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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

TAXATION REFERENCE NO.02 OF 2022

(Arising from Civil Taxation Application No.71 of 2021)

(Arising out of Civil Appeal No.239 of 2015)

10 **YESERO MUGENYI:.....APPELLANT**

VERSUS

ABDUL NASSER:.....RESPONDENT

CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA

(SINGLE JUSTICE)

15 **RULING**

This Reference was brought under the provisions of Rule 110 of the Judicature (Court of Appeal Rules) Directions S1 13-10, arising from the decision of the Deputy Registrar of this Court, Her Worship Suzan Kanyange as a Taxing Officer in Taxation Application No.71 of 2021 whereupon the Respondent was awarded

20 UGX 18,014,000/= for the entire bill of costs.

Background

5 The background to this Reference is that the Appellant with the leave of the High Court filed Civil Appeal No.239 of 2015 in this Court against an order by Kwesiga, J allowing the Respondent to amend the plaint to join another party and include pleading of facts the Respondent claimed to have come to his knowledge after filing the suit. The appeal was dismissed and Court ordered that the High Court
10 proceed with speed to have High Court Civil Suit No.87 of 2005 determined. Counsel for the Respondent filed their bill of costs and the Deputy Registrar awarded UGX 18,014,000/= for the entire bill of costs.

The Appellant filed this Reference on one ground namely that;

15 ***1. The entire bill of costs as taxed was inaccurate, manifestly excessive and highly unconscionable.***

Representation

At the hearing of this Reference, Mr. Yusufu Kagere appeared for the Appellant while the Respondent was represented by Mr. Itaka Kasaijja.

Appellant's submissions

20 Counsel for the Appellant submitted that the instant Reference was contesting the entire bill of costs save for item 23 regarding transport for Counsel to attend Court and VAT which the taxing officer disallowed. He further submitted that the taxing officer awarded the Respondent UGX 15,000,000/= being instruction fees in respect of representing the Respondent in Civil Appeal No.239 of 2015
25 and in her decision, she rightly considered the issue that defending a matter of

5 a house at Kololo Hill Drive did not make the matter so complex to attract an
award of high instruction fees. In Counsel's view, it was surprising that the
taxing officer went ahead and awarded the Respondent UGX 15,000,000/= as
instruction fees for handling the said Appeal and the said instruction fees as
awarded under item 1 was manifestly excessive and highly unconscionable. He
10 relied on ***Western Highlands Creameries Ltd & Anor V Stanbic Bank Uganda
Ltd, Taxation Appeal/Reference No.10 of 2013*** for the proposition that the
taxing officer is bound to exercise her discretionary powers judiciously and not
to allow costs to rise to such a level as to confine access to the Courts to the
wealthy.

15 Regarding items 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20, 21, 22, 24,
25 and 26, Counsel contended that the taxing master held that she had looked
at the items and taxed them accordingly without applying any known principles
of taxation and the taxation rules of this Court thereby failing to exercise her
discretion judiciously. Further that the principles that are supposed to guide the
20 taxing officer are well stipulated in the taxation rules of this Court and by
awarding a general fee without specifically relying on the taxation principles
meant that the Taxing Officer had not exercised her discretion judiciously. That
that item 4 of the scale of costs of the third schedule to the Judicature (Court of
Appeal Rules) Directions provides for a fee of 1000/= which ought to have been
25 awarded by the Taxing Officer under item 2.

5 Counsel submitted that items 3, 6, 9, 13, 15, 17 & 21 related to making copies which is provided for under item 13 of the Scale of Costs of the third schedule to the Judicature (Court of Appeal Rules) Directions and a fee of UGX 500/= is provided for the first copy and for each subsequent copy a fee of 200/= is charged. He further submitted that under item 3, a fee of UGX 500/= ought to
10 have been charged for the first copy and UGX 600/= for other 3 extra copies making a total of Ugx 1,100/=, under item 6, UGX 500/= is chargeable for the first copy and UGX 400/= for other 2 extra copies making a total of UGX 900/=, under item 9, UGX 500/= is chargeable for the first copy and UGX 1,000/= for other 4 extra copies making a total of UGX 1500/=, for item 13, UGX 500/= is
15 chargeable for the first copy and UGX 600/= for other 3 extra copies making a total of UGX 1,100/=, item 15, Ugx 500 is chargeable for the first copy and UGX 200/= for other extra copy making a total of UGX 700/=, under item 17, UGX 500/= is chargeable for the first copy and UGX 400/= for other 2 extra copies making a total of UGX 900/= and under item 21, UGX 500/= is chargeable for
20 the first copy and UGX 400/= for other 2 extra copies making a total of UGX 900/=.

Counsel further submitted that item 5 related to a letter requesting that the appeal was fixed for hearing and UX 100,000/= was claimed whereas item 12 of the scale of costs of the third schedule to the Judicature (Court of Appeal Rules)
25 Directions provides for UGX 500/= for which would have been sufficient for this item. Counsel added that item 4 of the scale of costs of the third schedule to the Judicature (Court of Appeal) Rules Directions provides for UGX 1000 /= for

5 which in Counsel's view was sufficient for item 8. That item 14 related to Counsel preparing a bill of costs and UGX 400.000/= was being claimed however item 11 of the Scale of costs of the third schedule to the Judicature (Court of Appeal Rules) Directions provides for UGX 500/= for which the taxing officer ought to have awarded for this item. Further that items 12, 16 and 20 are related to
10 extracting an order, taxation notices and certificate of taxation but under item 12 of the scale of costs of the third schedule to the Judicature (Court of Appeal Rules) Directions, UGX 500 /=- is provided as sufficient for items 12, 16 and 20.

Counsel contended that items 18 and 22 related to the clerk attending Court to file the bill of costs, order, taxation notices and serving copies to the Appellant
15 Counsel and transport spent. He added that the taxation rules of this Court do not provide for such activities of the clerk and the same are included on instruction fees awarded under item 1. He prayed that items 18 and 22 be accordingly disallowed. He further contended that item 19 related to attendance of Court by Counsel for taxation and that item 15 (a) of the scale of costs of the
20 third schedule to the judicature (Court of Appeal Rules) Directions provides for UGX 1500/- for the first 15 minutes and for each subsequent minutes UGX 500. However, item 19 does not show how much time was spent by Counsel at Court for taxation and as such submitted that UGX 2,000/= was sufficient for Counsel's attendance for taxation.

25 Counsel further contended that items 24 and 25 related to filing fees for Court pleadings and payment of certified copies and rule 4 of the third schedule to the

5 Judicature (Court of Appeal Rule) Directions requires receipts for all disbursements to be produced to the taxing officer at the time of taxation. However, as per the bill of costs presented, no receipts were provided for inspection by the taxing officer under items 24 and 25 and as such he prayed that the said items be disallowed. He added that item 26 is not provided for by
10 the Judicature (Court of Appeal Rules) Directions and as such prayed that the same ought to have been disallowed and that this Court invokes its powers under Rule 110(3) and make such deductions to render the taxed bill of costs reasonable.

Respondent's submissions

15 Counsel for the Respondent opposed the Application and submitted that Counsel for the Appellant opposed the Taxing Master's assessment of item 1 of the bill of costs regarding instruction fees to defend Civil Appeal No.239 of 2015 which was taxed at UGX 15,000,000/= and argued that the Appellant had failed to show how the taxing master applied a wrong principle in arriving to the said sum. In
20 Counsel's view, the Appellant was just acting in bad faith and without justification to stifle the Respondent's rights to enjoy the fruits of his litigation. He relied on ***Patrick Makumbi V Sole Electrics Uganda Ltd SCCA No.11 of 1994*** where it was held that there is no mathematical or magic formula to be used by the taxing master to arrive at a precise figure as each case has to be
25 decided on its own merits and circumstances.

5 Counsel further submitted that the Respondent instructed two law firms to defend him in a complex matter, protracted legal battle which involved lengthy preparations and research, whose subject matter was a residential house comprised in LRV 801, Folio 24, Plot 27 Kololo Hill Drive. That the Appellant has been collecting rent from the same 1981 without remitting it to the Respondent.

10 The Appellant filed an Appeal in this Court which was opposed by the Respondent's lawyers and Court ruled in favor of the Respondent and as such, the Respondent's advocates should be remunerated for their work done. He prayed that this Court makes a finding that the sum of 15,000,000/= awarded to the Respondent as instruction fees was sufficient.

15 Counsel further submitted that under item 2, a sum of UGX 200,000/= was sufficient for preparing the Respondent's scheduling notes and not UGX 1000/- as proposed by Counsel for the Appellant. Regarding items 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26, Counsel submitted that the Respondent maintains the figures as taxed by the Taxing

20 Master because the Appellant had not provided this Court with sufficient evidence to show that the taxing master applied a wrong principle in awarding the foresaid sums or that the same were excessively high. He invited this Court to uphold the decision of the taxing master and to find that the learned taxing officer performed her judicial duty properly and there was no miscarriage of

25 justice occasioned to the Appellant.

5 **Court's resolution**

I have carefully considered the submissions of both parties and the authorities availed to this Court. The principles of law governing taxation are well settled and the same have been re-stated by this Court and the Supreme Court.

10 A Taxing Officer provides an independent and impartial process of assessment of fair and reasonable legal costs which endeavors to achieve a balance between the costs claimed and the services rendered, the end result being to attract worthy recruits into the legal fraternity. See ***Premchand Rainchand V Quarry Services of East Africa (1972) EA 162.***

15 The Supreme Court in their decision of ***Makumbi & Anor Vs Sole Electrics (U) Ltd (Supra)*** held that a successful party should have the costs of the case regardless of whether the costs will be recovered. The Court went on to issue a warning that an appellate Court should not interfere with an assessment of costs by a taxing master except where it is clear that he/she has misdirected
20 him/herself on a matter of principle. That if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference. See also ***Steel Construction & Petroleum Engineering (EA) Ltd Vs Uganda Sugar Factory Ltd (1970) EA.***

The Court went ahead to enumerate guiding principles that any taxing master
25 should follow when assessing costs of a successful party. The relevant principles to this

5 application would be:

i) The taxing master has discretion in the matter of taxation but must exercise that discretion judicially and not whimsically

ii) A successful party should be fully reimbursed the costs they have incurred, and in doing so, the taxing master should ensure that costs do not rise above a
10 reasonable level so as to deny the poor access to court, but the level of remuneration must be such as to attract worthy recruits to the profession.

iii) So far as is practicable, there should be consistency in the award made.

Going by the above authorities, a successful party is entitled to disbursements as much as they would be entitled to other cost.

15 In the instant Reference, the Appellant's case is that the entire bill of costs as was taxed was inaccurate, manifestly excessive and highly unconscionable. Counsel for the Appellant submitted that under Item 1, the Taxing Officer awarded the Respondent 15,000,000/= being instruction fees to represent and defend the Respondent in Civil Appeal No.239 of 2015. In counsel's view, the
20 award of 15,000,000/= being instruction fees was manifestly excessive in as far as there was nothing complex that was shown by the Respondent in the Application to warrant the award of instruction fees of 15,000,000/=. Counsel for the Appellant prayed that this Court varies the instruction fees of Ug.sh 15,000,000/= for representing and defending the Respondent to an amount that
25 is reasonable.

5 In reply, Counsel for the Respondent argued that the Respondent instructed two
law firms to defend him in a complex matter, protracted legal battle which
involved lengthy preparations and research, whose subject matter is a residential
house comprised in LRV 801, Folio 24, Plot 27 Kololo Hill drive. That the
Respondent's advocates successfully represented the Respondent in the said
10 application and therefore should be remunerated for their work.

In awarding instruction fees of UGX 15,000,000/=, the taxing master stated as
follows;

*"Instruction fee covers the Advocate's work including taking instructions as well
other work necessary for presenting the case for trial on appeal. However,
15 instruction fees should not be excessive".*

In granting instruction fee Court has to consider that: -

- a. It covers the Advocate's work including taking instructions as well as
other work necessary for presenting the case;*
- b. However, instruction fees should not be excessive;*
- 20 *c. It should follow the proportion, value and importance of the work
involved, complexity and skill involved. See case of **Ngoma Ngime V
Electoral Commission & Hon. Winnie Byanyima, EP 11/2002***

The law applicable in the taxation of costs in this Court is the third schedule to
the Judicature Court of Appeal Rules Directions S.I 13-10. **Paragraph 9 of the
25 third schedule** provides as follows;

5 "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 thousand shillings.*
- 2) *The fee to be allowed for instructions to appeal or 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 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.*
- 3) *The sum allowed under sub paragraph (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.*
- 4) *Other costs shall, subject to paragraphs 10, 11 and 12 of this Schedule, be awarded in accordance with the scale set out in the following paragraphs or, in respect of any matter for which no provision is made in those scales, in accordance with the scales applicable in the High Court.*

It is settled law that a Court hearing a Reference against a ruling involving the exercise of a Taxing Officer's discretion in a taxing cause, will not normally interfere with the ruling merely because it thinks it would have awarded a

5 different figure had it been the one taxing the bill. This is because taxation of costs is not a mathematical exercise. It is a discretionary process. See **Bank of Uganda v Banco Arabe Espanol, Civil Application No.23 of 1999.**

In the instant Reference, the Registrar of this Court took into consideration the Advocates work for example taking instructions, the other work necessary for
10 presenting the case, the proportion, value and importance of the work involved, complexity and skills involved in awarding instruction fees of 15,000,000/=. I find that the sum of 15,000,000/= Uganda Shillings Fifteen Million was neither manifestly excessive nor manifestly deficient as to amount to an injustice.

In dealing with other items, the learned Registrar stated that she had looked at
15 all items and taxed them accordingly. VAT was not granted as no certificate or any proof of payment by the counsel that they had paid had been provided. She concluded that the total bill of costs was thus taxed and allowed at Ug shs 18,014,000 /= (Ugandan Shillings Eighteen Million Fourteen Thousand Only).

The Respondent's instruction fees before taxation amounted to Ug shs 80 million
20 on appeal. The taxing officer considered these amounts excessive and instead awarded Ug shs 15 million. The total Bill of costs after taxation amounted to Ugshs 18,014,000/= from Ug shs 99,468,600/= claimed by the Respondent. On the authority of **Lanyero Sarah Ochieng & Anor v Lanyero Molly, Court of Appeal Civil Reference No. 225 of 2013**, it was held that:

25 *"Having taxed off more than one-third of the bill of costs the taxing officer should have disallowed all the costs for drawing, filing and serving and attending*

5 *taxation of the Bill of Costs as required by Schedule three of the Rules of this Court.*”

Indeed, Rule 13 of the Third Schedule to the Rules of this Court provides that:

“13. Excessive claims

10 *“If more than one-quarter of the profit costs claimed is disallowed on taxation, the costs of drawing, filing and serving the bill and of attending taxation shall be disallowed”*

In the premise, the Learned Registrar had taxed over a third of the Respondent’s Bill of Costs allowing the costs of drawing, filing and serving the bill and of attending the taxation hearing which should have been disallowed. I, therefore,
15 find that items 14,15,16,17,18,19,20, & 21 should be disallowed. In the result, this Reference is to that extent granted and the final costs are allowed at 16,830,000/=.

Each party shall bear its own costs of this reference.

I so Order.

20 Dated at Kampala this-----^{29th}----- day of⁰¹.....202³₄


Cheborion Barishaki

JUSTICE OF APPEAL