

UGANDA / JUDGMENT

Naggayi v Centenary Rural Development Bank & Another (Taxation Reference 9 of 2024) [2025] UGCommC 37 (28 March 2025)

[2025] UGCommC 37

COURT
Commercial Court of Uganda

BEFORE
Abinyo, J

CASE / FILE NUMBER
Taxation Reference 9 of 2024

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) TAXATION REFERENCE NO. 0009 OF 2024 (ARISING
FROM TAXATION APPLICATION NO. 0002 OF 2024) 10 (ALL ARISING FROM CIVIL
SUIT NO. 0462 OF 2021)

NAGGAYI CLAIRE APPLICANT

VERSUS

- 1. CENTENARY RURAL DEVELOPMENT BANK
- 15 2. UGANDA REVENUE AUTHORITY RESPONDENTS

BEFORE: HON. LADY JUSTICE SUSUSN ABINYO

RULING

Introduction

- 20 This appeal was brought by Chamber Summons under section 62 of the Advocates Act, Cap 295, Regulation 3 (Taxation of Costs) (Appeal and References) Regulations SI 267-5, and section 98 of the Civil Procedure Act, Cap 282 seeking orders that;
- 1. The certificate of taxation in Taxation Application No. 0002 of 2024 be set 25 aside and or modified accordingly.

- 2. The amount of UGX 2,140,519 allowed under item 2 of the Plaintiff's bill of costs as instruction fees in respect of Civil Suit No. 0462 of 2021 is manifestly inadequate in all circumstances of the said suit.
- 3. The taxing master erred in principle when he exercised or applied a wrong 30 principle by failing to take the value of the subject matter into consideration and thereby awarding as costs, instruction fees that were manifestly inadequate.
- 4. Costs of the application be provided for.

5 Background

The Plaintiff (Applicant herein) filed Civil Suit No. 0462 of 2021 and sought interalia, an order for recovery of UGX 18,205,185, which had been unlawfully and negligently debited on 6th July 2021 from her account by the 1st Respondent; special damages for the loss of sponsorship to study at George Brown College,

10 Ontario, Canada, amounting to USD 33,630.39, and UGX 4,000,000 incurred as expenses for travel to and from the Defendant's offices, in which Judgment was entered in favor of the Applicant with costs awarded against the 1st Respondent.

Subsequently, the Applicant filed Taxation Application No. 0002 of 2024, seeking to recover the said costs. In the bill of costs, under item 2, relating to instruction 15 fees for instituting Civil Suit No. 0462 of 2021, the Applicant sought UGX 70,000,000 pursuant to Regulation 1(f) of the 6th Schedule of the Advocates (Remuneration

and Taxation of Costs) (Amendment) Regulations, 2018 however, UGX 67,859,481 was taxed off, leaving an award of UGX 2,140,519. The Applicant now contests this amount as manifestly low and inadequate.

20 Representation

The Applicant was represented by Counsel Alex N. Byaruhanga of M/S Volens Advocates, and the 1st Respondent was represented by Counsel James Katona of Nambale, Nerima & Co. Advocates and Legal Consultants. Counsel for the parties herein, proceeded by oral submissions as directed by the Court.

25 Evidence of the parties

The Applicant deposed an affidavit in support in paragraphs 1-14 by Mr. Bukiya Gilbert, an Advocate of the High Court and all subordinate Courts thereto, working for gain with M/s Volens Advocates, who are the Appellant's lawyers and conversant with the matter, and an affidavit in rejoinder deposed in paragraphs

30 1-9.

The Respondent deponed an affidavit in reply in paragraphs 1-10 by Mr. Ceasor Mateeka an Advocate working with M/s Nambale, Nerima & Co. Advocates and Legal Consultants, who are Counsel for the 1st Respondent.

The contents of the said affidavits will be evaluated below, and not reproduced 35 here.

5 Ground of appeal

Whether the taxing master erred in principle when he exercised or applied a wrong principle by failing to take the value of the subject matter into consideration and thereby awarding as costs, instruction fees that were manifestly inadequate.

10 Decision

The settled law in a plethora of cases is that the decision of a taxing master will seldom be interfered with save for instances where exceptional circumstances are demonstrated. This position was expounded by J. N. Mulenga, JSC (as he then was), in **Bank of Uganda v Banco Arabe Espanol (Civil Application No. 23 of 1999)** 15 [2000] UGSC 3 (19 April 2000), where he held that:

"I should reiterate briefly some pertinent principles applicable to review of taxation, such as I am called upon to do in this reference. Counsel would do well to have them in mind when deciding to make, and or when framing grounds of, a reference. The first is that save in exceptional cases, a judge* 20 *does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. Consequently, a judge will not alter a fee* 25 *allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount. Secondly, 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, the application of a wrong principle is* 30 *capable of being inferred from an award of an amount which is manifestly excessive or manifestly low. Thirdly, 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." [Emphasis* 35 *is mine]*

It was the Applicant's evidence that the instruction fees of UGX 70,000,000 in Taxation Application No. 0002 of 2024 was to institute Civil Suit No. 0462 of 2021 under Regulation 1(f) of the 6th Schedule of the Advocates (Remuneration and Taxation of costs) (Amendment) Regulations, 2018 due to the complex nature of 40 the suit.

- 5 The Respondent's evidence was that Civil Suit No. 462 of 2021 was heard and decided in favour of the Appellant, who was awarded general damages of UGX 5,000,000 (Uganda Shillings Five Million only) and costs of the suit on 26th October, 2023. That the Appellant filed Taxation Application No. 002 of 2024, which was heard by the Taxing master, and a sum of UGX 2,140,519 was awarded to her, as
- 10 instruction fees based on the award in the judgment; the sum of UGX 2,140,519 is not manifestly low or inadequate in the circumstances of this case.

Regulation 1(f) of the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, S. I 7 of 2018 provides that;

"1. The fees for instructions to sue, claim, defend or oppose shall be as follows-

- 15 (1) to sue or defend any case, whether commenced by plaint, statement of claim, petition, originating summons, or originating motion or to present or oppose an appeal, where the claim or value of the subject matter can be determined from the pleadings, settlement, a valuation or the judgment, the instruction fee shall be in accordance with the following scale —
- 20 (f) Where the amount exceeds 50,000,000 shillings but does not exceed 100,000,000 shillings-15% of the amount not exceeding 2,000,000 shillings;14% of the amount exceeding 2,000,000 shillings but not exceeding 5,000,000 shillings; 12% of the amount exceeding 5,000,000 shillings but not exceeding 10,000,000 shillings;10% of the amount exceeding 10,000,000 shillings but not exceeding 25 20,000,000;8% of the amount exceeding 20,000,000 shillings but not exceeding 50,000,000 shillings, and 5% of the amount exceeding 50,000,000." [Emphasis is mine]

It is a well-established principle of law that where the value of the subject matter is ascertainable, instruction fees shall be calculated in accordance with the scale prescribed under the 6th 30 Schedule of the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, S. I 7 of 2018. (See: *Western Highland Creameries & Anor Vs Stanbic Bank Uganda Ltd (Taxation Appeal No. 10 of 2013) [2013] UGCommC 151 (30 August 2013))*

The rationale of the prescribed scale in the 6th Schedule of the Advocates 35 (Remuneration and Taxation of Costs) (Amendment) Regulations, S. I 7 of 2018 is two-fold: firstly, to ensure that Advocates receive adequate remuneration for their services and secondly, to enable the public access legal services at a reasonable cost by maintaining the fees chargeable. *(See: Escoigne Properties Ltd Vs Inland Revenue Commissioners [1958]1 ALLER 406*, on the proposition that a statute is not 5 passed in a vacuum, but in a framework of circumstances, so as to give a remedy for a known state of affairs.)

I am fully persuaded by the decision in *Shumuk Springs Development Ltd & 3 Ors Vs Mwebesa Katatumba & 6 Ors (Taxation Appeal No. 21 of 2012) [2013] UGCommC 22 (8 February 2013)*, in which the Court held that:

10 *"... where the value of the subject matter can be ascertained from the judgment or the 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..."* [Emphasis is mine]

In the instant case, the value of the subject matter was ascertainable from the 15 plaintiff, and the provision of Regulation 1(f) of the Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, S. I 7, 2018 is couched in mandatory terms therefore, how the suit is determined is immaterial on the assessment of instruction fees where the value of the subject matter is ascertainable.

It is my considered view that the assessment of instruction fees based on the 20 judgment only applies, where the value of the subject matter was unascertainable from the pleadings, which is not the case here.

For the reasons stated above, this Court finds that the appeal has merit.

Accordingly, this Court finds that the taxing master applied a wrong principle, which affected the quantum of the award.

- 25 Consequently, this appeal is allowed, and the Court makes orders that;
- 1. The certificate of taxation in Taxation Application No. 0002 of 2024 is set aside.
- 2. Taxation Application No. 0002 of 2024 shall be placed before another Registrar for taxation proceedings.
- 30 3. Costs of this application.

Dated and delivered electronically this 28th day of March, 2025.

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Prepared on 14 October 2026 · Esheria