**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**CIVIL APPEALS NO. 034 AND NO. 35 OF 2015**

**(Arising out of Miscellaneous Applications No. 18 of 2010 and No. 22 of 2010)**

**UGANDA NATIONAL EXAMINATIONS BOARD .....APPELLANT**

**VERSUS**

**1. THE MANAGEMENT COMMITTEE OF KIBIITO PRIMARY SCHOOL**

**2. THE MANAGEMENT COMMITTEE OF BUBWIKA PRIMARY SCHOOL**

**3. KAHUBIRE SAMALI & 138 MINORS THROUGH THEIR NEXT FRIENDS… RESPONDENTS**

**AND**

**1. THE MANAGEMENT COMMITTEE OF MAKONDO PRIMARY SCHOOL**

**2. ABDUL HUSSEIN IGA**
**……RESPONDENTS**

**3. ALIGANYIRA & 129 OTHERS SUING BY THEIR NEXT FRIENDS**

**CONSOLIDATED WITH**

**CIVIL APPEAL NO. 36 OF 2015**

**(Arising from Miscellaneous Applications 18 and 22 of 2010)**

**1. THE MANAGEMENT COMMITTEE OF KIBIITO PRIMARY SCHOOL**

**2. THE MANAGEMENT COMMITTEE OF BUBWIKA PRIMARY SCHOOL .....APPELLANTS**

**3. KAHUBIRE SAMALI & 138 MINORS THROUGH THEIR NEXT FRIENDS**

**AND**

**1. THE MANAGEMENT COMMITTEE OF MAKONDO PRIMARY SCHOOL**

**2. ABDUL HUSSEIN IGA & 130 MINORS SUING BY THEIR NEXT FRIENDS .....APPELLANTS**

**VERSUS**

**UGANDA NATIONAL EXAMINATIONS BOARD.....RESPONDENT**

**BEFORE; HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.**

**Ruling**

This is an Appeal by Chamber Summons under **Section 62 (1)** of the Advocates Act, Cap. 267, **Rule 3(1)** of the Advocates (Taxation of Costs) (Appeals and References) Regulations S.I No. 257-5, seeking for an order that the ruling of the Taxing Master awarding the Respondents a sum of UGX 100,000,000/= as instruction fees in Miscellaneous Applications No. 18 and 22 of 2014 made on the 19th November 2015 be set aside or varied.

**Background**

The Respondents filed Miscellaneous Applications No. 18 and 22 of 2010 against the Appellant being applications for Judicial Review seeking for orders of certiorari that the decision of the Appellant to nullify the results of the 3rd Respondents in each of the two applications who sat PLE in 2009 be quashed, for an order of mandamus directing that the said results be released and general damages be awarded. The High Court consolidated both Miscellaneous Applications No. 18 and No. 22 of 2010 and both applications were allowed.

Judgment was entered in favour of the Respondents wherein the Court quashed the Appellant's cancellation of the 3rd Respondents' results, directed that the said results be released, awarded each minor Respondent a sum of UGX 500,000/= as general damages and costs of the Applications.

The Respondents filed their Bills of costs in the High Court of Fort Portal claiming a sum of UGX 277,082,500/= and UGX 267,366,000/= in Miscellaneous Application No. 18 of 2010 and Miscellaneous Application Costs were taxed on the 19th November 2015 and allowed at UGX 110,522,500/= and UGX 109,540,000/= respectively.

A sum of UGX 100,000,000/= was awarded as instruction fees under item 4 and item 7 of the Respondents' taxed Bills of costs in Miscellaneous Application No. 18 of 2010 and Miscellaneous Application No. 22 of 2010 respectively. The Appellant in Civil Appeals No. 34 and No. 35 of 2015 is challenging this award.

The Respondents filed a cross-appeal in Civil Appeal No. 36 of 2015 also challenging the award of Shs. 100,000,000/= on grounds that the award was manifestly low and inadequate. The Respondents are also challenged the Taxing Officer's decision to disallow item 55 in Miscellaneous Application No 18 of 2010.

The grounds of appeal are that;

1. The Learned Taxing Master erred in law when she awarded the Respondents a sum of UGX 100,000,000/= as instruction fees for applications for Judicial Review, a sum

which is excessive in view of the subject matter and in disregard of the principles governing taxation of costs and the Advocates (Remuneration and Taxation of Costs) Regulations, S.I 267-4.

2. The Learned Taxing Master erred in law when she erroneously took into account an alleged complexity of the matter in the absence of a Certificate of complexity as described by Schedule 6 item 1(a) (ix) of the Advocates (Remuneration and Taxation of Costs) Regulations S.I 267-4.

M/s Masembe, Makubuya, Adriko, Karugaba & Ssekatawa Advocates (MMAKS Advocates) appeared for the Appellants and Counsel Bwiruka Richard for the Respondents.

**Resolution of Ground 1: The Learned Taxing Master erred in law when she awarded the Respondents a sum of UGX 100,000,000/= as instruction fees for applications for Judicial Review, a sum which is excessive in view of the subject matter and in disregard of the principles governing taxation of costs and the Advocates (Remuneration and Taxation of Costs) Regulations, S.I 267-4.**

**Rule 2** of the Advocates (Remuneration and Taxation of Costs) Rules S.I 267-4 (the "Taxation Rules)" provides that the remuneration of an advocate of the High Court by his or her client in contentious and non-contentious matters shall be in accordance with the Rules.

**Rule 57** of the Advocates (Remuneration and Taxation of Costs) Rules S.I 267-4, provides that all causes and matters in the High Court and Magistrates Courts, an Advocate shall be entitled to charge as against his or her client the fees prescribed by the Sixth Schedule to the Regulations.

The Taxing Master in determining the amount to award considers the nature of the dispute and **Regulation 6(1)** and **(2)** of the Taxation Rules provide the considerations as;

1. The circumstances in which the business or part of the business was transacted.
2. The nature and extent of the pecuniary or other interest involved.
3. The labour and responsibility entailed.
4. The number, complexity and importance of the documents prepared or examined.

In the case of **Makula International Ltd versus His Eminence Cardinal Wamala Nsubuga & Anor. (1982) HCP 11**, it was held that;

*"The Taxing Officer should in taxing a bill, first find the appropriate scale fee in schedule VI and then consider whether that basic fee should be increased or reduced. He must give reasons for deciding that the basic fee should be increased or decreased. When he has decided that the scale fee should be exceeded, he does not arrive at a figure which he awards by multiplying the scale fee by a multiplication factor, but places what he considers a fair value upon the work and responsibility involved.*

*Lastly, he taxes the instruction fee, either by awarding the basic fee or by increasing or decreasing it. The judge should have taken the basic fee and placed what he considered a fair*

*value on the work done having regard to the nature and importance of the case, the amount involved and the fall in the value of money."*

And in the case of **Premchad Raichard Ltd & Another versus Quarry Services of East Africa Ltd & Another (No. 3) (1972) E.A 162**, Court held that;

*"Costs should not be allowed to rise to such a level as to confine access to Courts to the wealthy. The successful litigant ought to be fairly reimbursed for the costs he had to incur. The general level or remuneration of Advocates must be such as to attract recruits to the profession and that so far as practicable there should be consistency in the awards made."*

Counsel for the Appellants submitted that the fees as per the 6th Schedule to the Taxation Rules fees for instructions for applications, notices of motion or chamber applications, where the application is opposed, as not less than UGX 150,000/=. That under **Regulation 13** of the Taxation Rules the Taxing Master is granted discretion to allow such costs, charges and expenses as are authorised in the Rules and appear to him or her to have been necessary or proper for the attainment of justice.

In the case of **Nyangito & Co. Advocates versus Doinyo lessos Creameries Ltd [2014] eKLR**, the Court held that;

*"...it is within the discretion of the Taxing Officer to increase or reduce the instruction fees and the amount of the increase or reduction is discretionary...the Taxing Officer must set the basic fee before venturing to consider whether to increase or reduce it..."*

Counsel for the Appellants went on to submit that in the instant case the Respondents were entitled to a minimum of UGX 150,000/=as instruction fees for either applications. That the Taxing Master made an award of UGX 100,000,000/= as instruction fees without stating the minimum fee applicable and giving justification for this manifestly excessive award. **(See: Opa Pharmacy Ltd versus Howse & Mcgeorge Ltd Kampala, HCMA No. 13 0f 1970 (HCU)[1972]E.A 233)**. That this therefore amounts to an error in principle and exercise and a sufficient ground for reduction of the award of instruction fees by the Taxing Master in this matter. Further that, the matter was neither involving nor complex or highly charged. There were only two Court hearings and the entire process took 14 days, also there were no great volumes of documents for Counsel to refer to in the Judicial Review Applications and neither was this a new area of the law requiring novel research. (**See: Nyangito & Co. Advocates versus Doinyo lessos Creameries Ltd [2014] eKLR**)

In the case of **Bank of Uganda versus Banco Arabe Espanol, SCCA, No. 23 of 1999**, it was held that;

*"...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 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 of a 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 or 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."*

That in the circumstances the Taxing Officer should have made regard to the above while making her award and besides the Appellant was executing its legal mandate as a statutory body. That the award was based on a wrong principle therefore should be reversed since it was even contrary to public policy.

Counsel for the Respondents on the other submitted that in the instant case in Miscellaneous Application No. 18 of 2010, 139 pupils' PLE results from two primary schools were nullified and in Miscellaneous Application No. 22 of 2010, 131 pupils' PLE results were nullified in one school. That there was need to interview all the pupils whose results were nullified and them being minors there was need for parental involvement.

Further, that Counsel had to interview other witnesses such as the teachers, invigilators, and other candidates who sat PLE at the schools in issue. That members of the Management Committees of the Schools in issue had to also be interviewed. Several documents like the candidates sitting arrangements, bulky UNEB examination guidelines, question papers, letter of appointment, and correspondences on the matter had to be examined.

Furthermore, that the pleadings themselves as filed show that this was a complex mater. The matters in controversy were urgent, requiring exceptional dispatch and the pupils involved were looking at their future. And the marathon hearing of the applications was proof of this. Not to mention that the case was of great public importance concerning the major examiner in the country. That there was no previous case challenging UNEB and therefore it was a grey area that called for more research. Therefore, in the circumstances Counsel should have charged a minimum of UGX 1,000,000/= per pupil and thus, the Taxing Master should have at least awarded UGX 141,000,000/= Thus, the award of UGX 100,000,000/= by the Taxing Master was manifestly low and Court should enhance it.

According to the submissions I believe the UGX 100,000,000/= was made in due regard to the fact that the matter was of great public interest, very involving, very urgent, and to be determined within the shortest time possible.

Secondly, both Counsel were present during taxation, it was the right time to challenge the award. I believe Counsel for the Appellant was satisfied then, that is why he/she never questioned or made any protest during taxation.

Thirdly, there is no law that bars Counsel from either charging individually or charging as a group as long as the parties agree to it and it does not offend the Rules and depending on the expenditure involved.

In my opinion, the Learned Taxing Master did not err in law when she awarded the Respondents a sum of UGX 100,000,000/= as instruction fees for both applications for Judicial Review. The sum awarded was sufficient and the Taxing Master exercised her discretion judiciously and no wrong principle was applied. The award of UGX 100,000,000/= was justifiable in the circumstances. The Applications were urgent and matters of public interest that warranted special attention. This ground therefore fails.

**Resolution of Ground 2: The Learned Taxing Master erred in law when she erroneously took into account an alleged complexity of the matter in the absence of a Certificate of complexity as described by Schedule 6 item 1(a) (ix) of the Advocates (Remuneration and Taxation of Costs) Regulations S.I 267-4.**

**Schedule 6 item 1(a) (ix)** of the Taxation Rules provides that;

*"Where, due to the complexity of a case, a higher fee is considered appropriate, the advocate for either party may apply to the presiding judge or Magistrate, as the case may be, for a certificate allowing him or her to claim a higher fee, the Judge or Magistrate shall then specify the fraction or percentage by which the instruction fee should be increased."*

Counsel for the Appellant submitted that despite the absence of a Certificate of complexity as prescribed by **Schedule 6 item (a) (ix)** of the Taxation Rules, the learned Taxing Master considered this matter as complex and made an excessive award. That in the circumstances the award was erroneous, thus, should be set aside or reduced and prayed the appeal therefore be allowed.

Counsel for the Respondents on the other hand submitted that Civil Appeal No. 34 and No. 35 of 2015 have no merit and should be dismissed with costs.

A number of things in this regard come to mind; Was the matter complex, and the first of its kind? Did the trial Judge access/evaluate the complexity? Did the Advocates simplify an otherwise complex case? Was there too much research? What about the time frame? Did the trial Judge issue a Certificate of Complexity?

In light of the above, since the trial judge did not issue not even mention the percentage as per the 6$^{th}$ Schedule of the Taxation Rules. I do not see any reason why the Taxing Master would decide otherwise when she is not the one who entertained the matter. For this reason this ground succeeds.

Counsel for the Respondents on the cross-appeal submitted that there was no justification for disregarding item 55 which was a claim for transport of the Applicants and their parents to attend Court for judgment on 5/3/2010. That the Taxing Officer awarded UGX 1,000,000/= for a similar amount in Miscellaneous Application No. 22 of 2010 (Item 56). Thus, there was no justification for disallowing item 55 in Miscellaneous Application No. 18 of 2010.

In a nutshell, Civil Appeal No. 36 is allowed in part and an award of UGX 1,000,000/= in regard to item 55 be made. There was no justifiable reason to deny this item in one application and allow it in another. I, so order.

Civil Appeals No. 34 and No. 35 are allowed also in part having succeeded on Ground 2 and failed on Ground 1, where I uphold the award of UGX 100,000,000 as instruction fees. Each party bears its own costs since this a matter involving children and of great public interest and given the fact that all the appeals have been allowed in part.

**.....**

**OYUKO. ANTHONY OJOK**

**JUDGE**

**4/11/2016**

**Ruling read in open court in the presence of;**

1. Counsel for the Respondents – Bwiruka Richard
2. Court clerk – James

**And in the absence of;**

1. Counsel for the Appellant
2. Both parties and their representatives.

**.....**

**OYUKO. ANTHONY OJOK**

**JUDGE**

**4/11/2016**