

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
TAXATION REFERENCE NO. 001 OF 2023
(ARISING OUT OF TAXATION CAUSE NO. 03 OF 2023)
(AND TAT APPLICATION NO. 141 OF 2022)

UGANDA REVENUE AUTHORITY ===== APPLICANT
VERSUS
KANGAROO INVESTMENTS LIMITED ===== RESPONDENT

BEFORE: DR. ASA MUGENYI, DR. STEPHEN AKABWAY, MR. SIRAJ ALI,

RULING

This ruling is in respect of an application challenging the composition of instruction fees under the Advocates (Remuneration and Taxation of Costs) Regulations.

The respondent filed Application 141 of 2022 challenging VAT assessments issued against it by the applicant. On 10th March 2023, the said application was dismissed with costs by the tribunal. During the taxation of the applicant's bill of costs the respondent raised an objection to the effect that the applicant was not entitled to recover the costs indicated under items 1 to 26 of Part A and Items 1 to 13 of Part B of the bill of costs. The costs in Part C of the bill of costs was by the agreement of both parties taxed at Shs. 1,100,000 only. The learned Deputy Registrar of the tribunal found that the applicant did not incur instruction fees in respect of items 1 to 4, 7 to 11, 13 to 15, 18 to 19, 22 to 24 of Part A and items 3 to 11 of Part B of the bill of costs. The Deputy Registrar taxed the bill at Shs. 1,610,000 having found that the applicant was entitled to the costs associated with the attendance by the applicant's clerk to file and serve court process in respect of items 5, 6, 12, 16, 17, 20, 25 and 26 of Part A and drawing the bill of costs included under items 1 and 2 of Part B of the bill. The applicant being aggrieved by the Deputy Registrar's ruling filed this Reference before the tribunal.

The following issues were set down for determination.

1. Whether the applicant is entitled to the costs indicated under items 2 to 4,7 to 10,11,13 to 15,18 to 19 and 22 to 24 of Part A and items 3 to11 of Part B of the applicant`s bill of costs?
2. What remedies are available to the parties?

The applicant was represented by Mr. Timothy Lugayizi and Mr. Nsaja Philip while the respondent by Ms. Tayahwe Sheba.

The applicant submitted that instruction fees are limited to item 1 of Part A of the applicant`s bill of costs. The applicant cited *Makumbi and Anor v Sole Electric (U) Ltd* (1990-1994) 1 EA, where Manyindo DCJ held that the instruction fee should cover the advocate`s work including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be. It submitted further that work necessary for presenting the case for trial includes only pre-trial preparations done in respect of a case namely; research, perusal of documents, evidence gathering, client advisory and interviews. It submitted that items 2 to 4,7 to 10,11,13 to 15,18,19,22,23 and 24 of Part A and items 3 to11 of Part B of the applicant`s bill of costs do not constitute instructions fees as they are provided for separately under the 6th Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations. It cited *Ebrahim A. Kassim & 2 others v Habre International Ltd* Reference 16 of 1999 and *Khatijabal Jiwa v Zanab* (1957) EA 255.

The applicant submitted that it incurred expenses in respect of items 2 to 13 to15,18 to19; 22 to 24 of Part A and items 3 to11 of Part B of the bill of costs. Relying on the definition of the term `expense` in both *Black`s Law Dictionary* 11th Edition and *Collins Dictionary* the applicant submitted that expenses are not only restricted to monetary expenditures but include non-monetary components like time and labour amongst others expended in litigating a matter. The applicant submitted that one need not prove actual remittance of cash in order to claim these fees during taxation of a bill of costs. The presence of court documents, correspondences and proof of attendance to court as the case may be is sufficient to entitle a party to professional fees during the taxation of bill of costs.

The applicant submitted further that special expertise and skill was directed in defending Application 141 of 2022 as tax law is complex and requires special expertise. It submitted that defending the application, which was frivolous, took its officers away from other matters and business of the respondent for which it is entitled to indemnification. The applicant submitted that it is not disputed that its counsel attended court on the stated dates nor is it disputed that the respective court documents stipulated in the bill of costs were drafted, filed and served. The applicant submitted that all these activities subjected it to non-monetary expenses in respect of which it is entitled to indemnification under items 2 to 26 of Part A and items 1 to 13 of Part B of its bill of costs. The applicant prayed that the tribunal be pleased to find that the Deputy Registrar misdirected himself when he disallowed items 2 to 4, 7 to 10, 11, 13 to 15, 18 to 19, 22 to 24 of Part A and items 3 to 11 of Part B of the applicant's bill of costs.

The applicant submitted further that disallowing it to the said costs would subject it to defending frivolous and vexatious law suits as the costs would be minimal. The applicant emphasized that the items mentioned above do not constitute instruction fees and that it is entitled to them. The applicant submitted further that a litigant can never be adequately indemnified for expenses incurred in litigating a matter because expenses involved in litigation go beyond what is monetarily expended. The applicant submitted that the law governing costs and taxation simply attempts to restore parties to the position that they were in had they not gone through the rigors of litigation and that denying the respondent portions of non-monetary costs it incurred in defending the application would amount to obviating the indemnification purpose of an award of costs.

The respondent submitted that the argument by the applicant that items 2 to 4, 7 to 9, 13 to 15, 18 to 19, 22 to 24 of Part A and items 3 to 11 of Part B of the applicant's bill of costs, in as far as they relate to costs for drawing court documents, making copies and attendances of counsel are not instruction fees and ought to have been allowed by the taxing master, was rejected by the Court of Appeal in *Hope Mukanusi v. Uganda Revenue Authority* Civil Appeal 5 of 2022. The respondent submitted that the Court of Appeal found that the argument that instruction fees only relate to item 1 of Part A of the bill of costs is untenable. The respondent submitted further that the Court of Appeal found that

attendances, professional copying and compiling of documents flow from and are in addition to professional fees and should be taxed. The respondent submitted that in this case the disallowed items relate to drawings, perusals, professional copying and compiling which according to the *Hope Mukanusi* case flow from and are in addition to professional fees. The respondent submitted that the Deputy Registrar correctly taxed off the items referred to. The respondent submitted further that the expenses in question are characterized as part of instruction fees under the 6th Schedule of the Advocates (Remuneration & Taxation of Costs) Regulations, where it is stated that the instruction fees allowed under items 1-10 of the schedule shall include all the work necessarily and properly done in connection with the case which is not otherwise chargeable, including perusals. The respondent submitted that in this case, the disallowed items are works necessary for presenting the respondent's case for trial and thus fall within the scope of instruction fees. The respondent prayed for a finding that the learned Deputy Registrar rightly disallowed the said items in as far as they relate to instruction fees.

The respondent submitted that the applicant does not incur the cost of instructing external lawyers to represent them in a matter and no extra cost is paid to its in-house counsel to prosecute matters and as such the applicant cannot recover instruction fees. The respondent relied *The Inspector General of Government v Godfrey Magezi*; Taxation Reference 1 of 2016, *Zuberi v Returning Officer and Another* 1973 EA 33 and *Total Uganda Ltd v URA* Reference 26 of 2003. The respondent submitted that the theme in all the above authorities is that in-house lawyers of government entities such as the applicant are only entitled to recover what the said entity spends on them in respect of a specific case. The respondent submitted that the applicant pays its in-house lawyers a salary which is not dependent on a specific case such as the present one. The respondent submitted that there was no further expense incurred by the applicant towards the remuneration of its lawyers for taking on the instruction to defend this application, for perusal of the application, for drawing the statement of reasons, for attending proceedings, for drawing and extracting notices and orders. The respondent submitted that all these costs are not recoverable.

The respondent submitted further that the Deputy Registrar erred in allowing items 5, 6, 12, 16, 17, 20, 25 and 26 of Part A and items 1 and 2 of Part B of the bill of costs as they are expenses that relate to instruction fees. It cited *Hope Mukanusi* case to the effect that the Registrar in that case had erroneously allowed 'attendances' by clerk and counsel at the court when in fact these items are extensions of instruction fees for which in-house counsel and their clerks are paid a salary. The respondent submitted that in this case, the Deputy Registrar erred in assuming that the allowed items related to actual disbursement expenditures, yet in actual fact they relate to professional fees earned for the time and labour spent in executing those activities. The respondent submitted further that the Deputy Registrar also erred in awarding the applicant Shs. 1,610,000 in disregard of the ruling of the tribunal which awarded the applicant only half of the costs of the main application. The respondent submitted that in keeping with the ruling of the tribunal the applicant ought to have been awarded only Shs. 805,000. The respondent prayed that the application be dismissed with costs and that the Registrar's ruling be varied to correct the errors referred to.

In rejoinder, the applicant submitted that the instant case is distinguishable from the *Hope Mukanusi* case on the grounds that the taxation in the *Hope Mukanusi* case involved a reference to a single justice of Appeal on the award of costs of the appeal and the applicable rules in that case was the *Judicature (Court of Appeal) Rules*. The applicant submitted that under Rule 9(3) of the said rules instruction fees include but are not limited to attendances, correspondences, perusal and consulting authorities. The applicant submitted that there is no equivalent provision under the *Advocates (Remuneration and Taxation of Costs) Regulations* which apply to the instant case. The applicant submitted that what instruction fees constitute are defined in the 6th Schedule as including all the work necessarily and properly done in connection with the case which is not otherwise chargeable, including perusals. The applicant submitted that Rule 9(3) is an independent provision. The applicant submitted further that the phrase "*Unless otherwise provided in this scale*" which has been used in the above note to the 6th Schedule means that the note is subject to the regulations that precede it and should be interpreted with reference to the said regulations. It submitted that the preceding regulations to the note specifically provide for the fees for drawing documents, correspondences, court attendance, service

and filing distinctly and separately from instruction fees. The applicant submitted further that the activities referred to namely; drawing documents, correspondences, court attendance, service and filing fall under `otherwise chargeable work` and are therefore not part and parcel of instruction fees. It submitted that the wording of the *Advocates (Remuneration and Taxation of Costs) Regulations* clearly stipulates the fees chargeable in all instances for instance taking instructions, drawing documents etc. The applicant submitted that applying the Mukanusi case to the instant case would amount to disregarding the specific provisions of the applicable written law. It submitted that instruction fees under item 1 of the bill of costs are an independent and static item which is charged only once. This the applicant submitted is founded on the well-known position of the law that an advocates will be entitled to full instruction fees upon receiving instructions. The applicant cited *Jaber Twalib & Anor v. Global Hardware Company Ltd HCCA 0028 of 2016* and *Joreth Ltd v. Kigano & Associates Civil Appeal 66 of 1999*. The applicant submitted that holding that court attendances are part of instruction fees would be to say that there is a pre-determined number of court appearances for each case and parties can account for each under the `one time chargeable` instruction fees. The applicant submitted further that the bill of costs in question is a party-to-party bill of costs where unlike in an Advocate to client bill of costs the taxed costs are paid to the litigant and not the advocate.

Having listened to the evidence and read the submissions of the parties, the following is the ruling of the tribunal.

The dispute between the parties can be divided into three parts. Firstly, whether items 2 to 4, 7 to 10, 11 to 15, 18 to 19, and 22 to 24 of Part A and items 3 to 11 of Part B of the applicant`s bill of costs are instruction fees? Secondly, whether the Deputy Registrar erred in allowing items 5, 6, 12, 16, 17, 20, 25 and 26 of Part A and items 1 and 2 of Part B of the bill of costs? Thirdly, whether the Deputy Registrar erred in awarding the applicant Shs. 1,610,000 in disregard of the ruling of the tribunal which awarded the applicant only half of the costs of the main application?

We will handle the first and second parts together. A perusal of the bill of costs filed by the applicant on 14th April 2023, shows that the items in contention relate to perusals, drawing and drafting of documents, professional copying, attendances by counsel and by clerk. The law on what constitutes instruction fees is well established. In *Hope Mukanusi v Uganda Revenue Authority* Civil Reference 05 of 2022 the Court of Appeal stated.

I agree with counsel for the applicant that attendances, professional copying and compiling flow from and are in addition to professional fees and therefore should have been taxed off. What the Registrar appears to have done is to allow 'attendances' by clerk and counsel at court which in my view is wrong because these items are extensions of instruction fees for which in-house counsel and their clerks are paid a salary. The same is true for charging copies made of original documents. The costs that in-house counsel or counsel for the Attorney General can rightly claim are disbursements which are subject to proof of expenditure. In this case I reconsider the disbursements taxed off as I find them reasonable and not excessive and therefore allow them. I would recommend that appellate and trial courts should be alive to the legal position as to taxation of costs for in-house counsel when awarding costs and not award them in general terms as they would to an advocate in private practice. This is because the bulk of the costs lie in instruction fees which will be taxed off anyway.

As stated above the items in contention relate to perusals, drawing and drafting of documents, professional copying, attendance by counsel and by clerk. These items as can be seen from the above decision are extensions of instruction fees for which the applicant's in-house counsel and their clerks are paid a salary. Considering ourselves bound by the above decision we find that items 2 to,4,7 to 10,11,13,14,15,18.19,22,23 and 24 of Part A and items 3-11 of Part B of the applicant's bill of costs constitute instruction fees and were rightly disallowed by the Deputy Registrar.

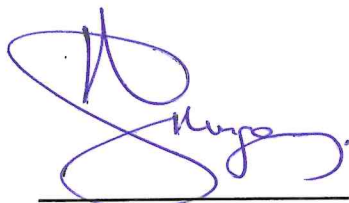
We also find that the Deputy Registrar erred in allowing items 5, 6, 12, 16, 17, 20, 25 and 26 of Part A and items 1 and 2 of Part B of the bill of costs as these items which comprised of attendances by the applicant's clerk to file and serve, the preparations of bill of costs and professional copying are as has been stated above extensions of instruction fees for which the applicant's in-house counsel and clerks receive a salary from the applicant. The attempt by the applicant to distinguish the *Hope Mukanusi* case from the instant case on the ground that the decision in the *Hope Mukanusi* case was based on The Judicature

(Court of Appeal) Rules and not the Advocates (Remuneration and Taxation of Costs) Regulations, is not well founded. While the decision in the above case was based on the Judicature (Court of Appeal) Rules it is clear that what constitutes instruction fees are the same in the High Court and the superior Courts of judicature. This is apparent from the fact that neither the Advocates (Remuneration and Taxation of Costs) Regulations, the Judicature (Court of Appeal) Rules nor the Judicature (Supreme Court) Rules provide for any distinction as to the definition of 'instruction fees'.

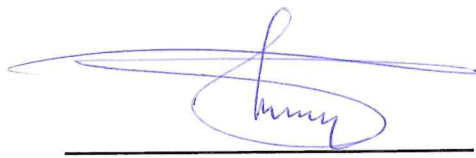
In respect of the third part of the dispute, it is clear that the tribunal awarded the applicant only half of the costs of the main application. The Deputy Registrar erred in awarding the applicant the sum of Shs. 1,610,000 without taking into account the quantum of costs awarded by the tribunal.

In the result this application is partially allowed. The Deputy Registrar was justified to disallow items 2 to 4, 7 to 10, 11 to 15, 18 to 19, and 22 to 24 of Part A of the bill of costs. Items 5, 6, 12, 16, 17, 20, 25 and 26 of Part A and items 1 and 2 of Part B of the bill of costs is remitted to the deputy Registrar for to be taxed off in accordance with the principles enumerated in this ruling, namely that attendances by the applicant's clerk to file and serve, the preparations of bill of costs and professional copying, constitute instruction fees. The Registrar will award half of the costs as stated above and the amount arrived at after the taxation. Since each party was successful, each party will bear its costs.

Dated at Kampala this *23rd* day of *October* 2023.



**DR. ASA MUGENYI,
CHAIRMAN**



**DR. STEPHEN AKABWAY,
MEMBER**



**MR. SIRAJ ALI
MEMBER**