

UGANDA / JUDGMENT

Pirbhai Sunderji and Co. v Compagnie Des Chemin De Fer Du Congo Superieur Aux Grands - Lacs Africains (C.A. 33/1933.) [1937] EACA 145 (1 January 1937)

[1937] EACA 145

COURT

East African Court of Appeal

BEFORE

Lucie-Smith Ag CJ (Kenya)

CASE / FILE NUMBER

C.A. 33/1933.

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COURT OF APPEAL FOR EASTERN AFRICA.

Before LUCIE-SMITH, Ag. C. J. (Kenya).

PIRBHAI SUNDERJI AND CO. (Appellants) (Original \$Plaintiffs)\$

\$v.\$

COMPAGNIE DES CHEMIN DE FER DU CONGO SUPERIEUR AUX GRANDS-LACS
AFRICAINS

(Respondents) (Original Defendants).

C. A. \$33/1933\$.

Appeal on Taxation.

- Advocates' costs—Taxation of—Appeal from Registrar—E. A. Court of Appeal Rules. Rule 25—Discretion of Registrar— Fee for instructions—Good cause to be recorded when fee exceeds Sh. 75. Effect of neglect on part of Registrar to record the cause—Fee for perusing record—Record in foreign language.
- Held (30-5-34).—That a fee of Sh. 600 allowed for perusing a record of five hundred folios, when the record contained a great deal of the French language, was reasonable.

- Held Further.—That an instructions fee of Sh. 500 allowed by the Registrar was, in all the circumstances, reasonable, and that the mere fact that the Registrar had not recorded the good cause for allowing more than the scale fee of Sh. 75 was no ground for disallowing the fee of Sh. 500. Appeal from Registrar dismissed with costs.

Schwartze for appellants.

Harrison for respondents.

Schwartze.—Registrar's analysis of Item No. 1. Pure question of fact—no law involved. Suggests that Sh. 250 is a reasonable fee for instructions. Perusal of record should be 500 folios at Sh. 1 per folio.

Harrison.—Fee for instructions entirely in discretion of Registrar, English Rules, O. LXV, reg. 38 and reg. 41. *Oailvie v. Massey*, 1910, Probate 243. Court will not interfere on a question of quantum. No allegation that Registrar has failed to exercise his discretion or has exercised it on wrong principles. *Slingsby v. Attorney-General*, 1918, Probate 239. No grounds set out for Court to exercise its powers.

Schwartze replied.

JUDGMENT.—On the 10th February, 1934, judgment was given by the Court of Appeal for Eastern Africa dismissing with costs the appeal of the appellants. The respondents in the appeal taxed their costs before the Registrar on the 17th February, 1934. *On* the 26th May—three months later—the applicants herein, being aggrieved at the order of the Registrar in taxation, applied to a Judge of the Court of Appeal to set aside such order under Rule 25 of the East African Court of Appeal Rules.

In the bill of costs presented for taxation the respondents. claimed for instructions to oppose appeal including instructions to oppose application to have the hearing of the appeal expedited. Perusing grounds of appeal. Notice of appeal and copy record, Sh. 1,300. On taxation the Registrar disallowed a sum of Sh. 150 on this lump sum, leaving a balance of Sh. 1,150 which he allocated as follows:—

Sh.

Instructions for appeal		500	
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Instructions for application		30	
Perusing record		600	
Notice of appeal		10	
Perusing grounds of appeal		10	

Mr. Schwartze, for the applicants herein, frankly admitted that there was no question of law involved and suggested that Sh. 250 was a reasonable instructions fee, while Sh. 500 was reasonable for perusal of the record, i.e., 500 folios at Sh. 1 per folio.

Taking the second item first, I agree, that in the usual course of events, Sh. 1 per folio would be a reasonable fee, but in this case the record was not at all in straightforward English but contained a great deal of the French language. For that reason I consider the sum of Sh. 600 allowed by the Registrar to be reasonable.

As regards the instructions fee, the second schedule to the East African Court of Appeal Rules reads as follows:—

"The Taxing Master may for good cause to be recorded by him allow a fee exceeding that set out in the following scale, provided that the fee actually allowed shall be reasonable . . . Instructions.

\$\cdot\$ 1. To file appeal Sh. 75 \$\mathcal{L}\$ To act for a respondent \$\ldots\$ \$\mathcal{L}\$
—{\text{max}}\$ Sh. \$75.\$

It is true that in this case the Registrar has not recorded the good cause for allowing a sum in excess of the Sh. 75, but I do not think that the respondents should be sufferers on account of the Registrar's oversight. Mr. Schwartze, in suggesting that Sh. 250 would be a reasonable instructions fee, has admitted that this is a case in which there exists a good cause for allowing more than the Schedule figure of Sh. 75. That being so, there is nothing before me to show that the sum of Sh. 500 allowed by

the Registrar is not a reasonable amount and I see no reason to interfere with the discretion exercised by the Registrar. This application therefore fails and will be dismissed with costs to the respondent, which costs the parties have agreed at Sh. 130.

In conclusion I should like to draw attention to the very long delay between the date of taxation and this reference. In my opinion steps should be taken by rules or otherwise to limit the time within which an application to set aside an order in taxation may be made.

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