

3. The Taxing Master erred in law and in fact when she misconstrued the value of the subject matter during taxation.
4. The whole taxation process of the applicant's bill of costs was conducted in error of law and fact and in contravention of the Advocates (Remuneration and Taxation of costs) and the principles applicable to taxation of costs.
5. It is in the interest of justice that this application is allowed.

The respondent filed an affidavit in reply opposing granting of the application whose salient ground was that the taxing master exercised her discretion judiciously and the appellant had not stated plausible reasons as to why the discretionary decision of the lower court should be interfered with.

The appellant was represented by *Counsel Kwemara Kafuuzi & Winnie Nakigudde* while the respondent was represented by *Counsel Joel Wananzuri* of Nyote & Co. Advocates.

Both parties filed written submissions that were considered by this court.

Determination

Counsel for the applicant submitted that Regulation 3 (13A) (1) of the Advocates (Remuneration and Taxation) (Amendment) regulations, 2018 was to the effect that the advocates for the respective parties or the parties themselves, if unrepresented, shall jointly identify the costs, fees and expenses on which they agree, if any, before the taxation of a bill of costs.

Counsel submitted that the taxing master could only tax the bill where there was no agreement as per Regulation 3 (13A) (2) of the Advocates (Remuneration and Taxation of costs) (Amendment) Regulations and that both counsel for the parties held a pre-taxation hearing where it was agreed that the total bill of costs allowed would be Ug. Shs. 82,000,000/

after taxing off Ug. Shs. 142,267,700/= and a consent settlement deed was extracted which was signed by the counsel for the applicant and matter was fixed for the counsel for the respondent to append his signature on the consent.

Counsel further submitted that the learned Registrar had no locus to re-tax the bill in absence of both counsel and reduce the same without according them a hearing to defend the bill. That the learned registrar conducted the taxation in contravention of the law and principles applicable to taxation of costs.

Counsel for the respondent opposed the application and submitted that the taxing master had exercised her jurisdiction judiciously and that the applicant had not stated any plausible reasons as why the discretionary decision of the lower court should be interfered with.

Counsel relied on the case of *Paul Mugalu vs Manjeri Nabukenya CACA No. 19 of 2003* which brought out the principle that the applicant had to show court that a lower court applied a wrong principle or took into account matters which are irrelevant in law or excluded matters which ought to have been taken into account and *Bank of Uganda vs Banco Arabe Espanol EALR (1999) 2 EA 45* where it was stated that before the exercise of discretion by the lower court is interfered with there must be proof that a wrong principle was followed.

In rejoinder counsel for the applicant submitted that the taxing master had not shown how she had arrived at the sum of Shs. 46,344,709 for the entire bill of costs because her ruling showed that there was only one item that was re-taxed which was item 1 yet it was silent about item 2-423 on the bill of costs.

Counsel submitted that the taxation of costs had never been on the discretion of court but that there were rules that should be adhered to wit the Advocates (Remuneration and taxation of cost) rules under regulation

13A (2) that provides that the taxing master shall only proceed to tax the costs, fees and expenses where there is no agreement and the 6th schedule of the rules.

Analysis

In this application, the first question to be looked at is whether the taxing master had the locus to re-tax the bill costs in the absence of the counsel for the applicant and the respondent yet the court was aware that the counsel for the parties had reached a settlement concerning the costs and even extracted a consent settlement deed.

Regulation 54 of the Advocates (remuneration and taxation of costs) rules provides that the taxing officer shall have power to proceed to carry out taxation ex parte in default of appearance of either/ both parties or their advocates and to limit/ extend the time for any proceedings before him/her and for proper cause to adjourn the hearing of any taxation from time to time. By this provision, the registrar/ the taxing master is empowered to tax the bill of costs in the absence of counsel.

Counsel held a joint pre-taxation meeting where they allegedly agreed on a sum of Ug. Shs. 82,000,000 as the taxed bill of costs. A consent taxation settlement was drafted and was signed by the applicant but not the respondent. The same was also not availed to the taxing master for signing up until the matter was set down for ruling on 17th March 2021.

A consent taxation settlement takes on the characteristics of a contract and ought to be signed in order to be binding. Failure by counsel for the respondent to append his signature on the consent means that the same cannot be relied on by the court owing to the fact that it is not legally binding. This means that the applicant's claim that the registrar reviewed and re-taxed the agreed item of instruction fees as per the bill of costs lacks merit since there was no valid consent taxation settlement before her worship.

In the same vein, the court is not bound by the consent of the parties in a taxation of costs unless the parties have executed consent on all the items and conclusively dealt with the bill of costs as settled by the parties. Where the parties consent to exorbitant or exaggerated sums contrary to the Advocates Remuneration & Taxation Rules such consent should never bind the court. The court should never sanction illegalities by mutual agreement of parties (Advocates), but rather they should execute their own consent outside court as a settlement and a certificate of taxation should not be issued by court under such circumstances.

With regard to the question of discretion and application of a wrong principle, this court can only interfere with an award of costs by the taxing master if such costs are so low or so high that they amount to an injustice.

The court must not be allowed to rise to such a level so as to confine access to the courts only to the rich as stated in the case of *Makula International Ltd vs Cardinal Nsubuga & Anor* [1982] HCB 11 and in the case of *Alexander J 'Okello v Kayondo & Co Advocates SCCA No. 1 of 1997* it was held that while awarding costs, the taxing master shall consider the value of the subject matter and shall consider factors such as complexity of the item, skill, specialized knowledge, time & labour and the number and importance of the documents prepared.

Counsel for the applicant relied on Rule 37 of the Advocates (Remuneration and taxation of costs) rules and submitted that the taxing master had not considered the nature of the case of the suit since it involved interpretation of complex construction designs and that he had filed numerous applications to set aside judgment and decree, seeking leave to appear and defend and an order of stay of execution arising from the main suit.

Counsel however failed to put it to the attention of the court what particular principle was applied wrongly by the taxing master and did not hint at any principles in relation to the taxation of costs but only stated that

the taxing master had only taxed item 1 on the defendant's bill of costs & ignored the other items on the bill of costs. I concur with the submissions of the counsel for the respondent on the premise that counsel for the applicant has failed to bring it to the court's attention that the wrong principle was applied.

The essence of costs is to compensate the successful party for part of the loss incurred in litigation. Costs cannot cure all financial loss sustained in litigation. It is not meant to be a bonus to a successful party, and is not awarded on sentiments.

The appellate court should only interfere with decision of the taxing master, if the discretion to award costs had been exercised in an arbitrary or illegal manner or without due regard for all necessary considerations or with no regard to unnecessary factors or *malafide*, the appellate court is entitled to interfere.

On that premise, this appeal fails and is dismissed. The award of costs by the taxing master is hereby maintained. The applicant shall bear the costs for this appeal.

I so order.

SSEKAANA MUSA

JUDGE

30th November 2022