

a) That the Taxation Ruling in the Chief Magistrate's Court of Makindye at Makindye delivered by the Taxing Master, His Worship Osauro John Pauls-Magistrate G.1 on the 05th day of July, 2022, in Miscellaneous Cause No. 205 of 2021- Mukasa Abdul Nasser v Wasswa Mwanje Muhammed be set aside.

- b) That the Taxation Award of Eight Million Seven Hundred Seventy Thousand Uganda Shillings (Ugx 8,778,000/=) to the 1st respondent be set aside.
- c) That the 1st respondent pays costs of this appeal.

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

1. The Taxing Master erred in law and in fact when he held that Misc. Cause No. 205 of 205 of 2021 was a substantive Election Petition whereas not thereby arriving at a wrong conclusion hence occasioning a miscarriage of justice.
2. The Taxing Master erred in law and in fact when he taxed and allowed several services charged in the 1st respondent's bill of costs whose dates when rendered were not provided thereby arriving at a wrong conclusion hence occasioning a miscarriage of justice.
3. That the award of a sum of UGX. 8,778,000/- is manifestly excessive.

In opposition to this Appeal the respondent did not file an affidavit in reply.

The Appellant was represented by *Najib Mujuzi* while the respondent's counsel never appeared in court.

The appellant filed submissions which have been considered by this court.

In their submissions the Appellant raised the following grounds for court's determination;

- a) *That the Taxation Ruling in the Chief Magistrate's Court of Makindye at Makindye delivered by the Taxing Master, His Worship Osauro John Pauls-Magistrate G.1 on the 05th day of July, 2022, in Miscellaneous Cause No. 205 of 2021- Mukasa Abdul Nasser v Wasswa Mwanje Muhammed be set aside.*
- b) *That the Taxation Award of Eight Million Seven Hundred Seventy Thousand Uganda Shillings (Ugx 8,778,000/=) to the 1st respondent be set aside.*

Counsel for the Appellant framed one issue for determination;

Whether the award of the taxing officer of 8,778,000/= to the 1st respondent ought to be set aside and/ or be reduced?

Counsel for the Appellant submitted that the instant case was an interlocutory application and therefore taxing the same erroneously as though it was an election petition resulted in the taxing master awarding 8,778,000/= which amount in our view is excessive and unreasonable.

The parties in the said application did not appear more than, twice and evidence was led by way of affidavits and the case proceeded by way of written submissions.

Counsel contended this was an interlocutory application and instruction fees is not less or more than Ugx 150,000/= thus the entire bill ought to have been allowed an amount in excess of Ugx 2,000,000/=.

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)*** 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;

- i. 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.*
- ii. Costs must not be allowed to rise to such a level so as to confine access to the courts only to the rich.*
- iii. That a successful litigant ought to be fairly reimbursed for costs he or she has to incur.*
- iv. That the general level of remuneration of advocates must be such as to attract recruits to the profession, and finally,*

v. *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...*”

I have reviewed ruling of court and the submissions of the appellant which contends that case before court was an interlocutory application. With greatest respect I do not agree with what counsel for the appellant has stated. The matter before court was a Miscellaneous Cause which is a complete suit which initiates proceedings and not an Interlocutory application as contended. The matter did not arise out of any pending matter to make it interlocutory and the appellant in his wisdom opted to file an application for leave to be allowed to file an election petition.

The appellant does not set out which specific items were taxed excessively as required by Regulation 3(1) of the *Advocates (Taxation of Costs) (Appeal and References) Regulations* which provides as follows;

Every appeal shall be by way of summons in chambers supported by affidavit which shall set forth in paragraphs numbered consecutively particulars of the matters in regard to which the taxing officer whose decision or order is subject of the appeal is alleged to have erred.

In absence of any particulars being set out in the affidavit this court should not get into speculating that every item considered was excessive since the same are not set out. Equally important is the fact that some items were agreed upon by the appellant at taxation hearing and therefore in my view cannot be subject of an appeal.

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 purpose of taxation is not to redress party's unhappiness in getting so much or paying so low but to ensure fair and reasonable remuneration for work done.

In awarding the costs, the court will look at the costs incurred in the prosecution of the action and award costs accordingly. So long as a

reasonable sum is made, the taxing officer has exercised his discretion reasonably and no party has suffered any prejudice. Costs cannot cure all financial loss sustained in the litigation.

The value of Uganda's currency is, like those of third world countries, is often subject to fluctuations at short intervals. What may have been held to have been excessive ten (10) years ago may appear paltry by current or modern standards. Conscious efforts should be made to award costs reflective of the value of the Uganda shilling at the time of making the order. That will be an effective way to ensure that the award of costs does not become an exercise in futility.

The trial court was justified in taxing and awarding the 1st respondent a sum of 8,778,000/=. The appeal is dismissed with costs to the 1st respondent.

Obiter dictum

Before I take leave of this matter. This was a clear case of negligence of counsel who tried to file an application for leave to extend time to file an election petition. The application was 'strangled at birth' by a preliminary objection which the trial court upheld. This should have been a proper case to award costs or part of costs against the careless, reckless or negligent counsel in this matter. Once the faults are in procedure, such sins of counsel should not be visited on their clients. The faults were those of his lawyers, it would not be right to penalize him for the faults of his lawyers.

The advocate in this matter ought to have known that time set by statute cannot be extended by court and any application made in that line would be an act in futility. This was an act of professional negligence and the advocate cannot escape liability by “labelling” or “baptizing” his/her act or omission as an error of judgment. Where the procedure taken is wrong, it cannot be regarded a mere error of judgment in order to absolve the lawyer from liability. The professional standards or practice serve, at most, as a guide of what is expected of a reasonably competent professional.

The standard of care expected of lawyers entails taking the proper procedure and giving proper advice on the proper procedure to take in order to achieve the clients desired remedies. The extent of a lawyer’s duty to a client is dependent on, amongst others, the particular needs, knowledge and abilities of the client.”

I so order.

SSEKAANA MUSA

JUDGE

29th September 2023