THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

CIVIL APPEAL No. 0163 OF 2016

(Arising from Civil Suit No. 0111 of 2013)

GULU INSTITUTE OF HEALTH SCIENCES …… APPELLANT

VERSUS

BWOMU GERALD …… RESPONDENT

Before: Hon Justice Stephen Mubiru.

JUDGMENT

This appeal under section 62 of the *Advocates Act*, and Regulation 3 of the *Advocates (Taxation of Costs) (Appeals and References) Regulations*, wherein the appellant seeks to set aside an award of costs of Uganda shillings 4,616,900/= as instruction fees as being excessive in the circumstances of the case. The taxation ruling was delivered on 23rd March, 2016 by which the respondent's bill of costs was taxed and allowed at shs. 19,574,320/=

The background to the appeal is that the respondent was a student at the appellant's Institute in Gulu. The respondent took out proceedings for judicial review against the appellant and The Executive Secretary of the Allied Health Examinations Board, seeking prerogative orders of mandamus and injunction. The grounds were that the despite the respondent having successfully completed his Diploma course in Clinical Medicine and Community Health in June, 2013 the appellant and the Examinations Board had taken steps to introduce new entry / admission requirements that had to be satisfied by entrants to the course. His contention was that the new requirements that came into effect on 26th June, 2013 should not be made to apply to him retrospectively since they were not in force at the time he was admitted to the course during the year, 2010. The appellant having filed its affidavit in reply out of time, it was struck off and the determination of the application was based solely on the pleadings of the respondent. The court

found in his favour and awarded him the costs of the application, hence the taxation ruling of 23rd March, 2016 which the appellant now challenges.

At the hearing of the appeal, Ms. Shamim Amola, representing the appellant argued that the taxation did not follow the applicable rules. As a result, the costs awarded were manifestly high and excessive, the disbursements allowed are unreasonable and manifestly excessive and the entire award constitutes unjust enrichment for the respondent.

All this is because the award of instruction fees of ten million was based on the assumption that the subject matter could not be ascertained, yet the court had awarded general damages of only shs. 5,000,000/=. Under the Advocates Remuneration Rules, rule 1(a) (iv) (b) where the subject matter is ascertainable, the maximum is 12.5% such that the correct award should have been in the region of shs. 450,000/= The Taxing Officer considered the matter to have been complex yet the respondent did not apply for a certificate of complexity. It was not a complex matter. The research, there was no authority served. Common authorities were cited. There was no basis for the grant. The hearing was entirely based on written submissions. On 18th December, 2015 the date of the ruling, counsel for the respondent never appeared. It is only the parties who were present. Exorbitant awards of costs block the door to court for the poor.

In addition, several of the items on perusals do not specify the number of folios. The copies allegedly made excessive and the amounts exorbitant. VAT was allowed yet no certificate of registration was attached. Attendances for service made by the respondent in person are claimed as having been made by a process server or the advocate. Claims for disbursements are all excessive; there are no specifics of distance. There are no receipts backing the figures and they are excessive. The amounts claimed were therefore not proved. Item 83 titled Miscellaneous should not have been allowed. She prayed that the award should be set aside and the costs of the appeal be awarded to the appellant.

In response, Mr. Tumwesigye Collins, counsel for the respondent submitted that the matter from which the appeal arises was an application for judicial review. The value was not specified and rule 7 applied, stating that iIt should not be less than shs. 3,000,000/= Therefore ten million as

instruction fees was not excessive. Rule 10 (3) covers decrees. Attendances can be verified from the court record. The missing dates in the bill can be checked from the records. He prayed that the appeal be dismissed with costs.

It is trite that save in exceptional cases, a judge should not interfere with the assessment of what the taxing officer considers to be a reasonable fee. 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 (Bank of *Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999* and *Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492*).

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. Application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low. 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.

The object of party and party costs is to indemnify the successful party for having to pursue or defend their rights in court. They are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them (*Tobin and Twomey v. Kerry Foods Ltd., [1999] 1 I.L.R.M. 428 at 432*; *Adams v. London improved Motor Coach Buildirs Ltd., [1921] 1 K.B. 495 at p. 499* and). The effect of the principle of indemnity applied to party and party costs is that a party is entitled to have all costs reasonably incurred in the defence of his or her rights not as a complete compensation or indemnity, but only in the character of an indemnity.

In the determination of an appropriate quantum, the complexity of the subject which counsel had to handle (for example where it was a novel and complex one, mostly focused on the interfaces between the fields of law and other disciplines; involving voluminous material on other professional fields) is relevant but the mere fact that counsel does research before filing pleadings and then files pleadings informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate’s unfamiliarity with basic

principles of law and such unfamiliarity should not be turned into an advantage against the adversary (see *First American Bank of Kenya v. Shah and others, [2002] 1 EA 64*). None is evident on the manner of this application. Other considerations include; the nature and the importance of the cause or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge, the general level of remuneration of advocates must be such as to attract recruits to the profession but costs should not be allowed to rise to such a level as to confine access to the courts to the wealthy, so far as practicable there should be consistency in the awards made, bills taxed in comparable cases allowance may be made for the fall in value of money, etc. (see *Premchand Raichand Ltd and Another v. Quarry Services of East Africa Ltd and others [1972] EA* 162 and *First American Bank of Kenya v Shah and Others [2002] 1 EA 64*).

In his ruling of 23rd March,2016 the Taxing Officer stated that;-

> In the instant case, the applicant was a student who had been unfairly denied the right to education after having pursued the course for three years. He had been allowed to pursues studies after fulfilling all the requirements. So the decision to stop him from graduating and get an ward was very unfair hence this is litigation which calls for compensation. So considering the principles governing taxation and looking at the way he was unfairly treated and the time the matter has taken in court I would considers. 10,000,000/= as instruction fees. (emphasis mine).

From that extract, it is evident that the award was propelled by considerations of *restitutio in integrum*, i.e. compensation as in an award of damages as opposed to the principle of "in the nature of indemnity," or reimbursement, that should guide taxation. It is an error of principle to take into account irrelevant factors during taxation. A wrong principle was applied resulting in an amount that is inordinately high as instruction fees. The Taxing Officer must set out the basic fee before venturing to consider whether to increase or reduce it. That some of the disbursements were not supported by probative evidence is also evident on the record. This is an exceptional case where this court ought to interfere. For all the foregoing reasons, the appeal is allowed with costs to the appellant. The award is set aside and the bill of costs remitted back to the Taxing Officer for taxation.

Dated at Gulu this 25th day of October, 2018.

Stephen Mubiru

Judge