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THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL REFERENCE NO.38 OF 2017

ARISING OUT OF CONST. APPEAL NO. 07 OF 2011

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MUWANGA KIVUMBI:::APPLICANT

=VERSUS=

ATTORNEY GENERAL:::RESPONDENT

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*(Appeal from the Ruling of the Registrar of the Supreme Court upon
taxation of costs in Civil Appeal No. 1 of 2014)*

RULING OF JUSTICE OPIO-AWERI, JSC.

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This is a reference to me under R.109 of the Rules of this Court from the Ruling of the Registrar in his capacity as taxing officer. The application was against the award of 6,000,000/= as instruction fees.

The reference is premised on one ground which is as follows;

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- 1. That the award of Ushs 6,000,000/- as instruction fees was manifestly so low as to amount to a wrongful failure to exercise discretion judiciously.**

The applicant prayed court that a single justice interferes with the award and enhances the same to reflect the correct principles in award of instruction fees in constitutional matters.

5 It is necessary to give a brief background to the proceedings giving rise to this reference before considering the ground of reference.

The appellant filed Constitutional Petition NO.9 of 2005 in the Constitutional Court in 2005 challenging the constitutionality
10 of Section 32 of the Police Act (Cap 303). The section empowers the Inspector General of Police (IGP) to prohibit the convening of any assembly or procession on any public road, street or any place of public resort, if the IGP had reasonable grounds to believe the assembly or procession was likely to
15 cause a breach of the peace.

The appellant petitioned the Constitutional Court stating that the above Section contravened Articles 20(1), (2), 21(1), (2), 29(1) (a),(b),(d),(e), 38(2), 42,43(3) (a) (c) of the Constitution.

20 The Constitutional Court held *inter alia* that there was no doubt that the power given to the IGP was prohibitive rather than regulatory. It was open ended since it had no duration. This meant that the rights available to those who wished to assemble and protest would be violated.

25 Further, the court found that the powers given to the IGP to prohibit the convening of an assembly or procession were an unjustified limitation on the enjoyment of a

5 fundamental right. Such limitation was not demonstrably
justifiable in a free and democratic country like ours.

10 In her lead judgment, Byamugisha JA allowed
the petition with costs. Learned Justices GM Okello and
C.N Kitumba concurred with the judgment of Justice
Byamugisha “in its entirety” but made no specific
reference to the order of costs therein. Mpagi-Bahigiene,
JCC specifically stated that she was in full agreement
with Justice Byamugisha’s opinion in regard to the
impugned section but was silent on the order given in
15 regard to costs.

On the other hand, although Mukasa Kikonyogo, DCJ
agreed with the reasons contained in the lead judgment
of Byamugisha JCC, she denied costs to the petitioner on
ground that the matter was filed in public interest.

20 Following this, the appellant’s counsel wrote a letter to
the Deputy Chief Justice to have the award of costs
clarified. On behalf of the court, Byamugisha JCC
responded to the letter as follows:

25 *“The above matter was referred to me by the Deputy Chief
Justice regarding costs of the petition. Only 2 Justices
awarded costs. The majority of the Justices did not.
Consequently, the petitioner got no costs. There is nothing
to correct under the slip rule.”*

5 Dissatisfied with the order of Court, the appellant
appealed to this Court on two grounds viz:

**1. The Constitutional Court erred to have refused
to award costs to the appellant who was the
successful party.**

10 **2. The Constitutional Court based on wrong
principles its decision to refuse to award costs
to the appellant who was the successful party.**

This court allowed the appeal and awarded costs to the appellant in
15 this Court and the Courts below.

A Bill of Costs was filed and an award of Six Million (6,000,000/=)
was given to the applicant's counsel as instruction fees. This is the
very subject of the instant reference.

Representation

20 The applicant was represented by Mr. Rwakafuuzi while the
respondent was represented by Mr. Madete.

Submissions

Applicant.

25 Counsel submitted that the only issue at hand was whether the
amount awarded by the taxing master as instruction fees was
manifestly so low as to amount to an improper exercise of
discretion.

30 He contended that the taxing master failed to consider the
authorities that were put before him and did not give reasons why

5 he did not follow them. The authorities included Semogerere vs AG,
Onyango Obbo vs AG, Lukyamuzi Ken vs AG and Ssekikubo vs AG.
He argued that the instant case was a ground-breaking case on
rights of individual vis a vis powers of Government. Further that
pursuant to the instant case, S. 32 of the Police Act was amended
10 to conform with the constitution thereby the appellant participating
in law reform. Counsel submitted that the appellant saved the
Government money that would have been spent through
consultation and all other procedures pertaining to the amendment
of laws.

15 Counsel prayed court to enhance the award to 100 million shillings

Respondents

In response to the above submissions, he opposed the reference
stating that the taxing master addressed his mind to R. 9(2) on
parameters for awarding instruction fees. Counsel argued that the
20 case did not involve any amount of money so as to inform on the
amount of money to be awarded on instruction fees.

In regards to inflation, counsel submitted that there was a period of
only 8 days between the decision of the court and the taxation of
the bill of costs and therefore there was no inflation at all. Counsel
25 stated that the taxing master properly distinguished the authorities
and helped court in reaching its decision. That there was no
justification for a higher fee than what was awarded. He prayed
court to uphold the award by the taxing master.

In rejoinder, counsel for the applicant contended that the issue of
30 inflation was not submitted on in light of the present case. He
stated that inflation was raised in regards to the earlier decided
cases and that the applicant's point was that since the authorities
referred to during taxation before the taxing master were decided
many years back with awards ranging from 30 to 80 million, 100
35 million would be sufficient now given the inflation since then.

5 Counsel prayed that interferes in order to be consistent with earlier decisions in constitutional matters.

Consideration

I shall firstly state the enabling law which governs taxation of bills of costs and taxation references in the Supreme Court.

10 A reference on taxation may be made to this court on two grounds namely ;on a matter of law or principle or on the ground that the bill of costs as taxed is in all circumstances manifestly excessive or manifestly in adequate.

15 This is provided for under rule 109 of the rules of this court whose relevant sub rules state that;

1. Any person who is dissatisfied with the decision of the registrar in his capacity as taxing officer may require any matter of law or principle to be referred to a Judge for his decision and the Judge shall determine the mater as the justice of the case may require....

2. Any person who contends that a bill of costs as taxed is , in all circumstances manifestly excessive or manifestly inadequate, may require the Bill to be referred to a Judge and the judge shall have the power to make such deductions or additions as will render the bill reasonable. Save as the sub rule provided, there shall be no reference on a question of Quantum only.

30 The principles governing the taxation of costs are contained in the third schedule to the rules of this Court. The factors to be taken into account in assessing instruction fees are provided for in **Para 9(2) and (3)** which state:

1. The fee to be allowed for instructions to appeal or to oppose the appeal shall be such a sum as the taxing officer

5 **shall consider reasonable having regard to the amount
involved in the appeal, its nature, importance and
difficulty, the interest of the parties, the other costs to be
allowed, general conduct of the proceedings, the fund or
persons to bear the costs and all other irrelevant
10 circumstances.**

15 **2. The sum allowed under sub paragraph (2) shall include all
work necessarily and properly done in connection with the
appeal and not otherwise chargeable including
attendances, correspondences, perusals and consulting
authorities.**

The principles that govern the taxation of costs are in the Third
schedule to the rules as stated above.

In his ruling, the Learned Registrar stated that:

20 *“....The appellant’s counsel did right to quote to quote rule 9(2) of the
rules of this court which deals with the parameters for awarding
instruction fees.....”*

25 *In the instant case, there was no amount involved in the appeal as to
the nature of the appeal, counsel in his opening submissions, stated
that the matter was not a public litigation. As considered from the
particulars of item 1 of the bill, the appellant was seeking a
declaration against the respondent that the Constitutional Court
erred in refusing to award the appellant costs as a successful party
and that also it based that refusal to award costs on wrong
30 principles.*

*Regarding the importance and difficulty of the matter, refusal to
award costs is a rudimentary matter which every lawyer can deal
with because the principles surrounding award of costs are very*

5 clear and understandable and are enunciated in many statutes and decisions of the higher courts.

As for the interest of the parties, the appellant was pursuing violation of his right to assembly. The Constitutional court ruled that his arrest was unconstitutional. Much as this was so, it is an act that it is not
10 easy to quantify so as to arrive at a definite monetary value in circumstances such as this. This reasoning applies in the same vein to the factor concerning all other relevant circumstances mentioned in the rule. This Court agrees with counsel that the appellant stood out to challenge the constitutionality of the Police Act into conformity with
15 the Constitution and all agencies were enjoined to preserve the rights of the citizens including the appellant who took a bold step to challenge the law.

On the other hand, no mention was made by the appellant's counsel regarding the other costs to be allowed, although later, her made
20 mention of the effect of inflation. While to this court inflation is a genuine economic cost that the court should take into account, the question to ask would then be, from when. The judgment in this matter was rendered on 14/2/2017 the appellant's bill of costs was filed in court on 22/2/2017. Therefore, the effect of inflation would
25 not be felt within the eight days as to make an impact on instructions fees.

On the general conduct of proceedings, counsel argued that the skill and knowledge exercised by counsel I arguing those matters ought to be looked into as a ground since there were two matters being dealt
30 with rather than one. Decisions of jurisdictions beyond their Court and persuasiveness of counsel should merit the mount claimed. Counsel distinguished all the authorities mentioned and this helped the Court to reach its decision. While this argument is well placed, the question to be posed is whether these arguments, singly or
35 collectively with other factors mentioned in rule 9(2), warrant the amount claimed by counsel.

5 *The fund to bear the costs in the instant case is the Attorney General and learned counsel did not make any submissions to this factor.*

10 *Considering all the above factors, it is the view of this court that an instruction fee of 6 million would be reasonable. The amount claimed by the appellant 's counsel as instruction fees of 100 million shillings is viewed as being on the higher side and not supported by plausible legal backing . while counsel has cited authorities of Semogerere, Ken Lukyamuzi , Sekikubo and Onyango Obbo, no justification has been advanced to show that a higher or commensurate instruction fees has been awarded in those cases should be given in the instant*
15 *case.....”*

It is evident from the ruling above that the taxing officer was alive to the principles governing taxation in this court. He took into account the factors enumerated in Para 9(2) of the Taxation of Cost Rules contained in the third schedule to the rules of the court.

20 Para 9(2) states that the fee to be allowed for instructions to appeal or to oppose the appeal shall be such a sum as the taxing officer shall consider reasonable having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties , the other costs to be allowed, general conduct of the proceedings, the fund or persons to bear the costs and all other
25 relevant circumstances. **Emphasis mine**

The above provision has been reiterated in many cases. (See: Attorney General V John Mark & anor Noble Builders (U) V Sietco Civil Application No. 16 of 2000, Bank of Uganda V Banco Arabe Espanol Civil Application No. 23 of 1999, AG V Uganda Blanket
30 Manufacturers.)

Counsel for the applicant argued that the taxing officer did not follow the principle of consistency with regards to earlier decisions. I however fully associate with the case of **Attorney General V**

5 **Uganda Blanket Manufacturers, Civil Application No. 17 of 93,**
where it was opined that

“.....there is no principle of law to the effect that the decision of
taxing officer must be subjected to the application of a magic
formula which when applied would result in a precise figure being
10 arrived at in an almost automatic manner. Every case must be
decided on its own merit and its peculiar circumstances, such
prolixity of the case in its preparation and any peculiar
complications in its presentation in Court....”.

Due to the difference in cases, uniformity and consistency may at
15 times be defeated. Moreover, other factors ought to be considered by
the taxing master as stipulated in R. 9(2). I agree that the 6 million
is manifestly so low given that the case was indeed of great role it
played in the progression of our jurisprudence. Be that as it may,
100 million shillings is a bit on higher side to be awarded as
20 instruction fees. It is my view that the instant Appeal was of great
public importance as the appellant stood out to challenge the Police
Act and protect the freedoms of the people of Uganda enshrined the
Constitution. The volume of work presented was indeed much and
from the Authorities filed, a lot of research was done by counsel to
25 help court come to a conclusion on the case therefore it would be
unfair to award them unworthy remuneration

That notwithstanding, with due regard to R.9(2), I agree with the
taxing master that the fund or person bearing the costs must be
considered before setting the award. In the instant case, the fund is
30 the national treasury and the amount claimed as instruction fees is
100 million. This would be unfair for taxpayers to bear such a great
burden.

Upon consideration of all relevant principles and circumstances of
the case, my view is that the sum of 80,000,000/= (Eighty million
35 shillings) is a reasonable award as conceded by the respondent and
it is in line with the spirit of striking a balance between keeping the


5 costs of litigation at a reasonable level so as not to restrict access to
Court to only the wealthy and the need to allow reasonable level of
remuneration of advocates to attract worthy recruits to the
profession.

10 I hold that the sum of 6 million as instruction fees is manifestly low
and that it is hereby substituted with 80,000,000/= (Eighty million
shillings).

The application is hereby allowed.

Dated at Kampala this.....*20th*.....day of.....*July*.....2018.

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Justice Aweri-Opio,
Justice of the Supreme Court.

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