

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

TAXATION APPEAL NO. 07 of 2019

(Arising from Civil Suit No.866 of 2017)

HASSAN BUKENYA WASSWA:..... APPELLANT

VERSUS

DR. RICHARD SSEMBATYA:..... RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This an application brought under Regulation 2 of the Advocates (Taxation of Costs) (Appeals and References) Regulations.

The applicant filed this application seeking for orders that the costs taxed and allowed in Civil Suit No. 866 of 2017 be revised/reviewed downwards as well as costs for the application on grounds that:

1. The respondent filed Civil Suit No. 866 of 2017 in the lower court for defamation.
2. The judgment was entered in favour of the respondent with costs and the respondent subsequently filed a bill of costs.
3. On the 2nd of April 2019, the bill of costs was taxed and allowed at UGX 8,497,000.
4. The costs allowed in the said suit are high, excessive and unconscionable in the circumstances of the case.
5. The costs allowed are not in line with the regulations governing the taxation of costs.
6. Costs under Items not allowed under the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018 were allowed.

7. The costs allowed are manifestly excessive as to bar and deter litigants from easily accessing courts.
8. It is fair and reasonable and in the interest of substantive justice if this application is granted.

The respondent filed an affidavit in reply opposing grant of the application whose salient grounds were that:

1. That the advocates in accordance to their rules first met amongst themselves and presented to the taxing master all the items/ particulars they had consented to save for item 3 relating to instruction fees
2. That it was only item 3 on instruction fees that was left to court to determine to which a ruling was delivered on 2.4.2019.
3. That the costs were taxed to scale and the amount awarded as general damages cannot be used as a basis for saying that the costs awarded were manifestly high.
4. That Ms Atulinda Majda is not competent to swear this affidavit as an advocate because she was not privy to the taxation proceedings as her evidence would amount to hearsay which is inadmissible and that she does not have locus standi against the respondent which would render the application incompetent for lack of evidence from the applicant.

The applicant filed written submissions that were considered by this court.

In the submissions, the applicant narrowed down the grounds of this appeal as follows:

1. That the costs as allowed were taxed and allowed save for several items in total disregard of the Advocates Remuneration and Taxation of Costs Amendment regulations 2018, (For example item 3)

2. That the costs were allowed for items relating to mediation perusals, translation costs which explicitly ignores the provisions of the Mediation Rules and the Advocates Remuneration and Taxation of Costs Amendment regulations 2018 (for example items 6,11,12,14,18,23 and 28,30,50,51,52,53,54,57 & 58) are all disallowable or subject to deductions.
3. That if left to stand as allowed, will render the Advocates Remuneration and Taxation of Costs Amendment regulations 2018 nugatory as the taxing officers to tax in their own wisdom other than the provided regulations.

The appellant submitted that the taxing master erred in law disregarding rule 1 of the sixth schedule by awarding taxed costs of UGX 2,500,000. Counsel submitted that had the taxing master followed the rules he would have come to an amount of about UGX 1,320,000 after proper calculations.

Counsel also submitted that Items 11, 12, 14, 15, 18 and 20 are all to do with mediation whereas the Advocates Remuneration and Taxation of Costs Amendment regulations 2018 do not provide for mediation costs.

Counsel submitted that the regulations do not provide for costs under Item 21 which is perusal of a letter. Counsel also submitted that Items 23 which is attending court where there was an adjournment, 30 which is extraction of mediation notices, 50 which is making photocopies of annexures to the plaint, 51 which is making 3 copies thereof and 52 which translation expenses are also not provided for and/or unjustified.

For items 53; transport to clerk to attend court, item 53 and 57 which is counsel's transport expenses and item 58 which is the plaintiff's fuel expenses to and from Mbarara, no receipts for accommodation or fuel expenses were availed by the respondent at taxation to prove these exorbitant sums. Counsel submitted that both

counsel and the respondent had a duty to keep these costs to the minimum and not to spend extravagantly.

In this case the first question court ought to determine is whether costs can be varied. The established position of judicial practice is that, save in exceptional cases, 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- per Mulenga JSC, as he then was, in *Bank of Uganda v Banco Arabe Espaniol Supreme Court Civil Application No. 23 of 1999*. He further stated that, 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 can be inferred from an award of an amount which is manifestly excessive or manifestly low. And that 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 allowed would cause injustice to one of the parties. See *Mugenyi vs Hoima District Administration TAXATION APPEAL No. 35 OF 2017*

I have reviewed the awards on the different items as pointed out by counsel and have found as follows;

Item 3; instructions for filing the suit, the taxing master disregarded Rule 1 Part C of the Sixth schedule hence the award is subject to deduction. I award UGX 1,350,000.

Items 11, 12, 14, 15, 18 and 20 are disallowed since they are not provided for by law.

Item 21; perusal of a letter is also disallowed for not being provided for by the law.

Item 23; counsel attended court but there was an adjournment due to the busy schedule of the Trial magistrate. The award is deducted from UGX 100,000 to UGX 50,000.

Items 30, 50, 51 and 52 are disallowed as they are not provided for in the sixth schedule as court papers.

Item 58; plaintiff's transport expenses to and from Mbarara on 10 occasions where the Taxing Master awarded UGX 4,600,000 is deducted to UGX 2,000,000.

Failure to follow the clear provisions of the law resulted into the Taxing Officer allowing figures that were too excessive as well as making awards not provided for by the law.

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 Manufactures 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"**.

On that premise, the appeal is allowed.

The respondent's bill of costs is accordingly adjusted to accommodate the above figures.

Each party shall bear its own costs for this appeal.

I so order.

Dated, signed and delivered by email & WhatsApp at Kampala this 15th day of May 2020

SSEKAANA MUSA
JUDGE