

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

CIVIL APPEAL NO. 16/94

B E T W E E N

1. FAMOUS CYCLE AGENCIES LTD
 2. ERIA SEVVIRI & SONS
 3. VICTORIA MARKETING COMPANY
 4. AHMAD YAWE IMPORT & EXPORT CO. LTD
 5. JASSO ENTERPRISES
- } APPELLANTS

V E R S U S

1. MANSUKHULAL RAMJIKARIA
 2. M/S MAKERERE PROPERTIES
 3. DEPARTED ASIANS PROPERTY CUSTODIAN BOARD
- } ... RESPONDENTS

RULING

This taxation ruling arises out of an appeal against the decision of a trial Judge in the High Court disallowing an adjournment, proceeding on with the trial of a suit and passing Judgment exparte. The appeal in the Supreme Court was dismissed except one ground of appeal relating to the order for payment of rent which succeeded.

The background of the appeal is clearly spelt out in the leading Judgment of Justice Arthur Oder JSC and I will not labour it here.

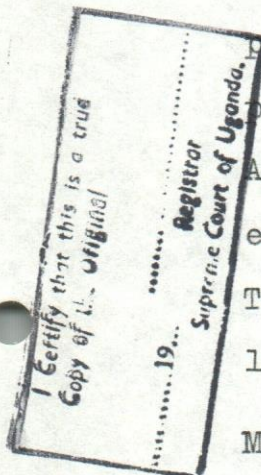
Mr. Matovu counsel for the 1st Respondent presented a bill of costs amounting to Shs.40,206,000/+. Shs.40,000,000/= was claimed as instruction fee to conduct the appeal. He only submitted in respect of item 1 regarding the instruction fee and the rest of the items were left to be determined by the taxing master at his discretion. He submitted that the Appellant dragged in the appeal the question of the subject matter when they contested the Respondent's ownership

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Registrar
Supreme Court of Uganda.

of the property and that it therefore became necessary at the end of the day to argue on the laws regarding ownership of the property and the Supreme Court made a decision thereon. He submitted that in view of the value of the subject matter estimated to be 700m= and located in the middle of the city and in view of the interests of the parties, at least the first Respondent and anxiety he had throughout the litigation and also in the view of the conduct of the Appellants unnecessary litigations they put the first Respondent into, the Respondent's counsel was of the view that $\frac{7}{8}$ of the costs of the appeal would come to a value of Shs.40M=. He prayed court to take into account the strenuous arguments made on the 8 grounds submitted by the Appellant to award Shs.40m= as a reasonable fees. He also prayed that figures on items 2, 3, 4, 5 and 6 be allowed as presented. Mr. B. Tibesigwa counsel for the Appellants submitted that instruction fee in item I was extremely high and was not in line with principles of Taxation applicable in this court. The rest of items were left to the discretion of the taxing officer.

Mr. Tibesigwa submitted that the Appellants were not claiming ownership of the property and as such when assessing the instruction fees the Court should not take into account the value of the property. He argued that even if that was the case still the court would require the guidance of valuation report to determine the value of the subject matter. He submitted that the appeal was not complicated and took a day to be argued out.

In reply Mr. Matovu prayed that he be allowed to produce a valuation report if the law was that a valuation report be produced. It is against the above submissions that I set



down to tax the bill of costs presented by the 1st Respondent. The taxation of costs in this court is governed by Rule 108 and item 9 of the 3rd schedule to the Rules of this Court.

Item 9 (2) reads:-

"The fee to be allowed for instructions to appeal or to oppose the appeal shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interests of the general conduct of the proceedings the fund or person to bear the costs and all other relevant circumstances."

It is clear from the above provision that the taxing master has discretion in the matter of taxation since it is stated that the amount to be allowed for instructions shall be such sum as the taxing officer in his exercise of the discretion. But as was pointed out by Hon. S.T. Manyindo DCJ in civil application No.11/94 Patrick Makumbi & Another Vs. Sole Electrics (U) Ltd which was a reference to a single Judge under R.109(2) of the Supreme Court Rules, the taxing master must exercise the discretion judicially and not whimscally. It was also pointed out in the same case that while a successful litigant should be fairly reimbursed the costs he has incurred, the taxing master owes it to the public to ensure that costs do not rise above a reasonable level so as to deny the poor access to court.

The Judge laid down the principles governing taxation of costs in his ruling on page 8 and I will refer to them as I go ahead taxing this bill of costs.

The item which was highly contested was item I in which the counsel for the 1st Respondent asked for Shs.40M as instruction fees. He advanced a point on the value of the subject matter.

He submitted that the Appellants dragged in the question of the subject matter by contesting the Respondent's ownership of the property. Counsel for the Appellants argued that the Appellants were not claiming ownership of the property and prayed that the court should not have regard to that in assessing the instruction fees. I agree with counsel for the Appellants that the Appellants did not claim ownership of the property. Indeed in the leading Judgment of Hon. Arthur Oder at page 3, the Judge observed in paragraph 3 after quoting the prayers made by the Appellants in their plaint, that:-

"Thus in the suit, the Appellants neither claimed any proprietary interest in the suit property, nor contested any claim of interest by any of the Respondent therein,"

The question of ownership was brought in by the 2nd Respondent which claimed that it was the proper and lawful owner of the suit property. The 3rd Respondent did not claim any interest whatsoever in the suit property. The 1st Respondent on the other hand claimed that he was the registered proprietor of the suit property. A perusal of the plaint filed by the Plaintiffs/Appellants shows that in (ii) of their prayers, they sought a declaration as to who of the three Defendants/Respondents was the Plaintiffs/Appellant Landlord and this shows that they were not claiming ownership or any interest in the suit property. On the authority of Patrick Makumbi & Anor and Sole Electrics (U) Ltd Civil Application No. 11/94 the value of the subject matter should not be taken into account since the Appellant in this case were not claiming proprietary interest in the suit. The question of producing a valuation report doesn't therefore arise in this application. The instruction fee in this case shall be determined on other consideration other than the value

of the subject matter. As was pointed out by the Hon. Manyindo DCJ in Patrick Makumbi & Anor and Sole Electrics (U) Ltd (Supra) there is no mathematical or Magic formular to be used by the Taxing Master to arrive at a precise figure. Each **case** has to be decided on its own merit and circumstances. I have gone through the proceedings and I find that this was not a lengthy or complicated case and there is nothing particularly difficulty in it. I don't see anything on the record to show or to suggest that it involved length preparations and research to attract high fees. It is submitted by counsel for the **Appellants** that the appeal was argued out in one day and this is not contested by counsel for the 1st Respondents who submitted that the appeal took one day because a lot of issues were obvious and that is why a lot of time was not wasted and alternatively he suggested that the counsel for the Appellants might have tried to conceal a lot of matters but in my view, this amounts to the something the appeal was a simple one and did not fall in the category of the complicated appeals which involve complicated matters of law and procedure.

On the importance of the appeal, a perusal of the Judgments reveals that no new points of law were discussed and in the view that if an appeal is to be of any legal importance, it must state new legal propositions and create a good precedent and should therefore expand the legal area. This was an ordinary and simple appeal.

I have also considered the fact that the Appellants succeeded in part in as far as the 8th ground of appeal succeeded. Only $\frac{7}{8}$ of the costs were in the circumstances awarded to the 1st Respondent.

As spelt out in Patrick Makumbi's case, the instruction fee should cover the Advocates work, including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be. The Hon. S.T. Manyindo DCJ in the application cited above held that it would be proper to award the Appellant's counsel a slightly higher fee than to the Respondent's counsel because the former has the responsibility to advise his client to challenge the decision. In this case, the bill of costs has been presented by the counsel for the 1st Respondent and while appreciating the fact that he made research and prepared to oppose the appeal and did successfully, at least to a certain extent, opposed the appeal, the amount claimed as instruction fee is too high and cannot be supported by any principle. Considering the award in previous similar cases like Patrick Makumbi, Uganda Blanket Manufacturers e.t.c. and to keep consistency of the awards, I find that a figure of Shs.40M= is out of step with reality and principles of taxation and I award Shs.5,000,000/= as reasonable instruction fee.

Item 2 is claimed for "attending court when hearing was adjourned" Here counsel claimed 50,000= . Item 17 of Schedule 2 provides a fee of Shs.5,000 for attending court per day when the matter is causerlisted. I will award transport in own vehicle of Shs.5,000. I therefore award Shs.10,000/= on item 2 and tax off Shs.40,000/=.

I therefore allow 10,000/= for that item. On item 5 and 6 in drawing and filing bill of costs and attending court to argue bill of costs, item 13 of the 3rd schedule to the Court Rules provides that:

"If more than one quarter of the profit costs claimed is disallowed on taxation the costs of drawing, filing and serving the bill and of attending taxation shall be disallowed."

Having disallowed more the $\frac{1}{4}$ of the profit costs claimed, I disallowed items 5 and 6.

All in all the bill of costs is taxed and allowed at Shs.5,052,500/= Only.

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ELLY TURYAMUBONA
DEPUTY REGISTRAR.

17/11/95

Mr. Matovu for the 1st Respondent in Court.

Appellants absent and counsel also absent.

Ruling delivered in presence of the court clerk

Emma Manano and Counsel for the 1st Respondent.

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ELLY TURYAMUBONA
DEPUTY REGISTRAR.

17/11/1995