

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

TAXATION APPEAL NO. 20 OF 2017

(ARISING FROM Civil Taxation APPLICATION NO.120 OF 2017 Itself arising from Miscellaneous Application No. 22 of 2017 arising out of Civil Revision No. 03 of 2010)

- 1. DR. CHRIS BARYOMUNSI**
- 2. TUMWEBAZE KARABENDA GODFREY----- APPLICANTS**
- 3. KANUNGU FM**

VERSUS

- 1. JAMES MUSINGUZI GARUGA**
- 2. KINKIZI DEVELOPMENT CO. LTD..... RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is a reference under section 62 of the Advocates Act, from a decision of the taxing officer in arising from Taxation application No. 120 of 2017, wherein the respondent's bill of costs was taxed and allowed at the total sum of Shs 32,610,000/=.

In this reference the applicants only contested only one item to wit;

The sum of shs 20,000,000/= on item 1 as instruction fees is excessive.

The rest of the items in the bill had been agreed upon by the parties save for the instruction fees of 80,000,000/= that was referred to the taxing master.

The background to this application is that the respondents sued the applicants for contempt of court. The respondents' won the application and were awarded damages.

Some of the pertinent principles applicable to review of taxation in applications of this nature are as follows;

Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer consider being 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/she 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 the 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. See **Bank of Uganda vs Banco Arabe Espanol Supreme Court Civil Application No. 23 of 1999**

The applicants are contesting the sum of 20,000,000/= awarded as instruction fees as being excessive. This was an application for contempt of court orders of the decision of this court and there is no consideration for the award based on the value of the subject matter. The taxing officer was merely exercising her discretion in arriving at the award. This court as an appellate court in this matter finds the award of 20,000,000/= as being excessive and a reasonable sum of 10,000,000/= would be a fair award as instruction fees because this was an application for contempt of court.

This Court as an appellate notes that, each case has to be decided on its own peculiar facts and circumstances. In the case of ***Electoral Commission & Another vs Hon Abdul Katuntu HCMA No. 001 of 2009*** which cited the case of ***Patrick***

Makumbi & Another vs Sole Electronics. The court stated that there is no mathematical or magic formula to be used by taxing master to arrive at a precise figure. *“Each case has to be decided on its own merits and circumstances. For example, lengthy or complicated case involving lengthy preparation and research will attract higher fees. Fourth, in a variable degree, the amount of the subject matter involved may have a bearing...”*

In the final result the instruction fees awarded to the respondents are reduced to 10,000,000/= and this bill is reconsidered/re-taxed and allowed at **22,610,000/=**

In the final result for the reasons stated herein above this application succeeds in part and I make no order as to costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
11th/07/2018