

UGANDA / JUDGMENT

Hatangimbabazi and Another v Bagoroza and Another (Taxation Reference 1 of 2023) [2023] UGCommC 118 (7 November 2023)

[2023] UGCommC 118

COURT

Commercial Court of Uganda

BEFORE

Kahigi Asiimwe, J

CASE / FILE NUMBER

Taxation Reference 1 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
TAXATION REFERENCE NO. 0001 OF 2023 (ARTSING OUT OF MISCELLANEOUS
CAUSE NO.65 OF 2022) IN THE MATTER OF THE, ADVOCATES ACT c. AP 267 AND IN
THE MATTER OF THE TAXATION OF COSTS (APPEALS AND REFERENCE) RULES S. I
267-5

1 EMMANUEL HATANGIMBABAZI I

2 FELESI LEONIDAS I:.....APPELLANTS

VERSUS

1 2 BAGOROZA DAVrD <sup>I</sup> BAGOROZA & CO. ADVOCATES

I:.....:RESPONDENTS

Before: Hon. Lady Justice Patricia Kahigi Asiimwe**Ruling**

- The Application was brought by a Chamber Summons under Section 62 (1) & (5) of the Advocates Act; Section 3 (1) & (2) of the Advocates (Taxation of Costs) (Appeals and References) Regulations; and Section 98 of the Civil Procedure Act seeking orders that: 1
- a) The taxing master's decision in Miscellaneous Cause No. 63 of 2022 and Miscellaneous Cause No. 65 of 2022 of the Respondent's bill of costs be set aside and/ or reviewed.
- b) Costs of this application be provided for.

- 2. The grounds for the Application were stated in the Chamber Summons and elaborated in the supporting affidavit deposed by Mr. Lawrence Kiwanuka an advocate with M/s Sekabanja & Co. Advocates who stated as follows:
 - a) That the \$1^{st}\$ and \$2^{nd}\$ Appellants through powers of attorney instructed the Respondent to represent and handle all legal matters related to their vehicles Registration No. AC2406/1LA1208 and \$M/V\$ IB0993/LA0751 respectively and pursue compensation against the Attorney General of Uganda;
 - b) That the Respondent prosecuted the Civil Suit No. 719 of 1997 and obtained a Consent Judgment with costs;
 - c) That the Respondent represented the \$1^{st}\$ and \$2^{nd}\$ Appellants jointly in the suit from which the alleged events occurred;
 - d) That the Respondent prepared and filed independent Bills of costs for each of the parties he represented which is procedurally improper;
 - e) That the learned taxing officer erred in law and in fact and failed to exercise her discretion judiciously when she taxed similar bills of costs vide Miscellaneous Cause No. 63 of 2022 and Miscellaneous Cause No. 65 of 2022 which was procedurally improper;
 - f) That the learned taxing officer erred in law and fact when she allowed the Respondents multiple suits/taxation applications when in fact all the said taxation Applications arose from similar instructions and events;
 - g) That the learned taxing officer erred in law and in fact and failed to exercise her discretion judiciously when she did not rely on the Laws and Regulations to tax the Respondent's bill of costs;
 - h) That the learned taxing officer awarded the Respondent UGX. 27,613,000 against the 1st Appellant and UGX. \$40,470,000\$ against the 2nd Appellant which was improper; and
 - i) That the learned taxing officer erred in law and in fact when she failed to exercise her discretion judiciously when she awarded the Respondent a grossly high amount in costs.
- 3. The Respondent in an affidavit in reply deposed by Mr. Bagarogoza David stated that:
 - a) From the outset, the respondent shall raise \$\overline{a}\$ preliminary objection that the matter is incompetent in law and should be struck out with costs;
 - b) That the \$1^{st}\$ Appellant instructed the \$1^{st}\$ Respondent via a power of attorney to handle all legal matters related with his respective lorry and trailer Registration No. AC24061LA1208 make MAN 33-372; and in particular to finalize pending cases in courts in Uganda to enable him to repossess his vehicle or obtain due compensation;

- c) That the 2nd Appellant also individually and separately instructed the 1st Respondent via a power of attorney to handle all matters related to his lorry and trailer Registration No. T80933/1A0751, make MERCEDES BENZ;
- d) That on the 2nd September 2005, the 1st respondent while representing the Appellants negotiated and signed a consent judgment awarding the claimants including the Appellants' replacement cost/value of their trucks and loss of earnings;
- e) That the 1st Respondent successfully prosecuted the civil suit and various applications in the civil division of the high court, court of appeal, and commercial division of the high court up to the point of change of advocates in favour of Sekabanja & Co. Advocates;
- f) That the 1st Respondent represented the Appellants individually as each gave him individual and respective powers of attorney with specific instructions and the representation in Civil Suit No. 719 was not in any way joint;
- g) That even when the instructions were being withdrawn by Notice of Change of Advocates, they were withdrawn separately by the Appellants at different times;
- h) That for that reason when the 1st Respondent was preparing and filing the bill of costs, he did so individually against the Appellants as his instructions were not joint; and
- i) That the taxing judiciously when amounts awarded. officer exercised she awarded the her discretion Respondent the

Representation:

4. The Appellants were represented by M/s Sekabanja & Co. Advocates while the Respondents were represented by M/s Kasumba, Kugonza & Co. Advocates. Both parties l-rled written submissions.

Issue:

5. Whether the 1st and 2nd Appellants are parties chargeable individually and separately

Resolution:

Preliminary objection:

6. Counsel for the Respondent raised a preliminary objection that this matter is incompetent in law and should be struck

out with costs, having been hld out of time, and without leave of this Honorable Court. It was submitted that Section 62 (11 of the Advocates Act Cap267 provides that any person affected by an order or decision of a taxing officer may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.

- 7 It was contended for the Respondents that the Court record clearly shows that the respective certificates of taxation were given under the hand and seal of the Court on the 17th October 2022, whereas the Affidavit of Lawrence Kiwanuka in support of the Chamber Summons was signed and sworn on 14th December 2022. If the Appellants were interested in appealing the decision of the Registrar, they should have done so by 17th November 2022 which they did not; the supporting affidavit is sworn and dated 14th December 2022 an extra 27 days longer than the required time.
- The Appellants in response conceded that at the time of filing this appeal, they were aware that the 30 days within which to appeal had lapsed and therefore filed Miscellaneous Application No. 62 of 2023 seeking for orders that leave be granted to file this taxation appeal/reference out of time. 8
- Counsel for the Appellants further stated that Miscellaneous Application No. 62 of 2022 was liled on ECCMIS on 22nd December 2022 and registered on the 15th of January 2023 but it had never been fixed for hearing yet this appeal was fixed. Counsel contended that there was sufficient cause to warrant the grant of leave and that based on the above, this appeal is not incompetent and the same should not be dismissed based on the preliminary objection. 9

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10. Court finds that it is indeed true that the Appellants filed Miscellaneous Application No. 62 of 2023 seeking leave to file this appeal out of time. The application was fixed for hearing after this appeal was fixed for hearing. The application was later heard and determined by this court. The Application was allowed and this appeal was validated. The preliminary objection was therefore overtaken by events.

**Issue: Whether the \$1^{st}\$ and \$2^{nd}\$ Appellants are parties chargeable
*individually and separately***

- Counsel for the Appellants submitted that the taxing officer \$11.\$ while consolidating and taxing the two bills of costs did not comply with Regulation 42 of the Advocates (Remuneration & Taxation of Costs) Regulations; and did not consider the items that were similar thereby making an award contrary to the law. Counsel cited the authorities in **Bank of Uganda vs.* Banco Arabe Espanol SCCA No. 23 of 1999 and Nicholas Roussoss vs. Gullam Hussein SCCA No. 6 of 1995 for the circumstances under which a judge may interfere with the assessment of a taxing officer as regards to quantum of costs generally acceptable.*

- 12. Counsel further submitted that the mandatory rules of taxation should be followed in taxation proceedings and cited the decision of Odoki JSC [as he then was] in Attorney General vs. Blanket Manufacturers SCCA No. 17 of 1993 for the holding 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 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"
- 13. It was also submitted that this is an exceptional case which calls for the interference with the taxing officers' assessment and that the taxing of individual bills of costs against the

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and nd Respondents means that they benefit twice from a single activity.

- \$14. Counsel for the Respondents submitted that the two appellants gave their respective instructions through different powers of attorney with independent and individual instructions referring to specific properties. It was further submitted that when dropping the Respondent as their counsel, each gave individual instructions.
- 15. The court awarded compensation to each Applicant and for his respective claim relating to his respective vehicle and with specific monetary amounts and as such Counsel is entitled to fees according to the scale of what he enabled the claimant to be awarded from his services during the court process.

Determination:

The gist of counsel for the Appellants' submissions is that the 16. taxing officer did not comply with Regulation 42 of the **Advocates (Remuneration & Taxation of Costs) Regulations.** The regulation provides as follows:

> Where the same advocate is employed by two or more **plaintiffs or defendants, [and] separate pleadings are** delivered or other proceedings heard by or for two or more such plaintiffs or defendants separately, the taxing officer shall consider in the taxation of the advocate's bill of costs, either between party and party or between advocate and client, whether the separate pleadings or other proceedings were necessary and proper, and if he or she is of the opinion that any part of the costs occasioned by the separate pleadings or other proceedings has been unnecessarily or improperly incurred, that part of the costs shall be disallowed. [Emphasis added]

17. The above section which is the equivalent of paragraph 17 to the Third Schedule of Rules of the Supreme Court was interpreted in the recent Supreme Court decision in Bank of Uganda vs. Sudhir Ruparelia & Meera Investments Ltd Supreme Court Taxation Reference No.1 of 2023 wherein Chibita JSC held as follows:

Paragraph 17 to the Third Schedule of Rules of this court provides for taxation of costs in cases that involve two or more parties being represented by the same counsel. It reads as follows:

"Where the same advocate is employed for two or more parties and separate proceedings are taken by or on behalf of any two of those parties, the taxing officer shall consider in the taxation of that advocate's bill of costs whether the separate proceedings were necessary and proper; and if he or she is of opinion that any part of the costs occasioned by them has been unnecessarily or improperly incurred, then that part shall be disallowed."

In statutory interpretation, it is the case that where statutory words are plain and unambiguous, the judge is required to give the words of the statute, their natural and ordinary meaning. See Lord Diplock in; *Abley v Dale*, 20 L. J. C. P (N. S) 233 [1985], *Duport Steel v Sirs*, QBD 1980.

I shall break down the above provision to give it its ordinary meaning.

For the benefit of any two of those parties. (Emphasis mine) The word "and" has generally a cumulative sense requiring See: *Ishwar Singh Bindra v State of U. P*, AIR 1968 SC 1450, 1454. The use of the word "and" in the above excerpt means that the provision is to be applied only in situations where separate proceedings have been taken out by any two of the parties."

18. The learned Justice further held that:

It follows that because the law expressly provides that separate proceedings must have been taken, excludes the reverse."

The other piece of the provision reads as follows;

"...the taxing officer shall consider in the taxation of that advocate's bill of costs whether the separate proceedings were necessary and proper; and if he or she is of opinion that any part of the costs occasioned by them has been unnecessarily or improperly incurred, then that part shall be disallowed."

The remaining piece of the provision provides for steps to be taken by the taxing officer after establishing that separate proceedings were taken.

19. It follows therefore that an advocate filing separate bills of costs is only entitled to do so where separate proceedings were commenced and such proceedings are found to be necessary by the taxing officer. Chibita JSC in the above also held that:

> From the wordings of the provision, it is clear that under no circumstances may a counsel representing two or more parties file more than one bill of costs.

- 20. In the instant case, counsel for the Respondents' argument is that in such cases where an advocate is employed by two separate parties, Counsel is entitled to file 2 separate bills of costs which as was held in the above case is contrary to Regulation 42 of the Advocates (Remuneration & Taxation of Costs) Regulations. It should be noted that no evidence was adduced to show that indeed two separate proceedings were taken out for each respective Applicants/Appellants.
- 21 . In the final result, the awards of the bills of costs in miscellaneous cause No. 63 of 2022 and miscellaneous cause

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No. 65 of 2022 are set aside and the matters referred back to the taxing master for taxation.

Dated this 7h day of November 2023

Patricia Kahigi Asiimwe Judge Delivered on TCCMIS

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