THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MULENGA, JSC)

CIVIL APPLICATION NO.23 OF 1999

BETWEEN

BANK OF UGANDA ::APPLICANT

AND

BANCO ARABE ESPANOL ::RESPONDENT

(A reference to a simple judge from the decision of the Taxing Officer in Civil Appeal No 8 of 1998)

RULING OF MULENGA, JSC

This is a reference, under Rule 105(1) of the Rules of this Court, from a decision of the taxing officer in the civil appeal referred to above, wherein Banco Arabe Espanol presented a bill of costs which was taxed and allowed at the total sum of Shs.206,433,000/=. In this reference only two items, namely item 1 and 5, of the bill of costs are contested. The taxing officer allowed Shs.200,000,00/= on item 1 as instruction fee for prosecuting the appeal; and Shs.6, 000,000/= on item 5 as instruction fee for opposing an application for security for costs.

The following is a summary of the background to the reference.

Banco Arabe Espanol, filed a suit in the High Court, to which I shall hereafter refer "as the principal suit," for recovery of a debt owed to it in the sum of US $ 1,713,665.75. It sued the Attorney General and Bank of Uganda, as co-defendants, but for reasons not material to this reference, the Attorney General was struck out from the suit by order of the Court and Bank of Uganda remained the sole defendant.

Before commencement of the trial, on application of Bank of Uganda, the Court ordered Banco Arabe Espanol to provide security for costs, which the latter failed to do in time. As a result of the failure, the principal suit was dismissed under 0.23 r. 2 of the Civil Procedure Rules. However, subsequently, Banco Arabe Espanol obtained an order reinstating the suit. Bank of Uganda appealed to the Court of Appeal against that order and its appeal was allowed. Banco Arabe Espanol, in turn appealed to this Court. Its appeal was allowed with costs. It is the costs of the appeal to this Court which constitute the main subject of the bill of

costs, the taxation of which is under reference to me. Item 5 of the bill of costs, however, is in respect of Civil Application No.20 of 1998, in which Bank of Uganda applied to this Court for further security for costs. The application was heard and granted by **Oder** JSC who ordered that costs of the application be in the cause.

By the time of hearing this reference, I was informed from the bar, that the original suit in the High Court had been part heard, but was still pending completion. For avoidance of confusion, I will hereafter in this ruling, refer to Banco Arabe Espanol as "the plaintiff', and to Bank of Uganda as "the defendant".

There are eight grounds of the reference. Grounds 1 to 6, inclusive, are concerned with the taxing officer's decision on item 1 of the bill of costs, while grounds 7 and 8 relate to his decision on item *5.* Before considering those grounds, however, I should reiterate briefly some pertinent principles applicable to review of taxation, such as I am called upon to do in this reference. Counsel would do well to have them in mind when deciding to make, and/or when framing grounds of, a reference. The first is that save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer consider 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, 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.

Mr. Masembe — Kanyerezi, Counsel for the defendant first argued grounds 2 and 3 together. I refrain from reproducing the grounds as framed because they offend the rules of this Court for being framed in argumentative form. Suffice to say that the substance of the two grounds

is that the taxing office erred in law
(a) in holding that the subject matter of the appeal was the claim of
US $ 1,713,665.70; and
(b) in failing to decide that the appeal was on an interlocutory matter.

Counsel submitted that the appeal to this Court had been an appeal against the Court of Appeal's refusal to extend time within which the plaintiff was to provide security for costs. He argued that the appeal centered on the interpretation of 0.23 r. 2(2) of the Civil Procedure Rules, and called for determination whether the plaintiff had shown sufficient cause for its failure to provide the security for costs within the time prescribed by the trial court. Counsel stressed that the appeal was on an interlocutory matter, and not on the issue of liability for payment of the amount claimed in the principal suit. He therefore invited me to hold that the taxing officer had erred in holding that the monetary claim for US $ 1,713,665.70 was the subject matter of the appeal, whereas the subject matter was the issue whether the plaintiff had shown sufficient cause for its failure to comply with the terms of the High Court order for security for costs. He relied on the decisions in **DEPARTED ASIANS PROPERTY CUSTODIAN** BOARD ***(DAPCB)*** vs. **JAFFER BROTHERS LTD** Civil Appeal No 13 of 1999 (unreported): **REGISTERED TRUSTEES OF KAMPALA INSTITUTE** vs. **DEPARTED** ASIANS **PROPERTY CUSTODIAN BOARD** (DAPCB), Civil Appeal No.3 of 1995 (unreported); and **PATRICK MAKUMBI & ANOTHER** vs **SOLE ELECTRICS (U) LTD,** Civil Application No.11 of **1995** (unreported).

In reply, Mr. Semuyaba, counsel for the plaintiff supported the holding of the taxing officer that the subject matter of the appeal was the plaintiffs claim for US $ 1,713,665,70. He premised his argument on the contention that the order of the Court of Appeal from which the appeal to this Court arose was a final order because it disposed of the suit. An appeal from that final order, therefore, could not itself be an interlocutory appeal. He argued that the plaintiff had come to this Court to fight against the dismissal of its suit for recovery of US $ 1,713,665,70, because if the order of the Court of Appeal had been upheld the plaintiff stood to lose that amount. He pointed out that in the application for further security for costs, made prior to the hearing of the appeal, counsel for the defendant had maintained that the appeal involved a very substantial sum of money and complicated issues. He submitted that therefore, the same counsel should not be permitted to turn round now and argue that the subject matter of the appeal was not the monetary claim or that the appeal was not

complicated. He sought to distinguish the authorities relied upon by counsel for the defendant basically on the ground that in the instant case the order appealed from had the effect of disposing of the suit by upholding the dismissal, whereas in each of those other cases what was in issue was not the entire suit but only some aspect thereof. For his part he relied on **KAZZORA vs RUKUBA,** Civil Appeal No.16 of 1993(unreported); **TOTAL OIL PRODUCTS(EA) LTD** vs **NUAUTO LTD (1968) EA 611**; **BOZSON vs ALTRINGHAM URBAN DISTRICT COUNCIL** (1903) I.K.B *547* and **SALAMAN** vs **WARNER AND OTHERS (1891) IQB 734.**

The holding by the taxing officer which gave rise to the defendant's complaint is contained in the following passage from the taxation ruling:

"In Attorney General vs Uganda Blanket Manufacturers (1973) Ltd., the value of the subject matter was also stressed as one of the factors to be one in mind. Mr Masembe-Kanyerezi argued that the subject matter of the appeal was not monetary. However, and with respect, and would wonder what the effect of dismissing the appeal by the Court of Appeal would have been. If the appellant had not appealed to the Supreme Court, then he would have lost the chance to claim $1,713,665.70, equivalent to U.Shs.2, 632,473,533.50. That is the amount of money the appellant was pursuing, and therefore, its appeal was of paramount interest to him. I have also read the case of Registered Trustees of Kampala institute vs Departed Asians Prop erty Custodian Board Civil Application No.3 of 1995 of this Court. It was held in that case that value can be and is often taken into account during taxation (page 9). And whereas in that case monetary value was not the subject of litigation for taxation purpose, it is distinguishable to the present case where as already noted, the appellant claim is stated in monetary terms (Shs.2, 623,473,535.50). If the dismissal order of the Court of Appeal had been upheld, then the appellant would not claim the above sums of money."

Later in the ruling he was more explicit where he said: *"….I find the figure of Shs.300, 000,000/= a bit high, although what was being claimed was 2.5 billion shillings. I therefore find and hold that instruction fees of Shs.200, 000,000/= is reasonable"*.

Clearly the taxing officer's decision on the subject matter of the appeal was influenced by his repeated assertion that in the appeal the plaintiff was "pursuing" the monetary claim which it

would have lost if the plaintiff had not appealed or if this Court had upheld the dismissal of the suit.

Needless to say that his premise is inaccurate. A dismissal of a suit for failure to provide security for costs under Order 23 of the Civil Procedure Rules is not a bar to pursuing the claim later. Nevertheless, it is in that context that counsel for the plaintiff strenuously submitted before me, that the dismissal order by the court of Appeal was not an interlocutory order, but a final one, and that consequently the appeal from it could not be interlocutory. But the two English precedents, which counsel cited do not support his submission.

In **SALAMAN vs WARNER & OTHERS** (supra) the head note defines a final order thus: *"A final order' is one made on such an application or proceeding that, for whichever side the decision is given, it will, if it stands, finally determine the matter in litigation."*

In that case the Divisional Court had dismissed a suit on a point of law raised by the defence, that the statement of claim did not disclose any cause of action. On appeal, a preliminary issue was raised whether the decision of the Divisional Court was interlocutory or final, in his judgment Lord Esher M.R. said at p *735:*

"The question must depend on what would be the result of the decision of the Divisional Court If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final On the other hand, of their decision, if given one way will finally dispose of the matter in dispute, but f given in the other will allow the action to goon then I think it is not final but interlocutory."
On that basis the Court of Appeal held that the dismissal order by the Divisional Court was interlocutory, In **BOZSON vs ALTRINCHAM URBAN DISTRICT COUNCIL** (supra) an action was filed for recovery of damages for breach of contract. An order was made in Chambers that only issues of liability and breach of contract would be tried, and the rest of the case, if any, would go to the official referee. Upon trial the judge held that there was no binding contract between the parties. He dismissed the action. The plaintiff appealed against the dismissal order. Counsel for the defendant raised a similar preliminary issue. Relying on the test in **SALAMAN'S** case, be contended that the dismissal order was interlocutory because if the trial judge had held that there was a binding contract, it would have allowed the action to go on before the official referee. The Court of Appeal, however, held that the dismissal was final. At p.548 Lord Alverstone C.J., recast the test thus:

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then in my opinion, an interlocutory order."

I respectfully agree with that test and would observe that it clearly illustrates the difference between the two decisions. In **SALAMAN'S** case (supra) the order dismissing the action on the ground that the statement of claim did not disclose any cause of action, was interlocutory because it was concerned with the issue of pleading and did not finally dispose of the rights of the parties. On the other hand in **BOZSON'S** case (supra) the decision in ordering the dismissal on the ground that there was no binding contract went to the core of the dispute between the parties and disposed of it. As long as the decision that there was no binding contract stood, it finally disposed of the rights in dispute.

An application, to the instant case, of the test as formulated either in the **SALAMAN'S** case or in the **BOZSON'S** case leads to only one conclusion, namely that neither the dismissal order by the Court of Appeal nor the reinstatement order by this Court, was a final order. The real dispute in litigation between the parties, which is whether the defendant is liable to pay the money claimed by the plaintiff, was not due for determination in either appeal, and was not determined by either the Court of Appeal or by this Court. I therefore hold that both appeals were interlocutory. Needless to say that this holding is only related to ground 3 of the reference, which, in my view, is not very significant as I will explain later. The more significant issue is raised in ground 2 and I think the way to resolve it is to consider the correct meaning of the rule governing taxation of instruction fee, and apply it accordingly. Paragraph 9 (2) of the Third Schedule to the Rules of this Court provides:

"(2) The fee to be allowed for instructions to appeal or to 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."

The rule permits the taxing officer, when determining what, in a given appeal, is a reasonable sum for instruction fee, to have regard, inter alia, to the "amount involved in (that) appeal." Undoubtedly, in his ruling, the learned taxing officer took the view that the monetary claim in

the principal suit was “the amount involved in the appeal.” With due respect, however, this was a misdirection. Although the principal suit, and therefore the monetary claim therein, was bound to be, and was actually affected by the outcome of the appeal, the monetary claim was not involved in the appeal. It was not an issue or a question to be determined in the appeal. The issue involved in the appeal was whether there was sufficient cause shown for the plaintiff’s failure to comply with the order of security for costs.

In view of all the foregoing I hold that it was an error of principle on the part of the taxing officer, while assessing the fee to be allowed for instructions to appeal, to have regard to the amount claimed in the principal suit, when that amount was not involved in the appeal. I also find that, undoubtedly that error was the substantial basis on which the taxing officer assessed the instruction fee. Ground 2 of the reference must succeed. As for ground 3, however, to the extent that it criticises the taxing officer for “failing to decide that the appeal was on an interlocutory matter,” I hesitate to say that it succeeds. Much as I have agreed with the submission for the defendant that the appeal was not final but interlocutory, the taxing officer was not under obligation to make a decision on that issue. Although both counsel addressed him on the issue, it was not an issue that he had necessarily to take into account. In my view therefore the taxing officer cannot in the instant case be faulted for failing to decide on the issue. As the rest of the criticism cum argument in ground 3 is identical to ground 2. I find that substantially ground 3 fails.

I do not find much merit in the three grounds of reference which counsel argued next. In ground 4 the complaint is that the taxing officer “erred in law” in holding that the appeal involved difficult matters of law. I agree with learned counsel for the defendant that the taxing officer ought not to have taken into consideration, matters which are extraneous to the appeal. However, in my view, this is not an error that would have warranted interference with his assessment. Besides, it appears to me that the outline of the history of the case which the taxing officer said showed that the case “was not all that simple and straight forward.” did not weigh heavily, if at all, in his assessment of the instruction fee. Grounds *5* and 6 are complaints that the taxing officer erred in principle for not having had regard to his duty to keep costs at reasonable level, and to the other costs in the Court of Appeal, allowed to the plaintiff. I am unable to hold that the learned taxing officer was not alive to these issues merely because they are not expressly spelt out in his ruling. In the ruling he does say that he read some of the leading precedents on the subject of taxation such as **PREMCHAND**

RAICHAND vs QUARRY SERVICES (No.3) (1972) EA 162 and ATTORNEY GENERAL vs UGANDA BLANKET MANUFACTURERS (1973)

Ltd, Civil Application No. 17 of 1993, in which the principles governing taxation of costs are well expounded. Grounds *4,5* and 6 of the reference therefore must fail.

Next, counsel argued ground 1. It reads:

"Item I of the Bill of Costs as taxed to the tune of Shs.200, 000,000/= is in all the circumstances manifestly excessive."

Mr. Masembe-Kanyerezi submitted that having regard to all circumstances which the taxing officer could lawfully take into consideration in the instance case, there was nothing to justify the assessment of such a large fee of Shs.200,000,000/= for instructions to appeal. He emphasized that the appeal was not one on complex issues of law, but was mainly on the factual question of what amounts to "sufficient cause" for failure to provide security for costs within prescribed time. He pointed out that the hearing of the appeal had been disposed of in only one morning. On his contention that the amount of Shs.200, 000,000/ allowed was manifestly excessive, he relied on the decisions in **PREMCHAND RAICHAND vs QUARRY SERVICES** (supra) and **ATTORNEY- GENERAL vs UGANDA BLANKET MANUFACTURERS** (supra). He submitted that a reasonable instruction fee in the circumstances would be Shs.7, 000,000/. For comparison he referred me to the amounts allowed in the **REGISTERED TRUSTEES OF KAMPALA INSTITUTE vs DAPCB** (supra); and **DAPCB vs JAFFER BROTHERS** (supra). Mr. Semuyaba's brief reply was that assessment of what is a reasonable fee was in the discretion of the taxing officer, and that the discretion ought not to be interfered with except on compelling grounds such as injustice. In his view no injustice would result to the defendant if the assessment of Shs.200, 000, 000/= is upheld.

The case of **PREMCHAND AND RAICHAND vs. QUARRY SERVICES** (supra) is a decision of the Court of Appeal for East Africa. It was a reference to the full Court of a decision of a single judge who had expressed an opinion that the brief fee allowed by the taxing officer was high but declined to interfere with it. In its judgment, the Court indicated what should be the test in assessing a brief fee, which in my opinion is applicable to an instruction fee. The Court said at p. 164:

"The correct approach in assessing a brief fee is, we think, to be found in the case of <u>Simpsons Motor Sales</u> (London) <u>Ltd vs. Herdon Corporation</u> (1964) 3 All ER. 833, when Pennycuik, J. said:

'One must invisage an hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particularly high *fee* ***sometimes demanded by counsel of pre-eminent reputation. Then one must estimate what fee this hypothetical character would be content to take on the brief."***

The full Court found that the case "was a difficult one and involved a little over Shs. 1,000,000/=." The hearing had taken a day and half. The Court however held that the costs taxed and allowed at a total sum of *Shs.55,597/30* was excessive and reduced it to Shs 3 *5,597/30.*

The case of **<u>ATTORNEY-GENERAL vs UGANDA BLANKET MANUFACTURERS</u>** (supra), was a reference to a single judge of this Court from taxation of a bill of costs where the taxing officer had allowed a fee of Shs.200, 000,000/= for instructions to appeal. The costs were in respect of an appeal wherein this Court had, inter alia, granted to the successful appellant company orders to the following effect:

(a) a declaration that at all the material times the company was in possession of, and was entitled to exclusive possession of the business and residential premises in dispute;

(b) an order for an account in respect of business and assets in issue;

(c) general damages for trespass.

In his ruling, Odoki J.S.C., cited with approval the above passage from <u>PREMCHAND RAICHAND's</u> case, and had this to say about the case before him:

"It is not clear on what basis such a high award of instruction fee was made. Even if the appeal involved difficult points of law or the value of the subject matter was large, it is difficult to imagine that a reasonably competent advocate would demand Shs.200 million to handle the present appeal. Moreover, the public interest requires that costs be kept to a reason level, so as not to keep the poor litigants out of courts."

The learned Justice of the Supreme Court held that the sum of Shs.200 million awarded as instruction fee was manifestly excessive, and he reduced it to Shs.50 million. In the instant case, what seems to be particularly relevant for consideration on this ground is the difficulty of the appeal (if any) and its importance to the parties.
Mr. Masembe-Kanyerezi contended that the appeal did not involve any complex or difficult issues at all, and that it took a short time to dispose of. In response Mr. Semuyaba observed that in the earlier application for further security for costs, Mr. Masembe-Kanyerezi had taken a contrary stance and submitted that the appeal was complicated. I think that is a fair criticism well taken. He might also have added that pursuant to the Court of Appeal allowing the defendant's appeal with costs, Mr. Masembe-Kanyerezi's firm of Advocates, filed a bill of costs in which the fee claimed for instructions to appeal, was Shs.200,000,000/= and yet, Mr. Masembe-Kanyerezi now contends that the plaintiffs claim for an item that is virtually identical, is manifestly excessive.

In fairness, however, I have to point out that Mr. Semuyaba himself has exhibited inconsistency in his arguments. Before me he contented that the dismissal of the suit by the Court of Appeal was final order and argued that the appeal from that order could not be interlocutory. Apparently, however, when he was opposing the application for further security for costs he contended that the reinstatement of the suit by the High Court was an interlocutory order, from which contention he should have consistently concluded that the appeal against it to, and the resultant order by, the Court of Appeal were also interlocutory. Be that as it may, I have to say that it is a matter of concern that all too often some advocates display similar inconsistencies and lack of objectivity, a tendency that ought to be discouraged because it undermines the advocates' duty to assist the Courts to arrive at just decisions. In my view, however, such fault does not create estoppel against the Advocate or his client, nor can it be reason for the Court to uphold what it considers to be erroneous. Consequently I have no hesitation in ignoring the earlier stance of the defendant's counsel, on complexity of the appeal.

In my view the appeal was very important to the parties. For the plaintiff the appeal was very important because if it was not presented, or if it was dismissed, the plaintiff stood to lose the suit and would have had to initiate other proceedings in pursuit of its claim, all very expensively in terms of costs. To the defendant it was important, albeit to a lesser degree, because if the appeal was dismissed, the defendant stood a chance of getting off the hook of

liability, at least for the time being. Nevertheless I find that the appeal was anything but difficult. It was a straight forward type of case where the Supreme Court was asked to reverse a decision of the Court of Appeal which had erroneously reversed a decision of the High Court made in exercise of discretion to reinstate the order of the High Court. The appeal could not have taken much time in its preparation and clearly took short time in its presentation. Consequently, like Odoki J.S.C. in **ATTORNEY- GENERAL vs. UGANDA BLANKET MANUFACTURERS (supra)** I am constrained to remark that I find it difficult to imagine that a reasonably competent advocate could demand such a large fee for instructions to prosecute the appeal in the instant case. In my view the amount of Shs.200 million as taxed is manifestly excessive, and can only have been arrived at as a result of the error of taking into consideration the monetary claim. Ground 1 of the reference succeeds.
I now turn to the remaining grounds of reference which are concerned with item *5* of the Bill of Costs. In ground *7*, it is complained that the learned taxing officer, in considering instruction fee for opposing application for further security for costs, relied solely on the principle that the level of remuneration of advocates should be such as to attract new recruits to the profession. On that item, the fee claimed was Shs.20, 000,000/. The learned taxing officer's ruling thereon was as follows: "**Mr.**
Masembe submitted that the application for security for costs was before a single judge in chambers for one hour. So he submitted that Shs.500, 000/ would be sufficient.
I have read the ruling of his Lordship the honorable Justice Oder (in) that application for security for costs. I again hold that the sum of Shs.500, 000/ proposed is too (low). This is especially when I take into consideration what the Supreme Court Justices have ruled constantly that a successful litigant should be fairly reimbursed, and that the level of remuneration must be such as to attract recruits to the profession. I therefore, award a sum of Shs.6,000,000/ under item
5. I accordingly *tax* ***off Shs. 14,000,000/."***

Although the learned taxing officer refers expressly, to two principles he took into consideration it is clear to me that this text does not suggest that they were the only considerations. I think it is not correct to demand that the taxing officer should, in every case and on every item, record in his ruling the whole litany of considerations contained in paragraph 9(2) reproduced earlier in this ruling. As I held earlier in respect of grounds *5* and 6, I am unable to conclude that the learned taxing officer was not alive to other relevant

principles, merely because he did not expressly reproduce them in the ruling. Ground 7, therefore, fails.

Ground 8 is similar to ground 1 in that it complains in effect that the amount allowed in item 5 of the bill of costs is manifestly excessive. The fee was allowed for instructions to oppose application for further security for costs. Mr. Masembe-Kanyerezi submitted that there was no justification for allowing such a large fee of Shs.6, 000,000/= in respect of an application of a routine nature. In his opinion Shs.500, 000/= would have been a reasonable fee. Mr. Semuyaba on the other hand supported the award as taxed, "having regard to the complexity involved." He did not elaborate on the alleged complexity. I have read the ruling by **Oder** JSC in that application and I have not detected any complexity at all. It seems to me, with due respect to counsel, that the application was opposed without much seriousness. Nor is that surprising in view of the earlier finding by the High Court, which was not appealed, that the plaintiff ought to provide security for costs, principally because it had no assets in the country. The arguments raised were simple and easily disposed of. Indeed, the application was granted, but the learned Justice of Appeal, in exercise of his discretion, ordered that costs would be in the cause. Once again I am constrained to remark, that I cannot imagine that a reasonably competent advocate would insist on a fee Shs.6, 000,000/= for instructions to make or oppose such
an application. In my view that amount is so manifestly excessive, that I am compelled to infer that it was arrived at as a result of an error of principle, and I hold that it would be unjust to uphold it. Ground 8 succeeds.

There are two matters I should mention briefly before I conclude this ruling.
The first is the provision in paragraph 9(2) to the effect that, in considering instruction fee, the taxing officer may, inter alia, have regard to "the other costs to be allowed". In his submissions on the grounds which I have disallowed, Mr. Semuyaba argued that the phrase should be construed to refer to costs in the Supreme Court only. I disagree. I think what is intended is other costs in the same litigation. Where it is applicable the taxing officer ought to have regard to other costs, including costs in the lower courts, if awarded, in order to assess what is a reasonable fee. This is not for purposes of any mathematical calculation to deduct or add the other costs. It is to give to the taxing officer an overview of the costs in the whole litigation rather than confine his mind to a segment thereof. In my view, that way the taxing

officer will more rationally discharge his duty to the public to keep costs of litigation at reasonable levels without compromising the other principles he has to abide by. If that is ignored, one can imagine a scenario where, after litigation has gone through the entire hierarchy of courts, the aggregate amount allowed in costs exceeds the value of the subject matter in litigation. The second matter is in regard to the relativity of taxed costs, viz a vis security for costs. It looks absurd to me, that in a case where the court has ordered security for costs in the sum of Shs.20,000,000/= the successful party is allowed ten times that amount on one item of his bill of costs. Of course I am not suggesting that taxed costs should be rigidly limited to the amount ordered as security for costs. However, the two ought to reflect that when the amounts were being assessed similar consideration were taken into account. That is why it is encouraged that an application for security for costs should be accompanied with a skeleton bill of costs. In the instant case it is difficult to imagine that the learned taxing officer had similar considerations in mind when taxing the bill of costs as the learned Justice of Supreme Court had when assessing the amount of security for costs. I think these two matters are worth mentioning because they featured in this case but I do appreciate that they are not very material to my decision on the reference.

14

For purposes of consistency, I have considered some recent awards in decisions of this court similar to the instant case. **PATRICK MAKUMBI & ANOTHER** vs SOLE ELECTRICS(U) **LTD.,** Civil Application No 11/94 (unreported) was a reference to a single judge of this Court, from an order of the taxing officer who had allowed a fee of Shs.12, 000,000/ for instructions to appeal. In his ruling given in May 1994 Manyindo DCJ observed that the appeal had been against an interlocutory order, and the appellant had succeeded on a point of law which the respondent had easily conceded. He reduced the instruction fee to Shs.2, 000,000/=. In **THE REGISTERED TRUSTEES OF KAMPALA INSTITUTE vs D.A.P.C.B** (supra) this court, in July 1995, sitting on a reference from a single judge, upheld the decision of the single judge reducing a fee of Shs.70,000,000/= allowed by the taxing officer for instructions to appeal, to Shs.7,000,000/=. The taxing officer, in assessing the instruction fee, had taken into consideration the value of the expropriated property in question. This was held to be an error of principle, because what was involved in the appeal was interpretation of provisions of S.1 (1) {c} of the Expropriated Properties Act, 1982, in order to determine if those provisions applied to the expropriated property. In **D.A.P.C.B.** vs. **JAFFER BORTHER LTD,** Civil Application No.13 of 1999 (unreported), the order of the

taxing officer to allow a fee of Shs. 16,000,000/= for instructions to oppose an appeal was referred to me. The taxing officer had similarly erred by taking into account, inter alia, the value and importance of a residential property which was in issue in the main suit, when that was not involved in the appeal. The appeal, which was against an interlocutory order, had involved a question of joinder of parties and the interpretation of 0.1 r. 10(2) of the Civil Procedure Rules. I reduced the instruction fee from Shs. 1 6,000,000/= to Shs.4,000,000/=

. In my view the appeal in the instant case is not very different from the three I have just referred to. It seems to me, however, that the work involved for the advocate, was lighter than that in **REGISTERED TRUSTEES OF KAMPALA INSTITUTE** case and that in **JAFFER BROTHER'S** case. Having regard to what I have said, I think it I just that the instruction fees on both items 1 and 5 be reduced. In regard to the instructions to appeal,

I am of the view that the amount proposed by Mr. Masembe-Kanyerezi is on the higher side in the circumstances. However, it is not so high as would compel me to ignore what in effect is a concession on the part of the defendant. Accordingly I hold that the reasonable fee for instructions to appeal would be Shs.7, 000,000/=. I am, however, not inclined to do the same in respect of the instructions to oppose the application for further costs. For the reason I have already stated I think only a minimal fee ought to be allowed. In my view Shs.300, 000/ is reasonable.

In the result, I allow the reference, and reduce the fee in item 1 of the bill of cost from Shs.200, 000,000/= to Shs.7, 000,000/=, and the fee in item *5* from Shs.6,000,000/ to Shs.300,000/=. The defendant shall have costs of this reference.

DATED at Mengo this day 19th of April, 2000.

J.N. Mulenga
Justice of the Supreme Court