

THE REPUBLIC OF UGAND
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
TAT APPLICATION No.17 OF 2019.

ATC UGANDA LIMITED:.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY:.....RESPONDENT

BEFORE H/W WAMAI SOLOMON DEPUTY REGISTRAR

RULING

This is a ruling in a taxation of a bill of costs filed by the respondent in the above mentioned matter. The tax dispute was finally resolved in favor of the respondent with costs hence this bill. The bill was filed under the Advocates (Remuneration and Taxation of costs) as Amended Regulations 2018.

Mr. Walter Bakalana and Ms. Jemima Mushabe represented the applicant while Mr. Joshua Ahabwe represented the respondent.

Before the hearing, the parties engaged in a pre-taxation as required under the law. The report from a pre-taxation was that the total amount agreed in part A of the bill of costs was Shs. 2,320,000/= and Part B was entirely agreed upon at Shs. 700,000/=.

What is contention before me is item 1 and item 2 of part A of the bill of costs. Both Counsel made oral submissions.

As regards to item 1 on instruction fees the applicant in its submission argued that the respondent is not entitled to charge instruction fees because they use in-house Counsel. They do not instruct any other private Counsel. The applicant cited the case of **Total (Uganda) Ltd v Uganda Revenue Authority Reference No. 26 of 2003** where Justice G.M Okello JA held that;

“The respondent incurred no expenses on payment of instruction of fees to its in-house lawyers to handle the case

The applicant further argued that this item should be struck out of the bill. In the alternative, if this court is inclined to award instruction fees than one million shillings is reasonable.

On item 2, the applicant submitted the respondent claimed Shs. 100,000 as perusals for TAT application No.17 of 2019. The applicant objected to this item and submitted that the Advocates (Remuneration and Taxation of costs) Regulations 2018 is very instructive on perusals. The applicant contended that perusals are not covered under sixth schedule and rules bars charging perusals. The applicant prayed that this item should be disallowed.

In reply, the respondent submitted that we take cognizant of the authority cited by Counsel for the applicant. It is that very reason why the amount is not much. Learned Counsel for the respondent noted that there are other factors to be considered when handling this case. We consider hardship, complexity involved in handling the matter and time involved. The respondent cited the case of **Akisoferi Micheal Ogola v Akika Othieno Emmanuel CA No.18/1999**) where Court held that;

- a) that costs be not allowed to rise to such level as to confine access to courts to the wealthy;
- b) A successful litigant ought to be fairly reimbursed for the costs he has had to incur;
- c) That the general level of remuneration of advocates must be such as to attract recruits to the profession; and
- d) That as far as practicable, there should be consistency in the awards made.
- e) That there is no mathematical 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.
- f) The taxing officer has discretion in the matter of taxation but he must exercise the discretion judicially, not whimsically

- g) The court will only interfere when the award of the taxing officer is so high or so low as to amount an injustice to one party.

The respondent argued that if instruction fees are not given it will be unjust to the respondent. The respondent further submitted that there should be consistency in the award of costs.

As regards to perusals, the respondent submitted that the regulations must be read as a whole. Fifth schedule part 5 captures drawings and perusing correspondences and other documents not expressly provided the amount is Shs. 100,000/= and this should cover other perusals.

In rejoinder, Counsel for the applicant submitted that on item one; i reiterate my earlier submissions that the respondent is not entitled to instructions fees. As regards to item two on perusals, the fifth schedule referred to by the respondent covers transactions like trademark, inventions and designs. The business prescribed under schedule five of the rules is not same with transactions covered under 6th schedule.

I have carefully considered the submissions of both parties as well as the authorities cited and this is the ruling of this court.

The respondent successfully defended this application before the Tax Appeals Tribunal with costs. In accordance with Rule 47 of the Advocates Regulations, the respondent prepared this bill of costs. A pre-taxation meeting of advocates was held as required by the law and the following items were agreed upon; item 3- 11 agreed , item 15 and 16 struck out, item 17 -27 agreed and item 28 and 29 were struck out. The total amount agreed amount in part A of the bill of costs was Shs. 2,320,000. Part B of the bill was entirely agreed upon at Shs. 700,000/=. The total amount agreed upon in part A and B is Shs. 3,020,000/=

What is in contention before me is item 1 and 2 of Part A of the bill which relates to instruction fees and perusals.

The applicant submitted that the respondent is not entitled to instruction fees because they use in-house lawyers. The respondent did not instruct any other private Counsel. The respondent argued that there are other factors to be considered when handling cases. We consider hardship, complexity involved in handling the matter and time involved.

Even though I am in agreement with the submission of Counsel for the respondent that time and complexity of the case must be considered when handling cases of this nature, I also note that the mandatory rules of taxation should be followed in taxation proceedings. Odoki JSC as he then was, in the case of **Attorney General vs. Uganda Blanket Manufactures SC Civil Application 17/1993** observed that,

“the intention of the rules is 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...The spirit behind the rules is to provide some general guidance as to what is a reasonable level of Advocates’ fees”.

The principle of costs is to fairly reimburse the successful litigant for what he or she had spent in the case. I agree with Counsel for the applicant that the respondent uses in-house lawyers to handle cases in courts of law and they are paid a salary and other wages. The respondent has not incurred any instruction fees in this case. Accordingly, the item of instruction fees in the bill of costs is disallowed. The respondent had paid no instruction fees. Even though, the applicant had opted to offer one million shillings as reasonable for instruction fees in this case. I find that this option has no basis.

As regards to item two, the respondent claimed Shs.100, 000/= for perusal of application No.17 of 2019. Schedule six of the Advocates Rules provides a guide to reach a justifiable fee. The rules provides that unless otherwise provided in the sixth schedule, the scale, instruction fee allowed under item 1 to 10 of this schedule, shall include all the work necessary and properly done in connection with the case which is not otherwise chargeable, including perusals.

Having established that the respondent is not entitled to instruction fees, I find that item two is covered under item one which is barred by the rules. Perusals under fifth schedule are different. Fifth schedule deals with different businesses under the rules. Therefore it is not just to use fifth schedule to justify charging perusals under sixth schedule. Sixth schedule bars charging perusals.

In conclusion, Items 1 and 2 are disallowed.

Each party to bear its own costs.

Dated at Kampala this 22nd day of March 2021.

Wamai Solomon
DEPUTY REGISTRAR

Delivered in the presence of;