

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPEAL NO. 001 OF 2019**

**[ARISING OUT OF CIVIL SUIT NO. 296 OF 2010]
ARISING OUT OF TAXATION NO. 147 OF 2017**

- 1. THE EDITOR IN CHIEF
OF THE RED PEPPER NEWSPAPER**
- 2. JAKO DAVID WALUKUKA**
- 3. THE RED PEPPER PUBLICATIONS LTD.....APPELLANTS**

VERSUS

MURANGIRA KASANDE VENNIE.....RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is a reference under section 62 of the Advocates Act and rule 3 of the Advocates (Taxation of Costs Appeals and References) Regulations, from a decision of the taxing officer in arising from Civil Suit No. 296 of 2010, wherein the respondent's bill of costs was taxed and allowed at the total sum of Shs 33,400,000/=.

In this reference the applicant contested the whole taxed bill of costs and sought the following orders;

1. That the Taxation No. 147 of 2017 and all awards made therein be set aside and the matter be placed before a different taxing master for taxation and the defendants/appellants be given an opportunity to be heard before making the award.
2. In the alternative but without prejudice to the aforesaid ground, the award of costs allowed at Ug Shs 33,400,000/= by the taxing master was manifestly so high, unreasonable and contrary to the law and principles of

taxation and as such ought to be reviewed and reduced by the Honourable Judge of the High Court.

The main grounds in support of this application were set out in the affidavit of Johnson Musinguzi-Director of the 3rd Appellant but briefly that;

1. That the Taxing Master erred in law and fact when, after hearing the appellants' points of law, failed to give a ruling on the preliminary points of law instead went ahead to tax the bill of costs without giving an opportunity to the appellants to be heard in opposition to the items of the bill of costs and hence came to a wrong decision which is null and void and ought to be set aside.
2. The Taxing Master erred in fact and law when she taxed the bill of costs without giving the appellants an opportunity to be heard.
3. The taxing Master erred in fact and law when she Taxed the bill of costs basing on the plaintiff's submissions which had not been ordered by court to be filed in court and without giving the appellants an opportunity to be heard in opposition to the bill of costs.
4. The Taxing Master erred in fact and law when she went on to tax the bill of costs which was a fraudulent bill of costs and which had been improperly presented to court despite the appellants preliminary points of objective and hence came to a wrong decision.
5. The Taxing Master erred when she allowed counsel for the plaintiff to represent the plaintiff and reply to the appellants' preliminary points of law despite the appellants' objections that he did not have a practising certificate and hence allowed a person who was not an advocate to represent the plaintiff/respondent.
6. The Taxing Officer erred in fact and law in taxing and awarding to the appellant Shs 33,400,000/= costs in a matter where the value of the subject

matter was only Shs 10,000,000/= in complete disregard to the Advocates Remuneration and Taxation of Costs) Regulations SI 267-4, the principles governing taxation and decided cases and gave an award which was manifestly unreasonable and contrary to the law.

7. The appellants are greatly prejudiced by the award and particularly the instruction fees of shs 25,000,000/= whereas the subject matter of the suit was only 10,000,000/=
8. It is only just and equitable that the taxation be set aside alternatively the award be reviewed by the High Court.

The appellants counsel submitted that the Respondent had wrongly claimed **Ug. Shs. 50,000,000/= (Fifty million Shillings)** general damages in the plaint. General damages cannot be claimed in the plaint but are awarded at the discretion of Court.

The Court awarded **Ug. Shs. 10,000,000/= (Ten million Shillings)** damages which is the value of the subject matter and the Regulations offer a sliding scale formula to use to calculate the instruction fees based on the subject matter.

Applying the formula of the sliding scale provided in schedule six to the subject matter, the allowable instruction fees where the subject matter is **Ug. Shs. 10,000,000/=** is only **Ug. Shs. 887,500/= (Eight hundred eighty seven thousand five hundred Shillings)**.

The respondent's counsel submitted that, the value of the subject matter in the plaint was put to be over 50,000,000/=:, and therefore they decided to put the estimated value of the subject matter to about 300,000,000/=: . According to them when this sum is subjected to the new rules the instruction fees would be above 30,000,000/=:

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 25,000,000/= awarded as instruction fees as being excessive and not being made in accordance with the Sixth Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations. This was a defamation suit with no specific amount was claimed in the plaint 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 25,000,000/= as being manifestly excessive and this could have been guided by the plaintiff's/respondent's pegged value of 300,000,000/= which was never derived from the pleadings/plaint.

This Court as an appellate court notes that, each case has to be decided on its own peculiar facts and circumstances where no value of the subject matter can be deduced from the plaint. 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...”*

The appellants’ counsel has argued that the value should be derived from the award made in the plaint which is 10,000,000/=, but I do not buy into that argument. What if the court had decided to award a nominal fee of one shilling, would that have meant that the value of the subject matter was one shilling and therefore the bill would be drawn according to the final award. That would be incredible to import such reasoning in order to determine the instruction fees. Or alternatively, if the court had actually dismissed the suit in favour of the defendants/appellants, wouldn’t the appellants have attached a value to their bill of costs? I believe the court would still have considered a reasonable value based on the entire case that was filed before court.

Indeed the award of court in the Judgement and the entire suit as presented would guide court in assessing a reasonable amount as instruction fees.

In the final result the instruction fees awarded to the respondent is reduced to 5,000,000/= as being a reasonable sum in the circumstances of the entire case as presented by the respondent.

The rest of the bill is taxed as follows;
Item 2 is allowed at 20,000/= and Item 3 is disallowed.

Item 4, 7, 17, 23, 29, 32, 36, 41, 47, 51, 56, 61, 66, 70, 79, 96, 99, 102, 110, 125 (a), 141, 151, 159, 167, 174, 190:

All these items are perusals of the plaintiff’s own documents which would not make sense of the regulations. However, the respondent under the regulations is allowed reading and correcting proofs under 6(d) per folio 1,000/= The same is allowed for all the documents drawn by the respondent.

Item 31: The letter written by the respondent's counsel forwarding a joint scheduling memorandum is allowed as a necessary letter since the document could not be sent with such a letter introducing the subject.

Item 33 & 37: These items are allowed since they were necessary

Item 40 & 42: These items are allowed since an affidavit of service is filed on court record and does not have to be served on the party served.

Item 43: The assessment is obviously for the preceding document i.e affidavit of service and it is therefore allowed.

Item 46, 48 & 49. These items are disallowed. I agree with the appellants' counsel, It was not necessary.

Item 50 & 52: These items are allowed as presented.

Item 55, 57, 58 & 59. These items are allowed as presented.

Item 60, 62 & 63 These items are disallowed.

Item 64 This item is disallowed since this sitting is not indicated on the record.

Item 65, 67 & 68: These items are disallowed.

Item 69, 71 & 72 These items are disallowed.

Item 73 & 74; Allowed at 30,000/=

Item 75 is allowed at 150,000/=

Item 79, 82, 83 & 84. These items are allowed.

Item 85 & 87 & 88 & 89 & 90 These items are disallowed. No particulars are given or dates of the said documents.

Item 93 This Item is allowed

Item 94, 95, 96 & 97: These items are disallowed.

Item 98, 99 and 100: These items are disallowed.

Item 101, 103 & 104 and 105 are allowed

Item 106 is allowed as presented.

Item 107 is allowed at 30,000/=

Item 108, 111 & 112 These items are disallowed.

Item 113, 114, 115, 116, 117 & 118, 119 These items are disallowed. No particulars are availed

Item 122. This item is allowed.

Item 124 Item allowed at 200,000/=

Item 125 & 126: Items allowed.

Item 127 Allowed at 20,000/=

Item 128. Allowed at 5,000/=

Item 129 Allowed at 30,000/=

Item 130 Allowed as presented.

Item 131 & 132, 133 Allowed as presented.

Item 134 Allowed at 10,000/=

Item 135, 136 & 137: Allowed at 50,000/= per day.

Item 138 is disallowed

Item 142 Allowed as presented.

Item 144 Allowed at 10,000/=

Item 145, 146, 147, 148 These items are allowed at 50,000/= per court attendance and it is not true that these attendances were on the same day.

Items 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193 & 194:

The appellants' counsel objected to the above items and contended that the respondent is not entitled to any fees because at the time the matter came for defence, the plaintiff informed Court that she no longer had a lawyer but she was representing herself in person. The plaintiff continued to represent herself until completion of the suit and even the bill of costs is signed by the plaintiff in person. Though the plaintiff is an advocate, she cannot be allowed to represent herself as an advocate and cannot claim any fees as an advocate.

The court disallows all the items were the plaintiff represented personally especially attendances in court are disallowed but the rest of the items are to be considered as provided by the regulations.

The following items are disallowed since the plaintiff represented herself i.e 149, 150, 151, 154, 155, 162, 163.

All the items presented as disbursements are allowed as presented. I have not found any merit in the objections by the appellants counsel.

In the final result this bill is reconsidered/re-taxed and allowed atIn sum and for the reasons stated herein above this application succeeds in part and I make no order as to costs since the mistakes in taxation were made by the taxing officer.

It is so ordered.

SSEKAANA MUSA
JUDGE
10th/05/2019