

Ssali and Another v Namuyaba
(Taxation Appeal No. 5 of 2020)
[2021] UGHCCD 264 (5 August 2021)
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The grounds of the appeal as contained in the 1st Applicant's affidavit are briefly as follows;

- a) The Applicants were defendants in Civil Suit No. 22 of 2017 which was determined in their favor;
- b) During the hearing of the case, the Parties were unrepresented;
- c) When the matter came up for taxation hearing, the Respondent had legal representation and the Applicants requested for an adjournment to legal representation as well, which request was ignored.
- d) The taxation hearing proceeded in disregard of the Applicants' request and their bill of costs was inconsiderately slashed from Ugx. 2,690,000/= to Ugx. 690,000/=.
- e) The taxing officer failed to judiciously exercise his discretion thus allowing an inappropriate amount.

This appeal stands uncontested as the Respondent did not file an affidavit in reply. By failing to file an affidavit in reply, it is taken that the Respondent has no objection to the application and fully accepts what is stated for the applicant and does not contest the orders sought. *(see for example Prof. Oloka Onyango & Ors Vs Attorney General (Constitutional Petition No.6/2014)*

Determination of the Appeal;

The law on taxation appeals is established under *Section 62 (1) of the Advocates Act* which provides that;

"Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act 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."

It is trite that save in exceptional cases, a judge should not interfere with the assessment of what the taxing officer considers to be a reasonable fee. 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 *(Bank of Uganda v. Banco Arabe Espanol, S. C. Civil Application No. 23 of 1999 and Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492)*.

In the instant appeal, the Appellants were the Defendants in Civil Suit No. 22 of 2017 which was dismissed with costs. The Defendants filed his bill of costs of Ugx. 2,694,000/= and it was taxed to Ugx. 692,000/=.

Ground one; the Appellant was neither served with the advocate-client bill of costs nor the taxation hearing notice

The rules as to service of summons under *Order 5 of the Civil Procedure Rules* apply to hearing notices. *(see; Edison Kanyabware vrs. Pastori Tumwebaze SCCA 6/2004)*

The Advocates (Remuneration and Taxation of Costs) Regulations as amended require for both Parties to be duly notified of the taxation hearing and further provides that both Parties are entitled to attend the taxation hearing and be heard. The Regulations also provide that a pre-taxation hearing should be held by both Parties to identify items that they both agree on before taxation. *(See Sections 9, 10(2) and 13A of the Advocates (Remuneration and Taxation of Costs) Regulations as amended)*

In the instant case, the Appellants were Defendants who were awarded costs and the bill of costs from which this appeal arises, was their own appeal. A taxation hearing notice is on the record and it was only addressed to the Respondent herein, meaning that it was the Appellants that took out the taxation hearing notice. It is therefore unclear as why the Appellants are alleging that they were not served with the taxation hearing notice. It was their duty to take out the hearing notice and serve the Respondent. In the same vein, I do not find any merit in the ground as to non-service of the bill of costs.

Ground two; taxation in the absence of the Applicant

According to the 1st Appellant's affidavit, he was present at the taxation hearing. This is induced from paragraphs 5-8 where he states matters that proceeded at the taxation hearing. This ground therefore holds no merit.

Ground three; taxing item 1 without taking into consideration the fact that the matter was straight forward.

This ground also does not hold any merit as item 1 of the bill of costs reflects transport filing fees and costs for drafting the defence. The costs for drafting the defence were maintained as stated by the Applicants save for the transport costs which were reserved according to the taxing master's discretion.

Ground four; the taxing master failed to judiciously exercise his discretion when he taxed the bill of costs to allow an inappropriate/exorbitant figure of Ugx. 692,000/=

I have carefully perused the bill of costs that was taxed and allowed on the 9th day of July 2021, from Ugx. 2,694,000/= to Ugx. 692,000/=.

There is no record of proceedings for the taxation hearing detailing the reasons and principles that guided the taxing master in taxing the Appellants' bill of costs. It is not clear what criteria the Taxing master followed to arrive at the values reflected on the taxed bill of costs. As a rule of law, all judicial officers must act fairly and rationally which means that they must not make decisions without reasons. The reasons must be adequate to show how the decision was reached. They must be reasons which are not only intelligible, but which deal with the substantial points that have been raised *(see *Re Poyser and Mills Arbitration* [1963] 1 All ER 612, [1964] 2 QB 467).*

In his affidavit, the first Applicant stated that all the Parties were not represented during the hearing of the case but when the matter came up for taxation hearing, the Respondent hired a lawyer who represented her. He stated that he requested court to adjourn the hearing to enable him hire a lawyer as well but the request was ignored by court. I have to note that since the Parties were unrepresented throughout the hearing of the case, it was immaterial whether or not they were legally represented at the taxation hearing. Therefore, there is no

In the result, the taxation award is hereby set aside for being inappropriately arrived at, unreasonable, and the lack of clear reasons or principles considered by the taxing master in the process. The Appellants' initial bill of costs claiming Uganda Shillings 2,964,000/= (Two Million Nine Hundred Sixty Four Thousand Shilling) shall therefore be maintained as it is very reasonable and adequate in the circumstances of the case.

Dated, signed and delivered by email at Masaka this 5th day of August, 2021.

Victoria Nakintu Nkwanga Katamba Judge

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