *There is no legal requirement for awarding the Appellant a higher brief fee than the Respondent, but it would be proper to award the Appellant's Counsel a slightly higher fee since he or she has the responsibility to advise his or her client to challenge the decision.*
- *There is no mathematical or magic formula to be used by the Taxing Master to arrive at a precise figure. Each case has to be decided on its own merit and circumstances. For example, a lengthy or complicated case involving lengthy preparations and research will attract high fees.*
- *The amount of the subject matter involved may have a bearing.*
- *The Taxing Master has discretion in the matter of taxation but he must exercise the discretion judicially and not whimsically.*
- *The Taxing Master owes it to the public to ensure that costs do not rise above a reasonable level so as to deny the poor access to court and must be such as to attract recruits to the profession.*
- *In so far as practicable there should be consistency in the awards made.*

***(See Raichand v Quarry Services of East Africa Limited and others [1972] EA 162, Nalumansi v Lule S.C Civil Application No. 12 of 1992, Hashjam v Zanab [1957] EA 255 and Kabanda v Kananura Melvin Consulting Engineers Supreme Court Civil***

***Application No. 24 of 1993), Attorney General vs Uganda Blanket Manufacturers Ltd (1973), Civil Application no. 17 of 1993, Makumbi and another v Sole Electrics (U) Ltd [1990–1994] 1 EA 306. Bank of Uganda vs Banco Arabe Espanol, Civil Application no. 33 of 1999, National Insuarance Corporation vs. Pelican Services limited (2000)2 EA 236, Muwanga Kivumbi vs Attorney General, Civil reference No. 38 of 2017, Mbale Resort Hotel(U) ltd vs. Babcon (u) Limited, Civil Reference No. 18 of 2018.***

Guided by the above principles, I shall examine the taxing master's holdings and determine whether this case presents exceptional circumstances as required by the law.

She observed as follows;

**"I have looked at the ruling of this court regarding dismissal of the appeal. It is evident that the appeal was dismissed, it is also clear that the dismissal was to return Crane Bank Ltd shares to the shareholders. I have looked at the grounds of appeal to determine what exactly Crane Bank Ltd sought from court....it is clear that the failure of Crane Bank Ltd to succeed in this case meant that it would not recover the money it claimed against the respondents. It also meant that the land it was claiming would not be delivered. more specifically, what was placed before this court was determination of whether Crane Bank ltd could claim the amounts so stated in the High Court plaint.**

She then concluded thus;

**"I therefore believe that each of the respondents bills are correct to refer to the subject matter as UGX 458,606,827,259/ and to calculate 10% of that figure for the sum of instruction fees."**

It is evident from the above extracts, that the taxing master relied on the value of the subject matter to arrive at the quantum of instruction fees. I respectfully disagree with the taxing officer. The amount involved in the appeal or subject matter of a case is indeed one of the factors a taxing officer may rely on to arrive at the quantum of instruction fees. Be that as it may, the value of the subject matter was not the question for determination in this court. The question before this court in Civil Appeal No. 07 of 2020 was mainly the determination of the scope of the powers of a receiver under the Financial Institutions Act.

The High Court Civil Suit No. 0493 of 2017, which involved the monetary subject matter was never heard on its merits. The respondents filed HCMA No.320 of 2019 challenging the locus standi and existence of Crane Bank ltd (in receivership). Court held that the plaintiff was nonexistent and therefore could not institute any suit. Court further held that there was no cause of action. It is important to note that the appeal in the Court of Appeal and the subsequent appeal to this court emanated from the above ruling which sprung fresh questions for determination revolving around receivership under the Financial Institutions Act. The aim of the appellant in both

appellate courts was for court to set aside the Ruling and order that the case be heard on its merits in the High Court. The monetary value involved in the Principal suit in the High Court could not therefore, be a dependable factor in the awarding of instruction fees.

This kind of error by the taxing officer is not strange to this court. The learned justices of this honorable court have labored to set straight what the phrase "amount involved in the appeal" means.

In the case of **Bank of Uganda vs Banco Arabe Espanol(supra), Mulenga JSC** when dealing with a similar scenario observed as follows;

**"Undoubtedly, in his ruling the learned taxing officer took the view that the monetary claim in the principal sum was "the amount involved in the appeal" with respect, however, this was a misdirection. Although the principal suit and therefore, the monetary claim therein, was sound to be and was actually affected by the outcome of the appeal, the monetary claim was not involved in the appeal. it was not an issue or a question to be determined in the appeal."**

In another, case of **Attorney General & Anor vs James Mark Kamoga & Anor, Civil Appeal No. 02 of 2008,** Justice Okello stated as follows;

**"...I agree with the above interpretation of subparagraph 2 of paragraph 9 as to what constitutes *"the amount involved in the***

***appeal.*" It can be deduced from the above passage that <u>the test to be applied to determine what constitutes the amount involved in the appeal is a question whether the amount was an issue or a question to be determined in the appeal.</u> The sole damages awarded in the appeal or the value of then subject matter of the appeal as argued by Mr. Tibaijuka, do not constitute "the amount involved in the appeal" unless they were issues for determination in the appeal.**

See also; ***Mbale Resort Hotel(U)ltd vs Babcon (U) Limited, Taxation Civil Reference No.18 of 2018***.

The case evidently does not pass the test set out by Okello JSC in the above text and holding as such was not only a misdirection, but also an error of principle on the part of the taxing officer.

Having settled the above, I shall now examine whether the award of 45,860,682,730/ was manifestly excessive as claimed by the applicant.

Instruction fees is the money paid to an advocate for the work done on a given case. Difficulty of a case or the amount of work done by an advocate is one of the most important factors when assessing the quantum of instruction fees. The amount of research done in a complex case is not the same as in a non-complex one and both advocates cannot be paid the same. It is also noteworthy that just because counsel does research before filing pleadings and then files pleadings, is not of itself necessarily indicative of the complexity of

the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an advantage against the opponent (**See: First American Bank of Kenya v. Shah and others, [2002] 1 EA 64).**

It follows that in instances; where the responsibility entrusted to counsel in the proceedings is quite ordinary and calls for nothing but normal diligence such as must attend the work of a professional in any field; where there is nothing novel in the proceedings on such a level as would justify any special allowance in costs; where there is nothing to indicate any time-consuming, research-involving or skill engaging activities or where there is also no great volume of crucial documents which counsel has to refer to, there is no need for a boosted quantum of instruction fees. **See**; **Mubiru J** in **Electoral Commission vs Kidega Nabinson James H.C Civil Appeal No. 076 of 2016**.

The appeal in issue was withdrawn before hearing, therefore, not as much work was done by the advocate in this court as would have been, if the appeal had been argued too its logical conclusion.

It is trite that the instruction fees should not be too excessive so as to discourage the public from accessing the courts of law and not too low to demoralize new recruits to the profession. **See; Makula International vs. His Eminence Cardinal Nsubuga & Anor, Civil Appeal No. 4 of 1981.**

The award of 45,860,682,730/ in the circumstances was excessive, oppressive and punitive. It amounts to an injustice to the applicant and must be interfered with.

From the foregoing, I hereby set aside the sum of 45,860,682,730/ as instruction fees and substitute the same with an award of 500,000,000.

On the issue of the excessiveness of instruction fees in regards the interlocutory matters. The taxing officer awarded 50,000,000/ as instruction fees to the respondents for each of the interlocutory applications. Miscellaneous Application no. 33 of 2020 sought for interim orders to restrain the 1st respondent from taking over Crane Bank Ltd, Miscellaneous application no. 32 of 2020 sought for orders to restrain the 1st respondent from taking over Crane Bank Ltd, Miscellaneous application no. 39 of 2020, sought to restrain Bank of Uganda from liquidating the Appellant and Miscellaneous application no. 02 of 2021 sought to amend the record of Appeal by substitution of a name.

The law governing assessing of instruction fees in interlocutory matters is **Paragraph 9(1) to the Third Schedule to the Rules of this court**. It provides as follows;

**"The fee to be allowed for instructions to make, support or oppose any application shall be a sum that the taxing officer considers reasonable but shall not be less than one thousand shillings."**

It is clear from the above, that it is at the discretion of the taxing officer to determine what he or she considers a reasonable sum as instruction fees in interlocutory matters. As stated earlier, it is trite that the discretion should be exercised judiciously and not whimsically. It must also be based on sound principles.

The taxing officer did not give reasons for her decision. Considering that the process of taxation of costs relies heavily on the discretion of the Taxing Officer, the parties have a right to know the considerations upon which that discretion was exercised. The order awarding a specified amount ought to speak for itself by giving reasons.

The miscellaneous applications were not intricate as to attract 50,000,000/ as instruction fees. The awards were exorbitant and unreasonable and the same are hereby set aside. I find a sum of 5,000,000/ per interlocutory matter a reasonable sum for instruction fees.

**Issue 3**

**Whether there was an error in assessing and allowing amounts for drawings, copies thereof, attendances, perusals, disbursements and VAT.**

The thrust of counsel's submissions on this issue was that it was erroneous for the taxing master to allow amounts for drawings, copies thereof, attendances and perusals yet the same were

incorporated in instruction fees as provided in Paragraph 9 (3) to the third schedule.

On disbursements, counsel's contention was that the taxing officer wrongfully allowed amounts for disbursements which were not proved as required by the law. Counsel also queried the taxing officer's award for conferencing notes in items 1 and 2 under drawings since both parties never filed conferencing notes.

On the issue VAT, it was counsel's submission that the taxing master erred when she assessed VAT in the absence of counsel's VAT certificate of registration and that the same should be disallowed.

In response, counsel for the respondents submitted that the learned taxing officer assessed the amounts using High Court scales as she correctly relied on paragraph 9(4) of the third schedule which is to the effect that provides that other costs shall be awarded in accordance with the scale set to in High Court (Advocates Remuneration and Taxation of Costs) Amendment Regulations, 2018.

Regarding disbursements, counsel responded that paragraph 11(1) of the third schedule allows such costs, charges and disbursements as have been reasonably incurred for the attainment of justice. That the amount of 5,000,000 is commensurate to the nature of appeal that was and the numerous interlocutory applications filed by the applicant.

On the issue of VAT, Counsel submitted that the absence of the VAT certificate of registration of counsel on file was not more than a technicality. He argued that counsel is a registered tax payer and duly attached his certificate to the record of reference.

**Consideration**.

Drawings, copies thereof, attendances and perusals.

Counsel argued that drawings, copies thereof and perusals are part of instruction fees. He cited **Paragraph 9(4)** to the Third Schedule.

**"The sum allowed under subparagraph (2) of this paragraph 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."**

From the foregoing, drafting of court papers or drawings would fall under instruction fees however, the same specifically provided for under paragraph 10.

It is trite that if a specific provision conflicts with a more general one in the same or an earlier statute, the specific provision prevails. **See: Ibori V. Ogburu (2004) 15 NWLR (PT.895), Chief S. O Adedayo & Ors. v. People Democratic Party & Ors. (2013) LPELR-20342(SC)**

Paragraph 10 provides that;

**"The fee for drawing a document shall include the preparation of all copies for the use of the party drawing it and for filing and**

**service when only one other party or one advocate for other parties has to be served; but where there are additional parties, fees may be charged for making the necessary additional copies.**

My understanding of Paragraph 10 above, is that, the fee that the taxing officer allows as drawing fees includes the amount for copies thereof. The taxing officer may only allow an additional fee to cater for copies, if there are more than one party to serve, and even then, those parties must have employed more than one advocate.

In the present case, the applicant was one party. This follows that all monies allowed by taxing officer for copies thereof were an error in law. Items 4, 6, 9, 11,14,18,20,22,24,26 and 29 are hereby set aside. Item 30 under drawings was work done in the Court of Appeal and cannot be billed in this court. Further, fees allowed for attendances and perusals were awarded illegally as the same form part of the instruction fees. Consequently, items 32-47 are hereby set aside. It is also on record that there were no conferencing notes done therefore, Item 1 and 2 under drawings are also set aside.

Regarding disbursements, it was counsel's contention that the taxing officer wrongfully allowed amounts for disbursements which were not proved as required by the law.

**Paragraph 4 to the third schedule** to the **Rules of this court.** It reads as follows;

**(1) Disbursements shall be shown separately at the foot of the bill of costs.**

(2) **Receipts for all disbursements shall be produced to the taxing officer at the time of taxation.**

(3) **No disbursement shall be allowed which has not been paid at the time of taxation.**

Properly documenting these costs is crucial in a legal case in order to make an accurate determination of the client's losses and create an understanding of claimed damages.

It was an agreed fact that there was no proof of the disbursements or production of receipts at the tax hearing. The amount arrived at by the taxing officer is therefore illegal and set aside. Item 48 of the bill of costs shall be remitted back to the taxing master for proper assessment.

On the issue of VAT, it is trite law, that the before issuance of VAT, a VAT certificate ought to be presented as proof of Counsel's law firm's VAT registration status. In the instant case, Counsel for the respondents did not produce a VAT certificate when the bill of costs was being taxed and yet the taxing master awarded VAT at 8,265,040,691/. I find this procedurally wrong. Counsel attached a copy of the tax certificate on the record before me. This has been used in consideration of a new VAT on items 1-5 in the bill of costs.

The application is allowed with the following orders;

1. The Taxing officer's decision overruling the P.O is hereby set aside.

2. The Taxing officer's decision of making double awards of fees is hereby set aside.
3. Instruction fees in Civil Appeal No. 7 of 2020 are set at 500,000,000/.
4. Instruction fees for interlocutory matters are set at 5,000,000/ per matter.
5. The award of VAT is set aside and a new VAT is set at 18% on items 1-5.
6. Items 1-2, 4, 6, 9, 11,14,18,20,22,24,26,29 and 30 under drawings, 32-47 are hereby set aside.
7. Item 48 shall be taken back to the registrar for proper consideration.

In the premises, I am satisfied that the Taxing Master did not exercise powers judicially. The Taxation Reference therefore succeeds as indicated above.

Costs of the Taxation Reference are awarded to the Applicant.

Dated at Kampala this ...5th..... day of .....May..... 2023

**Hon. Mike J. Chibita**
**JUSTICE OF THE SUPREME COURT**

Delivered by the D/Registrar on directed

Judge
5/05/2023.