

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL REFERENCE NO. 17 OF 2007

**(Arising from the decision of the Taxing Officer in Election
Application No. 005 of 2006)**

MUSIITWA HERBERT MULASA APPELLANT

VERSUS

**1. ELECTORAL COMMISSION } RESPONDENTS
2. HAJI SSALI JAKIRA }**

CORAM: HON. JUSTICE S. B. K. KAVUMA, DCJ (E) ✓

RULING OF COURT

Introduction

This is a Reference from the Taxation ruling of the Assistant Registrar of Appeal at Kampala (*Her Worship G.K.Nakibuule*), delivered on 17th April 2007 in Election Application No. 005 of 2006.

Background

This Reference arose out of Election Application No. 005 of 2006 seeking an order to strike out the Respondent's Notice of Appeal on grounds that the Respondent had no locus to file an appeal against an interlocutory order.

The application was dismissed with costs to the respondent. The Respondent's Bill of costs was taxed exparte and Shs 10, 000,000/- was awarded as instruction fees to the Respondent.

5 All efforts to stay execution were rejected by the Taxing Officer. She allowed execution to proceed against the appellant. Finally, in order to secure his liberty, the appellant entered into a consent with the Respondent but filed this Reference.

Grounds of Reference

10 The grounds upon which the Reference was premised were laid out in the Memorandum of Reference as follows:

1. The amount of Shs. 10,000,000/- allowed as reasonable instruction fee in respect of the said Election Application No. 05 of 2006 is manifestly excessive in all circumstances of the said Application.
2. The Taxing Officer erred in law when she failed to exercise her
15 discretion judiciously and thereby awarded as costs, instruction fees which were excessive.

Orders sought

- a) The Reference be allowed
- b) The Taxing Officer's award of Shs. 10, 000,000/- on instruction
20 fees be set aside and substituted with such award that, the Honorable Court finds fit and proper in the circumstances.
- c) This Court determines the matter as the justice of the case requires.

d) The respondents pay the costs of this Reference.

Representation

At the hearing of the Reference, the appellant was represented by Mr. Kaggwa Richard, (counsel for the appellant), while the respondents were
5 represented by Mr. Muwanga Mohammed, (counsel for the respondent).

The case for the appellant

Counsel for the appellant submitted that the law governing taxation of costs and miscellaneous applications in this Court is provided for under Rule 9 (1) of the Taxation Rules of this Court. He submitted that in the
10 instant case, the fees for handling appeals should be the sum the Taxing Officer should consider reasonable. He noted that the Bill was taxed under this Rule. He contended that the amount awarded of Shs 10, 000, 000/- was manifestly excessive in the circumstances. Counsel based his submissions on three factors, namely:

15 i) The nature of the application that was dismissed.

On this point, counsel argued that this was a simple civil application seeking to strike out a Notice of Appeal. He observed that it was not in itself a main appeal but merely an interlocutory matter. He contended that applications of this nature should not attract such excessive fees as
20 that which was awarded by the Taxing Officer.

Counsel further observed that this Court has set its own precedents on taxation and instruction fees to be awarded in interlocutory matters. He cited the case of **Yesero Mugenyi v Philemon Wandera & Others, Civil Reference No. 71 of 2004**. He invited Court to reduce the sum
5 awarded in the instant case.

ii) Inconsistence

On the second ground, counsel submitted that the Taxing Officer failed to maintain consistency in the awards in similar circumstances. He stated that one of the basic principles of taxation is that the award should be
10 consistent with earlier awarded sums in cases of a similar nature.

iii) Prohibitive costs

The other principle he highlighted was that costs should not be raised to a level so as to confine the access to court to only the wealthy. He quoted the Taxing Officer in a previous similar matter in **John Cossy
15 Odomel v Electoral Commission & another Election Application No. 17 of 2006**. The taxing Officer awarded as instruction fees for an application to strike out an appeal Shs 2M/- as instruction fees. She also awarded Shs 3M/- as being commensurate to the work done by counsel in an application for extension of time. Counsel submitted that the
20 learned Taxing Officer was inconsistent with herself when she awarded Shs 10M/- as instruction fees in the instant matter on a mere application to strike out an appeal.

Counsel observed that whereas the Taxing Officer correctly observed in her ruling the criteria followed in similar awards, in the instant case, she elected not to mention any case where she awarded a similar amount of money. It was his submission, therefore, that the Taxing Officer failed to
5 exercise her discretion judiciously and awarded manifestly excessive instruction fees. He noted that from her previous rulings, the amount of Shs 1M/- to 2M/- would be reasonable in the circumstances of the instant case. He also prayed for costs of this Reference.

On the consent, he prayed that Court considers the circumstances under
10 which it was made. He referred to the record and stated that the appellant made the consent at a time when execution had already been issued against him and he thus entered this to avoid being taken to a civil prison.

The case for the respondents

15 Counsel for the respondents maintained the amount awarded was reasonable. He stated that the Bill had been taxed according to the law and that it was consistent with other Election Petition matters like **National Council of Higher Education v Bangu Aggrey Fredrick EPA 6 of 2006** where this Court awarded 12M/- as instruction fees and
20 **John Cosby Odomel (supra)** where the Court awarded 15M/-.

Concerning the allegation that the consent was made under duress, he argued that it was not indicated anywhere that they protested against the

consent. He stated that the consent was filed on 4th May 2007 and the Reference on 4th July 2007, two months after a payment schedule had been filed. To counsel, this was an after-thought to the Reference, the appellants having made a down-payment and having also issued post-dated cheques to settle the balance. He argued that the appellant having consented to pay and having signed post-dated cheques, they could not now come to oppose the award.

Counsel submitted that in reply to the application to strike out the Notice of Appeal, this was a matter concerning elections and it was of public interest. This was an application going to the root of the whole application. It was heard by a bench of three Justices. It involved matters of law requiring court's interpretation of the Local Government Act and Election laws of this country. To counsel, there was too much work done in respect of the application and as such, the Taxing Officer awarded a reasonable amount.

Counsel contended that the authority of **Yesero Mugyenyi** (supra) that was cited by counsel for the appellant, is distinguishable from this application. He noted that this is an election petition from Entebbe Municipality which went to the disposal of the whole petition whereas in **Yesero Mugyenyi** (supra), Her Lordship C. K. Byamugisha, JA (RIP) was talking of interlocutory orders. He prayed that ~~Court~~ finds that the award by the Taxing Officer was reasonable and consistent with all petitions as cited in the affidavit in opposition.

Court's consideration of the Reference

The applicant contends that the award of Shs 10M as instruction fees in the instant appeal was manifestly excessive, unreasonable and inconsistent with similar matters the Taxing Officer had handled.

5 On the other hand, counsel for the respondent argued that the award was reasonable and not excessive considering that the application in which it was given went to the root of the petition.

The law that governs taxation in this Court is laid out in Rule 9 of the Judicature (Court of Appeal Rules) Directions S.I.13-10, Third
10 Schedule. It provides:

“9. Quantum of costs.

**(1) 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
15 thousand shillings.**

**(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
20 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.

5 (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, correspondences, perusals and consulting authorities.”

10 In **John Cossy Odomel v Electoral Commission & Another** (supra), this Court while considering an application that arose out of an Election Appeal, appreciated the laborious work the respondent counsel engaged in to prepare for the defective appeal. In that case, Court awarded Shs 12M/- as instruction fees. In another case of **National Council v Bangu Aggrey Fredrick** (supra), Court awarded Shs 12M/- as instruction fees. This too was an election matter.

15 Incidentally, in the case of **Yesero Mugyenyi v Philemon Wandera & Others** (supra), C.K. Byamugisha, JA (RIP) held that it is now settled law that appeals from interlocutory orders attract lower instruction fees to avoid excessive costs resulting from a multiplicity of large instruction fees in the same litigation. In that case, the award was reduced from Shs
20 4M/- to Shs 1M/-.

In the instant case, I find that this was an application to strike out an appeal. That cannot be said to have engaged counsel so intensely as to justify the award of a hefty sum of money as instruction fees.

I would find that taking into consideration the principles that govern
5 taxation, the amount of Shs. 10M/- as instruction fees that was arrived at by the taxing officer was too high and unreasonable in the circumstances of the case and compared to previous matters of a similar nature.

In the result, I set aside the decision of the taxing officer and substitute
10 the Shs 10M award with Shs. 5M/-. The Reference is also considered successful. Given that the applicant had already agreed to a payment schedule, this should be followed until the remaining balance has been paid.

I so order.

15 Dated at Kampala this 19th day of April2016


S. B. K. Kavuma
Deputy Chief Justice (E)

Civil law into. as 2006
MUSKATA HERBERT - M

F C vs ANOTHER

Amur - cloud
Kagwa uncheat for
app
absent
Henry Schump for the
just people. Both
needs absent
method for ruling
and we are ready
to receive it. P.D.

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~~John~~
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