THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

TAXATION APPEAL NO. 17 OF 2020
[Arising from Civil Appeal No. 25/2019]

JOYCE LUBEGA ::APPELLANT

VERSUS

CENTURY BOTTLING CO. LTD ::::::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this Appeal under Section 62 of the Advocates Act, the application is by chamber summons however the chamber summons does not state under what rules of procedure it has been brought, this ought to have been done as a matter of good practice but it's not fatal to the appeal .I may safely presume that it has been brought under section 62(1) & Regulations: 2(a), 3 and 9 of S.I 267-5 for orders that;

I. *Items 1 to 26, 86 and 87 be taxed afresh*
II. *Costs of the appeal be provided for.*

The grounds of this application are specifically set out in the affidavit of Applicant Joyce Lubega which briefly states;

1. That the appellant instructed M/s Balikuddembe & Co Advocates and Wakabala & Co. Advocates to jointly represent her in Civil Appeal No. 25 of 2019.

2. The said advocates filed a joint bill of costs to be taxed by the registrar.

3. That the learned registrar erroneously disallowed items 1 to 26, 86 and 87 of the bill of costs.

4. That the Learned Registrar erroneously disallowed items 86 and 87 for disbursements.

In opposition to this Appeal the Respondent through *Brian Amanyire* an Advocate on 14th June 2021 and later surprisingly filed another affidavit in reply by *Mr. Apollo Katumba*, An advocate in Advocates of the respondent (AF Mpanga Advocates) filed an affidavit in reply filed on 01st 12-2021 wherein they vehemently opposed the grant of the orders being sought contending that;

1. The Learned taxing master delivered a ruling in which items 1-26, 86 and 87 of the bill of costs were disallowed. They supported the decision of the learned taxing master.

2. That none of the advocates in the firm of Wakabala & Co Advocates was enrolled in 2004, nor was the advocate known as Bamujje Ahmed Adnan, yet the period covered by the amounts claimed in Items 1 to 26 of the bill of costs between July and August 2004.

3. That the firm of Balikuddembe & Co. Advocates was a sole proprietorship owned by Joseph Balikuddembe who passed away in November 2017. Wakabala & Co Advocates took over the conduct from the said firm in 2018.

4. That no document, communication, pleading, filing or appearance after Wakabala & Co. Advocates took over conduct was done by, with or demonstrates the involvement of the firm of Balikuddembe & Co. Advocates. The said firm only appears on the bill of costs after the appeal was determined.

5. That, taxation of costs is not an exercise in investment or enrichment from which a litigant expects or seeks to make profit. It is a juridical exercise of ascertaining and computing the actual costs incurred by a party who has been permitted by court to recover costs of litigation.

6. That items 1-26 of the said bill of costs are not only unclaimable they are also grossly exaggerated and based on a law that did not exist at the time the work was done.

7. That items 86 and 87 being listed as disbursements are not proved in part or at all and from the description in column 3 both items, it is clear that they are also grossly exaggerated, wholly inapplicable to this case or an attempt at extortion. There is no record that the appellant was in South Sudan.

Both parties filed submissions which have been considered by this court though only on matters of law on the respondent's submissions.

The appellant was represented by *Mr. Wakabala Herbert* and the respondent was represented by *Mr. Kalibbala Ernest Wiltshire*

This is an appeal to this court, from the order of the Registrar of this Court in his capacity as taxing officer. The taxing officer sustained an objection by counsel for the respondent, regarding items 1 to 26, 86 and 87 of the bill of costs presented. The applicant, as plaintiff, lost a civil suit against the respondent in the magistrate court in 2004. The applicant successfully appealed to this Court in **Civil Appeal No.25 of 2019.** The appellant advocates then where Balikuddembe & co. Advocates.

Thereafter on 23rd October 2019 Wakabala & co. Advocates filed to have joint instructions with Balikuddembe & co. Advocates. I have studied the record of this application. It is clear from the said records that Wakabala & Co.

Advocates did not appear on the record as an advocate for the respondent until 2018. Indeed Wakabala & Co advocates does not appear until 2018, nor could they, contest this. In September, 2020, Wakabala & Co Advocates , drew up and lodged in the registry of this Court a bill of costs for taxation in respect of the successful appeal. However in drawing that bill, Wakabala & Co, Advocates purported to have drawn the bill with Balikudembe & co. advocates which firm was operated by a sole proprietor Joseph Balikuddembe where this court took judicial notice of his demise in 2017, appellant counsel included therein costs which should have been claimed by Balikudembe & co. advocates, the original advocate who had, as stated earlier, represented the appellant in an appeal to this Court.

When the bill came before the taxing officer for taxation, counsel for the present respondent, raised a preliminary objection to the effect that items 1 to 27 the learned counsel for the respondent submitted that these relate to work done by Balikudembe & Co. Advocates the current counsel doesn't feature on the documents in issue at all.

Counsel, for the respondent, before the taxing officer, opposed the objection, though didn't dispute the fact that he didn't participate in the proceedings leading to items 1to 27. The learned registrar uphold the objection and taxed items 1to 27 of bill of costs off.

The applicant being aggrieved with tax masters ruling hence this appeal, It is the disputation of appellant counsel, that the learned taxing officer erroneously disallowed items 1 to 26, 86 and 87 of the bill of costs when he ruled that the 'current advocate ought to have indicated what was due for him and then annexed what was due for the former, Learned counsel also criticized the taxing officer for his failure to appreciate that the firms were jointly instructed.

Analysis

In the Supreme Court, the circumstances under which a Judge of the High Court may interfere with the Taxing officer's exercise of discretion in

awarding costs were restated in the case of ***Bank of Uganda v Banco Arabe Espanol, Civil Application No.23 of 1999*** (Mulenga JSC-RIP) to be the following;

> *"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 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 would cause injustice to one of the parties.''*

The principles of taxation of Advocates' bills were furthermore outlined in the case of ***Nicholas Roussos v Gulamhussein Habib Virani SCCA No. 6 of 1995***, which were taken from the case of ***Makula International Ltd v Cardinal Nsubuga and Another [1982] HCB. 11*** as follows;

1. *The court will only interfere with an award of costs by the taxing officer if such costs are so low or so high that they amount to an injustice to one of the parties.*
2. *Costs must not be allowed to rise to such a level so as to confine access to the courts only to the rich.*
3. *That a successful litigant ought to be fairly reimbursed for costs he or she has to incur.*
4. *That the general level of remuneration of advocates must be such as to attract recruits to the profession, and finally,*
5. *That as far as possible there should be some consistency in the award of costs.*

The mandatory rules of taxation should be followed in taxation proceedings. Odoki JSC (as he then was), in the case of *Attorney General vs. Uganda Blanket Manufacturers SC Civil Application 17/1993* observed that,

> "*The intention of the rules is to strike the right balance between the need to allow advocates adequate remuneration for their work and the need to reduce the costs to a reasonable level so as to protect the public from excessive fees… the spirit behind the rules is to provide some general guidance as to what is a reasonable level of Advocates' fees*."

This Court as an appellate court 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…*"

It is trite that a bill of costs is a factual statement of services rendered and disbursements made and, if any of the facts alleged in the bill are shown to be untrue, e.g., if it is shown that a particular service charged for has not been rendered or that a particular disbursement has not in fact been made, the relevant item in the bill must be taxed off: See ***Bhatt vs Singh [1962] EA 103 at 104.***

The major thrust of the appeal before this court is whether an advocate can reap from services he didn't execute or do?

I have studied the record of this application. It is clear from the said records that ***Wakabala & Co. Advocates*** did not appear on the record as an advocate for the respondent until 2018. Indeed ***Wakabala & Co Advocates*** does not appear until 2018, nor could they, contest this.

Yet the first item claimed on the bill states: -"**Instruction fees to file civil appeal no.25 of 2019 with several complicated grounds of appeal".**

Clearly that item along with the claims for the year 2004 under items 1 to 26 which relate to work done before Wakabala reflecting on record are definitely caught by the provisions of paragraph 16 of the 3 rd schedule.

The Supreme Court of Uganda in the case of Haji Haruna Mulangwa v Shariff Osman S.C.C.Ref No. 3 of 2004 [2005] ULSLR 210 Justice Tsekooko (RIP) cited the case of Bhatt vs Singh (Supra) where the taxing officer had upheld an objection slightly similar to that raised here. In his ruling the learned Vice President referred to an earlier ruling in another reference by a different Judge of Appeal **Sir Newnham** of the same Court who had state that:

> *"A bill of costs is a factual statement of services rendered and disbursements made and, if any of the facts alleged in the bill are shown to be untrue, e.g.,. If it is shown that a particular service charged for has not been rendered or that a particular disbursement has not in fact been made, the relevant item in the bill will be taxed off. The commonest example of this in England is probably the inclusion in the bill of counsel's fees which had not been paid when the bill was presented: e.g. In re Taxation of costs: In re A Solicitor, [1943] 1 All E.R. 592 and Polak v. Marchioness of Winchester, [1956] 1 W.L.R. 818. Now, if the bill before me is judged by that standard it should probably be taxed at Sh. nil for it is not a true representation of the facts. It purports to be an account of services rendered to the appellants and disbursements made on their account by Messrs. Shah and Gautama and makes no mention of Mr. Nazareth. I have no doubt that it was a genuine and well-meant attempt to meet the peculiar circumstances resulting from Mr. Nazareth's is having taken silk: it is nevertheless, an inaccurate bill."*

Thereafter Sir Alastair Forbes agreed with these principles and stated: -

"On the principles applied by SIR NEWNHAM it seems to me that the bill in the instant case is no more an accurate bill than that which SIR NEWNHAM was considering. It purports, on the fact (sic) of it, to be an account of services rendered to the appellants, of disbursements made on their account, and of instructions given to counsel on their account, by Mandla & Co. It is not a true factual statement; and on the principles stated by SIR NEWNHAM, by which as I have said, I am bound, I think that the taxing officer was right to tax the bill at Shs.nil, no application to amend having been made to him. The question in issue is purely a matter of form. The respondents were awarded their costs and should, I think, be given the opportunity of recovering them by being allowed to file a bill in proper form. The form appropriate appears to be adequately prescribed by Practice Note No.7 of 1956."

The note referred to above show at least two important aspects that;

- First no one but the advocate on the record for the time being can lodge or tax a bill.
- Second if the advocates have been changed during the proceedings, the bill of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement I therefore do not agree with appellant counsel that it is not necessary where they are joint instructions,

I find that the taxing officer was justified in his objection to taxing off item 1 to 26 of the bill. With respect, I think that the position of law is clear. The items which should have been claimed by the previous advocate before joint instructions must be listed separately on a separate bill and be made an annex to the bill of where there are joint current instructions. The advocate should explain to the taxing officer what costs are due to them jointly and those due to previous advocate before joint instructions.

In that way the bill presented for taxation would be stating the true position. It is not just a question of form curable under Article 126(2) (e) of the constitution. The bill as presented indeed purports to show that Wakabala

& Co. Advocates had been instructed in 2004 to prosecute an -appeal and was therefore entitled to claim Shs 10,000,000/= as instruction fees. Of course that is fundamentally and absolutely false and it must not be encouraged.

Therefore ground one must fail.

For items 86 where appellant claimed sh.12.500.00/= for special hire for three years and for item 87 were appellant claim sh.15, 000,000/- as expense incurred by the four appellants on transport from southern Sudan to Kampala and lunch for three years it was finding of the taxing officer that there was need to prove it which was never done . Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee see ***Bank of Uganda v Banco Arabe Espanol***,(supra) the exceptional circumstances which would warrant me to interfere with the taxing masters finding is where it is shown expressly or by inference that in arriving at his decision , the taxing officer exercised, or applied a wrong principle.

In this regard, taxing officer required that there would have been proof of item 86 and 87, appellant counsel admitted absence of receipts and only prayed this court to re-tax the said items, in my view the registrar was fortified in his decision, how would you accept special claims without proof? Therefore, upholding his decision would cause no injustice to any of the parties consequently I uphold his decision.

Like this court has ruled before there are no rigid rules to be applied in taxation matters but the circumstances of the case must be considered in order to balance the interests of the parties. Those special circumstances like in the present case are paramount in guiding the taxing officer in order to give a reasonable award. The special circumstances in any given case should not be asserted or proved in a vacuum but had to, in some rational way, address the concerns raised. Merely showing that the respondent shall suffer no prejudice does not go towards fulfilling the statutory requirements of proving special circumstances.

The purpose of taxation is not to redress parties' unhappiness in getting so much or paying so low but to ensure fair and reasonable remuneration for work done. So long as a reasonable sum is made, the taxing officer has exercised his discretion reasonably and no party has suffered any prejudice. This appeal was unnecessary since it was premised on clear points of law enunciated in earlier decisions.

In sum therefore, the appeal fails and is dismissed with costs to the respondent.

I so order.

SSEKAANA MUSA
Judge
9th May 2022