

THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL APPEAL NO 13 OF 2018
ARISING FROM MISCELLANEOUS APPLICATION NO 1056 OF 2017
(ARISING FROM CIVIL SUIT NO. 658 OF 2017)

SANLAM GENERAL INSURANCE (U) LTD.....APPELLANT

VERSUS

ROYAL TRANSIT LIMITED.....RESPONDENT

BEFORE HON. JUSTICE RICHARD WEJULI WABWIRE

JUDGMENT

This Appeal was brought under section 62 (1) of the Advocates Act and Rule 3 of the Advocates (Taxation of Costs) (Appeal and References) Regulations and Section 98 of the Civil Procedure Act for orders that;

- i. The taxation award of the Registrar for a sum of Uganda Shillings 10,000,000/= as instruction fees in addition to VAT of Ugx. 1,914,480/ in the certificate of taxation of Ugx.

- 12,625,480/ be set aside for being illegal, inaccurate, manifestly excessive, highly unconscionable, penal and instead a reduced award of a legal, fair and proportionate instruction fees be taxed and awarded.
- 25 ii. that the bill of costs is taxed afresh and
 - iii. Costs of the appeal to be provided.

Briefly, the background to the appeal is as follows;

30 The Appellant (formerly Lion Assurance Company Limited) filed a summary suit against the Respondent vide **Civil Suit number 658 of 2017** for recovery of UGX 226,378,189 as outstanding premium under a comprehensive insurance policy. The Appellant conceded to the Respondent's application for leave to appear and defend the suit and withdrew the suit before the Respondent could file the written statement of defence. On 7th March 2018, the Respondent presented its bill of costs amounting to Ugx. 32,766,979. The registrar taxed the bill and allowed it at UGX. 12,625,480. The learned registrar awarded UGX 10,000,000 as instruction fees.

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The Appellant being dissatisfied with the ruling of the taxing master decided to file this Appeal. The grounds of the Appeal are supported by the affidavit of Irene Rebecca Nassuuna but are that;

- 45 i. The learned Registrar/taxing master erred in law and misdirected himself in ignoring the scale or formula laid down under the sixth schedule of the Advocates

(Remuneration and Taxation of costs) Rules SI 267-4 this arriving at a wrong figure of UGX 10,000,000 as instruction fees

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ii. That the learned Registrar/taxing master erroneously exercised judicial discretion and misdirected himself in increasing the instruction fee beyond the instruction fees provided for such masters under the sixth schedule of the Advocates (Remuneration and Taxation of costs) Rules SI

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267-4.

iii. That the award was not reasonable, proportionate and consistent compensation and remuneration for work done but unjust enrichment of the Respondent

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iv. that the learned trial registrar did not place a fair value upon the work or apply a sense of proportion in order to reach a legal, reasonable, fair and proportionate instruction fees.

Counsel Joseph Wandabwa represented the Appellants while Counsel Nalugya Ramla represented the Respondent. The parties filed written submissions which addressed the following issues;

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1. Whether the learned Registrar/taxing master erred in law and misdirected himself in ignoring the scale or formula laid down under the sixth schedule of the Advocates (Remuneration and Taxation of costs) Rules SI 267-4 this arriving at a wrong figure of UGX 10,000,000 as instruction fees

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Counsel for the Appellant submitted that Rule 37 of the **Advocates (Remuneration and Taxation of costs) Rules (The Advocates Act cap. 267)** provides that a bill of costs incurred in contentious proceedings in the High Court and Magistrate Courts shall be taxable according to the rules set out in sixth schedule to the rules.

He argued that it was mandatory for the learned Registrar to apply the scale as laid down in the sixth schedule because he did not have discretionary mandate.

He further submitted that the sixth schedule gives a specified formula for the calculation of instruction fees based on the ascertained value in the suit. That where therefore the subject matter value has been ascertained, calculation is prescribed by the rules. That had the learned registrar followed the formula laid down in the sixth schedule, he would have arrived at a figure of Shs 3,651, 281/=. She cited the cases of **Shumuk Springs Development Ltd V Mwebesa Katatumba and Six Others HCCA 21 of 2012** and **Western Highland Creameries Limited & Another V Stanbic Bank of Uganda Limited TA 10/2013**.

2. Whether the learned Registrar/taxing master erroneously exercised judicial discretion and misdirected himself in increasing the instruction fee beyond the instruction fees provided for such masters under the sixth schedule of the **Advocates (Remuneration and Taxation of costs) Rules SI 267-4**.

95 Appellants Counsel submitted that the Taxing Master can only
award a higher fee where due to complexity of the case, the
advocate has applied to a presiding magistrate or judge for a
certificate allowing him /her to claim a higher fee in which case
the magistrate/judge may indicate the fraction of the instruction
100 fee may be increased. The circumstances under which the basic
fee can be increased are laid down in the sixth schedules of the
rules under item 1 (ix).

The basic fees can only be increased or decreased in accordance
with the clear circumstances specified in the rules which
105 circumstances did not apply to the Respondent herein. He cited
the case of Western Highland Creameries Limited (supra) held
that "... it would be a clear misdirection if there was a reduction
in the instruction fees or an increase without applying the
relevant provisions that permit the increase or the decrease. To
110 do so would not be acting judicially but acting arbitrarily in total
disregard of the rules".

He submitted that the learned Registrar had increased the basic
fee without applying the relevant provision that permits the
increase and that this amounts to a misdirection on the part of
115 the registrar which justifies this Court's interference with the
award.

3. Whether the award was not reasonable, proportionate and consistent compensation and remuneration for work done

120 The Appellant's Counsel submitted that the Appellant withdrew the suit before the Respondent had filed its written statement of defence and that therefore the Respondent did not expend colossal resources or time to defend this matter. That despite his acknowledgement that defendants counsel had not expended much effort, the learned registrar still went ahead to award 125 colossal sums as fees far beyond what the formula in the sixth schedule provided for. She quoted the learned Registrar as having said that; (*ruling Annexure "E"*). " I must keep in mind that this matter was withdrawn without trial and thus counsel was saved further effort".

130 She argued that the learned registrar's award of UGX 10,000,000 was arbitrary, not reasonable, proportionate or consistent compensation for work done as provided for by the Rules and amounted to unjust enrichment of the Respondent.

135 Whether the award is prejudicial and has caused injustice to the Appellants as litigants with the right of access to courts and a fair hearing and may adversely destroy public confidence in Courts. Counsel submitted that an arbitrary award of UGX 10,000,000 as instructions fees without any justification instill fears in the public and has a potential effect of causing the litigants to shy away from 140 the courts. He cited the case of **Premchand Raichand Limited V Quarry services of East Africa Limited and others (1972) 1 EA 16** to brace his argument. In that case it was held that costs should not be allowed to rise to such a level as to confine access to courts to

the wealthy. Litigants have a right to approach court to settle
145 their disputes. Unjust and excessively colossal sums of costs due
to high and unjustified instruction fees may have a chilling effect
on people's desires to approach courts of law as this makes the
business of justice dispensation very expensive.

He submitted that in the High court the taxing master is required
150 to strictly apply the scale in the sixth schedule. The learned
registrar misdirected himself in relying on precedents that set 8-
10% value of the subject as being the instructions fees and prayed
that Court grant the orders sought by the Appellant and set aside
the award of the registrar along with costs of the Appeal.

155 **In reply, the respondent's Counsel strongly** opposed the
application and prayed that this application be struck out with
costs for being incompetent and a waste of court's time. She
further submitted that the principles governing the taxation of a
bill of costs are well settled.

160 That an award by the taxing master is a matter left to the
discretion of the court depending on the circumstances of the
case and should not be interfered with by an appellate court
except in a few exceptional cases.

She cited the decision of Manyindo (DCJ as he then was) in
165 **Nicholas Roussos v Gulam Hussein Habib Virani and Nasmudin
Habib Virani (Civil Appeal No.6 of 1995)** to argue the principle that
court should interfere where there has been an error in principle

but should not do so in questions solely on quantum as that is an area where the taxing officer is more experienced and therefore more apt to the job. That the court will only interfere in exceptional cases. She also cited **Jobbing Field Properties Ltd v Lumonya Bushara & co. advocates (high court Civil Appeal no. 0011 of 2018)** in which the above principle was reiterated.

On the ground of appeal that awarding the Respondent with Ushs.10, 000,000 as instruction fees was erroneous and amounted to unjust enrichment, Respondent Counsel contended that that the Respondent prayed for Ushs.22, 000,000 as the instruction fees in its bill of costs and the learned registrar awarded less than half of that to the Respondent after taxation. That in doing so, the learned registrar exercised fairness and reasonableness in arriving at the instruction fee of Ushs.10, 000,000.

Counsel cited the case of **Nicholas Roussous (supra)**, to argue the principle that court should not interfere with the award of the taxing master where it is simply a question of quantum as is in this Application. She contended that the Applicant's argument is simply that Ush. 10, 000,000 as instruction fees is too high but do not show what principle was erroneously applied by the taxing master to reach that conclusion.

Respondent counsel contended that the assertion by the Applicant that the Respondent had not put in a defense does not

hold water and ought to be disregarded by this Honorable Court. That it is not true as asserted by the Appellant that the learned registrar relied on the yardstick of 8%-10% in reaching the award
195 of Ushs.10, 000,000 as instruction fees. She argued that the Appellant had admitted in its application that the Respondent filed an Application for leave to appear and defend which was accompanied by the intended defense and the Applicant only withdrew its suit upon realizing that the Defendant/Respondent
200 herein had a good and tenable defense.

He cited the case of **Bunjo Jonathan v KCB Bank Uganda Ltd (H.C.M.A No. 174 of 2014)** to justify the foregoing position, that an Application for leave to appear and defend must be accompanied by a copy of the Applicant's intended defense in
205 order to support the assertion that the Applicant has a tenable defense

The Respondents cited the decision by Justice Stephen Musota in the case of **Manharlal Thakkar v Bahati Mark & Anor (H.C.C.A 188 of 2013)** to argue that whereas various Court decisions have
210 recommended that taxing masters consider awarding 8%-10% of the subject matter as instruction fees in order to maintain consistency, the learned registrar did not rely on the said formula and awarded a fee that is way less than 8% of the subject matter.

That there is no evidence on record to show that the taxing
215 master did not follow The Advocates (Remuneration and taxation

of Costs) rules in reaching the taxation award as asserted in the Application and that so the said contention by the applicant that the fee was too high was baseless.

220 Respondent Counsel prayed that the application be dismissed with costs and the tax award be upheld because the learned registrar clearly exercised the correct thought process in reaching the award, as well as the fairness and reasonableness expected, and exercised his discretion judiciously.

225 **In rejoinder the Appellants' Counsel pointed out** that in support of her submissions counsel for the Respondent had cited the authority of **Nicholas Roussos V Gulam Hussein Habib Viran and another Civil Appeal No.6/1995** which was no longer good law. The bill of costs in that case was taxed using The Advocates (Remuneration and Taxation of Costs) Rules, **1982** which had a
230 proviso in the sixth schedule giving the taxing officer discretion to take into consideration other fees or allowances, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings and all other relevant circumstances. The wording of the sixth
235 schedule of The Advocates (Remuneration and Taxation of Cost) Rules **1996** under which this the Respondent presented its bill of costs for taxation has since changed by omission of the proviso giving discretionary powers to the taxing master and because the decision interpreted the now revoked proviso, it is no longer good
240 law. The principles of interpretation based on those provisions in

The Advocates (Remuneration and Taxation of Costs) Rules, 1982 cannot apply to the provisions in the Advocates (Remuneration and Taxation of Cost) Rules 1996 which are self-explanatory.

245 In **Western Highland Creameries Limited & another v Stanbic Bank Uganda Limited Taxation Appeal No.10/2013** it was held that "where there are clear statutory provisions, there is no need to rely on any judicial precedents on general principles unless the judicial precedents interprets the specific rule that is considered because it may not be clear or is ambiguous. General guidelines
250 are only applicable where there is no specific statutory provision covering the issue. Where there is a specific statutory provision, then the rule has be interpreted as it is.

It is not disputed that there are specific statutory rules in The Advocates (Remuneration and Taxation of Cost) Rules 1996 and
255 Court in the case of **Shumuk Springs Development Ltd V Mwebesa Katatumba and six others HCCA No.2112012** had the opportunity to address the question of whether the rules were mandatory or discretionary.

Justice Christopher Madrama Izama in **Western Highland Creameries Limited & another v Stanbic Bank Uganda Limited Taxation Appeal No. 1 012013**) held that "it is my holding in the case of **Shumuk springs Developments Ltd and others (supra)** that the wording of item 1 (a) of the sixth schedule is mandatory because of the use of the word "shall". Consequently this court in
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265 the case of Western Highland creameries Limited (supra) has held that "the calculation of instruction fees on an ascertained value of the subject matter of the suit is not based on any discretionary power". In other words instructions fees have to be calculated exactly according to the prescribed statutory formula.

270 Counsel rejoined further that the Respondent had cited a case which dealt with repealed rules to justify their submission that the taxing master has unfettered discretion when taxing the bill of costs. He submitted that the discretionary powers of the registrar under section 55(3) of the Advocates Act are limited by
275 the express provisions of the sixth schedule which applies to taxation in contentious matters in the High court and Magistrate's court.

That the taxing master exercised discretion he did not have and hence acted *ultra vires* and illegally.

280 Counsel submitted that once an illegality is brought to the attention of court, it is cannot be ignored and invited court to interfere with the award of the taxing master under the circumstances explained above.

He cited the case of **Jobbing Field Properties Limited V Lumonya Bushara & Co. Advocates** in which Justice Kiryabwire laid down the
285 principles of taxations and upheld the position that it is mandatory that the fees are calculated in accordance with the scale in the sixth schedule and that it is therefore incorrect for the

Respondent to think that general principles of taxation can
290 override express provisions of the law. That the taxing master
cannot therefore ignore the scale as laid down in the rules.

Counsel reiterated that prayer that the court finds that the
learned registrar erred in law and misdirected himself in ignoring
the scale or formula laid down in the sixth schedule of the
295 Advocates (Remuneration and Taxation of costs) Rules thus
arriving at a wrong figure of ugx. 10,000,000 as instructions fees.

In rejoinder to the contention that an Application for leave to
appear and defend is accompanied by an intended defence and
hence the Respondent had filed a defence to the suit, Appellant's
300 counsel reiterated that attaching a proposed WSD to an
Application has never been filing a WSD but merely trying to
demonstrate that the Applicant has triable issue to persuade
court to grant them leave to file a defence.

In rejoinder to whether the taxing master considered a yard stick
305 of 8-10% as established by the Court of Appeal, the Appellant
argued that there is a scale laid under the sixth schedule of the
Advocates (Remuneration and Taxation of Costs) Rules which the
Registrar should have followed because it is mandatory but he
declined to use it and exercised discretion he did not have. The
310 award of UGX 10,000,000 as instructions fees has no basis and
therefore illegal and arbitrary. It constitutes a misdirection on the
part of the registrar necessitating interference by this Court. In

the premises, the appellant’s Counsel reiterated all the prayers in their earlier submission.

315 **Judgment**

The principle in dealing with appeals of this nature involving bills of cost was laid down in the case of Patrick Makumbi & anor V Sole Electrics Ltd SCCA 11/94.

In that case Justice Manyindo (DCJ as he then was) held

320 *“...the Appellate court will not interfere with an assessment to costs by a taxing master unless he misdirected himself on a matter of principle; but if the quantum of assessment is manifestly extravagant, a misdirection of principle may be a necessary inference*
325 *...”*

In the case of **Jobbing Field Properties Ltd. V Lumonya Bushara & Co. Advocates** CA 11 of 2008, Justice Kiryabwire as he then was laid down the principles of determining appeals on matters of taxation. He stated them as follows;

330 That courts should interfere where there has been an error in principle but should not do so in question’s solely of quantum as

that is an area where the taxing officer is more experienced and therefore more apt to the job. The same position was held in **(Nicholas Roussos V Gulam Hussein Habib Virani & anor C.A. No. 6**
335 of 1995).

That in determining an appeal in a taxation matter what is important is that; a taxing officer exercises the correct thought process and once that has been exercised, the award will be upheld on appeal **(Alexander Okello V Kayondo and Co. Advocates**
340 C.A. 1 of 1997).

I have carefully considered the pleadings on file and the submissions by respective counsel for the parties in this appeal. The principal contention is whether the registrar erred in law in ignoring the scale or formula laid down under the sixth schedule
345 of The Advocates (Remuneration and Taxation of Costs) Rules S.1267-4, whether he erred in law when he based his award of instruction fees on his discretion instead of adhering to the sixth schedule of the Advocates (Remuneration and Taxation of Costs) (Amendment) Rules S.1267-4 which provide for the scale of fees
350 in High court and Magistrates courts and consequently arrived at a figure of UGX 10,000,000 as instruction fees.

The learned Registrar's rationale in arriving at his award was that counsel for the Respondent/defendant was "*entitled to more than the bare minimum, having led to withdrawal of the suit by the Plaintiff after application for leave to defend, complete with a draft WSD, was granted but that 8-10% value of the subject matter should be a good yardstick*". This seems to have been the basis of the award of fees.

He held that "*by and large, taking all matters into consideration, 10,000,000/= was fair in the matter and taxed 12,637,819 of the item as fees*".

The learned Registrar was required to apply the sixth schedule of the Advocates (Remuneration and Taxation of Costs) (Amendment) Rules S.1267-4 when taxing the bill of costs. The Appellant's Counsel has rightfully argued this position with the relevant and applicable authorities.

Counsel rightfully cited and invited court to follow the position taken by Hon. Justice Christopher Madrama Izama in **Western Highland Creameries Limited & another v Stanbic Bank Uganda Limited Taxation Appeal No.10/2013** and in **Shumuk springs Developments Ltd and others** in which he held that *the wording of item I (a) of the sixth schedule of the Advocates (Remuneration*

and Taxation of Costs) (Amendment) Rules S.1267-4 is mandatory because of the use of the word "**shall**". That where the value of the subject matter can be ascertained, how instructions fees are calculated is prescribed by the rules and where the value of the subject matter can be ascertained from the judgment or claim, there is no discretionary power in the award of instruction fees which can be precisely calculated according to the formula prescribed in the rules. The scale provided in the sixth schedule gives a specified formula for the calculation of instructions fees based on the ascertained value in the suit. The calculation is mathematical and whoever applies the formula will arrive at the same figure.

Given that in the circumstances of the instant case, the appellant had conceded to the respondent's application for leave to appear and defend the suit and also went ahead to withdraw the suit, the applicable rule in this case is the sixth schedule rules 1 (a) (iii) of the Advocates (Remuneration and Taxation of Costs) (Amendment) Rules S.1267-4 which provides that:

*"In a suit where settlement is reached prior to confirmation of the first hearing date of the suit the fee **shall be** 85% of the fee chargeable under item 1(a) (iv) of the 6th schedule."*

This rule makes reference to item 1(a) (iv) of the sixth schedule which gives the formula for calculating instruction fees in any

action to sue or defend where the value of the subject matter can be determined by the amount claimed or the judgment.

The amount claimed in the summary plaint is UGX. 226,378,189/. There is therefore no controversy in this regard and this should
400 have been the basis of arriving at the fees.

In his ruling of the learned registrar opined that *“taking all factors into consideration 10,000,000/ is fair in the matter”* and thus taxed off 12,637,819/. In doing so, he invoked discretion which he did not have.

405 The Bill of costs in the case of **Nicholas Roussos V Gulam Hussein Habib Viran and another Civil Appeal No.6/1995** which was referred to by the respondent’s Counsel was taxed using **The Advocates (Remuneration and Taxation of Costs) Rules, 1982** which had the proviso in the sixth schedule giving the taxing
410 officer discretion to take into consideration other fees or allowances, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the general conduct of the proceedings and all other relevant circumstances.

The wording of the sixth schedule of **The Advocates**
415 **(Remuneration and Taxation of Cost) Rules 1996** under which the Respondent presented its bill of costs for taxation has since changed by omission of the proviso giving discretionary powers to the taxing master. The decision interpreted the revoked proviso which is no longer good law. The case of **Nicholas Roussos**

420 **V Gulam Hussein Habib Viran and another Civil Appeal No.6/1995**
is no longer good law for calculating instruction fees.

The principles of interpretation based on that case cannot apply
in the current rules which are self-explanatory. The taxing master
should therefore not have ignored the scale as laid down in the
425 rules.

I find that the learned Registrar erred in law and misdirected
himself in ignoring the scale or formula laid down under the sixth
schedule of the Advocates (Remuneration and taxation of
costs) Rules SI 267-4 when he invoked a discretion he did not
430 have.

These are clear statutory provisions which ought to have been
followed.

The learned taxing master erroneously exercised judicial
discretion which he did not have in the circumstances and
435 misdirected himself in increasing the instruction fee beyond the
instruction fees provided for under the sixth schedule of the
Advocates (Remuneration and taxation of costs) Rules SI 267-4.

The award was not proportionate and consistent compensation
and remuneration for the work done.

440 The learned registrar do not take into account the circumstances
of the case and the principles thereby basing his decision on an
inapplicable taxation precedent.

The appeal succeeds. I order that;

- 445 i. The taxation award of the Registrar for a sum of Uganda Shillings 10,000,000/= as instruction fees in addition to VAT of Ugx. 1,914,480/ in the certificate of taxation of Ugx. 12,625,480/ be and is hereby set aside for being illegal, inaccurate and penal
- 450 ii. The bill of costs be referred back to the taxing master to be taxed afresh and adjusted in accordance with the relevant and applicable Rules -The Advocates (Remuneration and Taxation of Costs)(Amendment)Rules SI 267-4.
- iii. Each party bear its own costs in this Appeal.

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455 Richard Wejuli Wabwire

JUDGE

14/01/2019