THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL REFERENCE NO. 147 OF 2012

ARISING FROM MISCELLANEOUS APPLICATION NO 59 OF 2012

HARUNA MUBIRU AND 3 OTHERS…APPLICANTS

VERSUS

NAKATO BUSHIRA AND ANOTHER …RESPONDENTS

BEFORE: THE HONORABLE JUSTICE SOLOMY BALUNGI BOSSA

RULING

This reference was made to a single Judge by the applicants from the decision of the Registrar (His Worship Alex Ajiji) as taxing officer under Rule 110(3) of the Judicature (Court of Appeal Rules) Directions SI 13-10. The reference was based on two grounds. The first ground was that the taxed amount was manifestly excessive. The second ground was that the learned Registrar improperly exercised his discretion as a taxing master. The applicants prayed that the taxed amount be reduced.

Background

The background to this application was as follows. The applicants were dissatisfied with the decision of the High Court in Civil Suit No. 336 of 2012. They accordingly lodged a notice of appeal and filed Miscellaneous Application No. 59 of 2012 seeking an interim order to stay execution of the orders arising out of that suit. The application was dismissed and the respondents filed their bill of costs

which was taxed and allowed at shs. 9,152,330/= on July 23, 2012. The main contention of this reference is item 1 of the bill of costs relating to instruction fees to defend Miscellaneous Application No. 59 of 2012, which was allowed at shs. 5,000,000/= by his Worship the taxing officer.

Submissions of the parties

Learned Counsel for the Applicants, Mr. Muhumuza relied on the case of ***Premchand Raichand Ltd. and Another v. Quarry Services of East African and Others [1972] EA 162*** in his arguments. He submitted that that case restated the principles of taxation. One of the principles laid down in the case on which he relied was that the Court will interfere with an award of costs by a taxing officer if such costs are so low or so high that they amount to an injustice to one of the parties. Relying on **Rule 109(2), paragraphs 9(1) and 9(2) of the Third Schedule of the Court of Appeal Rules,** he submitted that there was no justification for allowing such a manifestly excessive fee of shs. 5,000,000/= in respect of an application of a routine nature that was not complex at all. He argued that shs. 400,000/= would have been a reasonable fee.

He further relied on the Supreme Court decision in ***Bank of Uganda v. Banco Arabe Espanol Civil Application No. 23 of 1993,*** which quoted ***Premchand Raichand Ltd. and Another v. Quarry Services of East African and Others (supra)*** on the principles of taxation in a brief fee. He submitted that shs. 300,000/= was deemed appropriate in the former case regarding instruction to oppose an application for security for costs. He also submitted that the applicants and respondents were from the same family and had already paid to the Respondents shs. 4,152,330/=.

Counsel for the Respondents did not file any submissions.

Applicable law

The principles of taxation of costs as restated by the Supreme Court in the case of ***Bank of Uganda v. Banco Arabe Espanol SC Civil Application No. 23 of 1999 (Mulenga JSC)*** are 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, 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 allowed would cause injustice to one of the parties.

Also in the case of ***Attorney General v Uganda Blanket Manufacturers (1973) Ltd. Civil Application No. 17 of 1993*** and ***Premchand Raichand Ltd. and Another v. Quarry Services of East African and Others*** (supra) among the principles governing taxation expounded on was that public interest requires that costs be kept to a reasonable level, so as not to keep poor litigants out of courts.

The applicable legal provisions are found firstly the Judicature (Court of Appeal Rules) Directions. Rule 110(3) of the Court of Appeal Rules provides that:

"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".

Rule 109(2) of the same Rules provides that:

"The costs shall be taxed in accordance with the rules and scale set out in the Third Schedule to these Rules".

Paragraph 9(1) of the Third Schedule to these Rules provides that:

"***The fee to be allowed for instruction fees 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."***

Paragraph 9(2) of the Third Schedule provides that:

"***The fee to be allowed for instructions to appeal shall be a sum that the taxing officer considers reasonable, having regard to the amount involved in the appeal, its nature, importance, difficulty, 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."***

I have borne the above principles and legal provisions in mind in deciding on this application.

I will start with quoting the particular order appealed against. In his decision, the learned taxing officer recalled the principles of taxation laid down in ***Akesoferi***

Michael Ogola v Akika Othieno Emmanuel Civil Appeal No. 18 of 1999 quoting the decision of ***Premchand Raichand Ltd. and Another v. Quarry Services of East African and Others*** supra. He then went on to state:

"***On instruction fees, this was an application for an interim order of stay. I do agree that it entailed some preparation and novel research but a figure of shs. 15,000,000/= is rather on the high end. Shall (sic) therefore exercise my discretion and award a sum of shs. 5,000,000/=***"

It is not clear from his ruling whether he treated this matter as interlocutory or as final. The real test for determining this is whether the judgment or order, as made, finally disposes of the rights of the parties. If it does, then it ought to be treated as a final order; but if it does not, it is then an interlocutory order (See the case of ***Salaman v. Warner and Others (1891) 1 QB 734*** as approved by the Supreme Court in the case of ***Bank of Uganda v. Banco Arabe Espanol*** (supra)). This also has a bearing on instruction fees as it determines the nature of the case. The issue for determination by the Registrar was whether he should grant an interim order of stay of execution. From the record, it is clear that the parties understood and treated this matter as interlocutory.

The parties agreed on all items in the bill of costs except for the instruction fees. The proceedings were just one page, a clear indication that the matter was not involved or complex and was very brief. The novel research alluded to by the taxing master was not borne out by the record. In my considered opinion, it was therefore a misdirection to take this into account in taxing the bill and failing to take into account the fact that the matter was not complex and was clearly interlocutory. Therefore, the learned taxing officer erred on principle in his assessment of the fee to be allowed on instructions to appeal. He did not fully take

into account the principles and provisions of the law above quoted, thus making an excessive award in the circumstances. On the basis of the ***Bank of Uganda v. Banco Arabe Espanol SC Civil Application No. 23 of 1999*** supra, an error of principle is a substantial. It cause injustice to the applicants.

Taking all the above circumstances into account, I therefore set aside the award of instructions fees amounting to shs. 5,000,000/= and substitute it with shs. 1,000,000/= (one million shillings only).

It is so ordered.

Dated, read and signed this day of September 1, 2013 by

S B Bossa

Justice of Appeal

Read this …day of September 2013 by her/his Worship

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Assistant Registrar

In the presence of

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