



**IN THE HIGH COURT OF UGANDA SITTING AT GULU**

Reportable  
Civil Appeal No.165 of 2016

In the matter between

**HON. ACIRE CHRISTOPHER**

**APPELLANT**

And

**1.HON REAGAN OKUMU**

**2.THE ELECTROL COMISSION**

**RESPONDENTS**

**Heard: 22 July 2019**

**Delivered: 29 August 2019**

*Civil Procedure: — Taxation of costs — questions solely of quantum are regarded as matters which Taxing Officers are particularly fitted to deal with and the court will intervene only in exceptional circumstances — To be exceptional, the circumstances must be markedly unusual or specially different thereby rendering the case for intervention remarkably strong or compelling — The appellate court will interfere only on being satisfied that the circumstances are markedly unusual or specially different such that upholding the amount allowed would cause injustice — The facts must truly demonstrate that without the court's intervention, a grave injustice may result.*

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**JUDGMENT**

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**STEPHEN MUBIRU, J.**

Introduction:

[1] The appellant was one of the contestants in the elections for member of Parliament representing Aswa County in Gulu District that took place in February,

2016. Having lost the election, he petitioned this court challenging the results that were declared. The petition was dismissed and the costs were awarded to the two respondents. The first respondent filed a bill of costs in which he claimed shs. 120,000,000/= as instruction fees. The second respondent too filed a bill of costs in which it claimed shs. 200,000,000/= as instruction fees. On 18<sup>th</sup> November, 2016 the two bills of costs were taxed and shs. 30,000,000/= was awarded to each of the respondents as instruction fees.

The grounds of appeal:

- [2] The appellant Being dissatisfied with the award, the appellant appeals to this court on the following grounds. namely;
1. The award of shs. 30,000,000/= as instruction fees to each of the respondents be set aside because it is excessive, unconscionable and oppressive as well as inconsistent with the rules of taxation of costs.
  2. The award of VAT was unjustified.

Arguments of Counsel for the appellant:

- [3] In his submissions, counsel for the appellant, argued that the jurisdiction by the Taxing Officer must be exercised judicially. Adequate remuneration for advocates should be guaranteed without allowing costs to escalate as to restrict access to justice. The amount should not be so high as to deter losers of elections from taking their grievances to court. The court should also strive to maintain consistency in awards. The amount of shs. 1,500,000/= should have been considered adequate. The respondents did not present VAT registration certificates.

Arguments of Counsel for the respondent:

- [4] In response, counsel for the respondent submitted that the Taxing Officer properly exercised his discretion. All relevant matters were taken into account

before arriving at the sum awarded. Authorities cited by the appellant do not support the quantum proposed. The grounds advanced do not sound in law.

Taxation of a bill of costs.

- [5] Taxation of bills of costs is not an exact science. It is a matter of opinion as to what amount is reasonable, given the particular circumstances of the case, as no two cases are necessarily the same. The power to tax costs is discretionary but the discretion must be exercised judiciously and not capriciously. It must also be based on sound principles and on appeal, the court will interfere with the award if it comes to the conclusion that the Taxing Officer erred in principle, or that the award is so manifestly excessive as to justify treating it as indicative of the exercise of a wrong principle or that there are exceptional circumstances which otherwise justify the court's intervention (see see *Thomas James Arthur v. Nyeri Electricity Undertaking*, [1961] EA 492 and *Bank of Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999*).
- [6] As regards the argument that the amount awarded is excessive, unconscionable and oppressive, questions solely of quantum are regarded as matters which Taxing Officers are particularly fitted to deal with and the court will intervene only in exceptional circumstances. To be exceptional, the circumstances must be markedly unusual or specially different thereby rendering the case for intervention remarkably strong or compelling. It must be something which is excepted in the sense that the general rule does not apply to it. This calls for examination of the degree of rarity of the case-specific facts alongside the general impact of the quantum of the award on the general scheme of things in matters of costs. Each case should be dealt with on its merits. The appellate court will interfere only on being satisfied that the circumstances are markedly unusual or specially different such that upholding the amount allowed would cause injustice.

[7] If the reasons given by the Taxing Officer to justify the award are in fact a mistaken view of the law or a mistaken view of the facts and a wrong quantum of costs was made because of those wrong views taken, then the appellate Court must correct the amount assessed. I have examined the reasons given by the Taxing Officer and not found any mistaken view of the law nor of the facts.

[8] As to whether there are exceptional circumstances justifying intervention on the question of quantum alone, whether or not exceptional circumstances exist does not depend upon the exercise of a judicial discretion. The existence or otherwise of exceptional circumstances is a matter of fact which the Court must decide accordingly. The appellate court is likely to intervene only when the it is satisfied that some matter of importance has possibly been overlooked. The facts must truly demonstrate that without the court's intervention, a grave injustice may result. Such cases will be likely to be few and far between. That the appellate court itself would have awarded a greater or lesser sum is not proper justification.

[9] I have not found anything markedly unusual or specially different that renders the case for intervention extremely strong or compelling. Comparatively speaking, the amount awarded is within the range of multiple other awards in similar cases that for this court to intervene it would be doing so only on basis of the fact that it would itself have awarded a greater or lesser sum, which is not a legitimate reason. The Taxing Officer did not include VAT in the amount assessed and for that reason the second ground is misconceived.

Order :

[10] In the final result, the appeal has no merit. It is dismissed with costs to the respondents.

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Stephen Mubiru  
Resident Judge, Gulu

Appearances

For the appellant : M/s Barenzi and Co, Advocates

For the respondent : M/s Victoria Advocates and Legal Consultants.