

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(EXECUTION AND BAILIFFS DIVISION)**

**CIVIL APPEAL NO. 13 OF 2016**

**(ARISING FROM EMA NO. 1943 OF 2016)  
(ARISING FROM MISC. APPLICATION NO. 1947 OF 2016)  
(ARISING FROM HC CIVIL SUIT NO. 1949 OF 2014)**

**EQUATOR TOURING SERVICES LTD ..... APPLICANT**

**VERSUS**

**KAMPALA CAPITAL CITY AUTHORITY ..... RESPONDENT**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**RULING**

This appeal was made under S. 62 (1) of the Advocates Act, and Regulation 3 of the Advocates (Taxation of Costs) (Appeals and References) Regulations. The Applicant seeks orders of this court:-

- 1) Setting aside the Taxation decision of His Worship Muse Musiimbi in EMA 1943/2016.
- 2) The Applicant's Bill of Costs be allowed as it was presented.

The grounds for the application were stated as follows:-

- 1) The Taxing Master did not exercise his discretion judiciously as required by the precedents and taxation principles while taxing the Bill, thereby awarding the Applicant costs which were manifestly inadequate, unfair and unreasonable.
- 2) The Taxing Master ignored and failed to apply the principles of taxation when he failed to follow the doctrine of precedent in relation to taxation of costs and award of reasonable, proportionate and fair instruction fees.
- 3) The award was a not reasonable, proportionate and consistent compensation and remuneration for work done.
- 4) The Taxing Master did not place a fair value upon the work or responsibility involved or apply a sense of proportion in order to reach reasonable, fair and proportionate instruction fees.

5) The Taxing Master did not take into account the circumstances of the case and principles thereby allowing inadequate fee as instruction fees.

6) It is just and equitable that this appeal be allowed and the Bill of Costs be allowed as presented to the Taxing Master.

The application is supported by the affidavit of Farida Nanziri an Advocate of the High Court of Uganda and all Courts of Judicature.

10 The application was filed on 12.12.16.

There is no indication that it was ever served on the Respondent.

15 There is no affidavit in reply although having proceeded ex parte on 27.02.17. Parties were absent and so was Counsel for the Respondent.

20 Counsel for the Applicant submitted that the appeal was against the decision of the Taxing Master in MA 1947/16 where the Applicant was awarded an amount so manifestly inadequate, unfair and unreasonable and did not follow the principles of taxation and the doctrine of precedent.

The costs awarded were not consistent compensation for work done.

25 The case of **NIC vs. Pelican Services Ltd Civil Ref 13/2005** in which an award of 10% was given for a subject matter worth 75,000,000/- was relied upon in support.

30 Counsel pointed out that the case was referred to in the case of **Manharlal Thakka vs. Bahati Mark and Kibungo Services Ltd MA 188/2013** by Justice Musota. In that case, the subject matter was in the range of Shs. 200,000,000/- and the award of Shs. 5,000,000/- initially given by the Taxing Master was substituted for an award of Shs. 16,000,000/-.

35 It was argued that, the present case is also in the range of Shs. 200,000,000/- and that therefore an award of Shs. 20,000,000/- should be substituted as instruction fees, following the above cited case.

Further that, the Taxation of the other items was also inadequate, meant to drive the lawyers out of business. Counsel asserted that it was not fair compensation for work that was done.

40 Counsel urged court to follow the doctrine of precedent by making reference to the ruling in **Manharlal's case (Supra)** and the case of **NIC vs. Pelican Services Ltd (Supra)** and adjust the instruction fees and other items upwards.

45 He also explained that the Respondent was not served because the law is that, if a party does not attend a matter where taxation arises from, they did not have to be served with the subsequent proceedings.

That the Respondent did not attend taxation proceedings and it was not a requirement under the law in respect of garnishee proceedings.

**Whether the Taxation award given by the Taxing Officer should be set aside.**

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In determining the issue, I will bear in mind the principle established by decided cases that ***“an appellate court will only interfere with the decision of the Taxing Master, where it is proven that his/her discretion was exercised injudiciously or that he/she misdirected himself/herself on the law”***.

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Also that under Rule 2 of the Advocates (Remuneration and Taxation of Costs) Rules, ***“Taxation of costs as between party and party in contentious matters in the High Court and in the Magistrates courts shall be in accordance with these rule”***.

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***“a Bill of Costs incurred in contentious proceedings in the High Court and in the Magistrates courts, shall subject to any order pronounced by the court in regard to any particular case, be taxable according to the Rules prescribed in the 6<sup>th</sup> schedule to the Rules – Rules 3.7”***.

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It is also worth noting that ***“while taxing a Bill of Costs, the Taxing Master must consider the following principles:-***

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***Costs should not be allowed to rise to such a level as to confine access to courts to the wealthy;***

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***The successful litigant ought to be fairly reimbursed for the costs incurred.***

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***The general level of remuneration of Advocates must be such as to attract recruits to the profession and;***

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***So far as practicable there should be consistency in the awards made.”***

In

considering an appeal in taxation, the general principle is that ***“court will only interfere when the award of the Taxing Officer is so high or so low as to amount to an injury to one party. Usually in comparable cases an allowance may be made for the fall in the value of the money”***.

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***“Instruction fees should be based on the amount of work involved in preparing for the hearing, the difficulty and importance of the case and the amount involved. These facts apply to the Respondents as well as the Applicant”***. – See the following cases:-

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**Manharlal Thakkar vs. Bahati Mark and Kibungo Enterprises Misc. Appeal No. 188/2013** where the cases of : **National Insurance Corporation vs. Pelican Services Ltd Civil Ref. No. 13/2005 (CA), Uganda Revenue Authority vs. Rock Petroleum Ltd HCCS 0707/12**, inter alia, were referred to.

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In the present case, the contested award arises out of garnishee proceedings **EMA 1943/16** where the Applicant is the decree holder, the Respondent the **Judgment Debtor and Stanbic Bank (U) Ltd** the garnishee Bank.

The garnishee order nisi was issued on 14.09.16 and it was made absolute on 23.09.16. Being garnishee proceedings, the Judgment Debtor, the Respondent did not appear on both occasions.

5 When the garnishee absolute was issued, the costs of the garnishee proceedings were awarded to the Applicant.

Counsel for the Applicant then presented the Bill of Costs on 28.09.16, and prayed court to award the amounts claimed therein. The Bill had been filed on 20.09.16. The total claim was Shs. 33,296,400/-. The Taxing Master taxed off Shs. 20,311,400/0 leaving the balance of Shs. 10 5,985,000/- as the costs allowed.

I have not found any written reasons as to why the Taxing Master arrived at the decision he did. But looking at schedule 6 of the Advocates (Remuneration and Taxation of Costs) Regulations, it appears to me that the Taxing Master followed the rules and in fact in some circumstances 15 allowed more than what ought to have been allowed.

Schedule 6, Regulation 1 (vii) instructions to sue or defend application – where the application is unopposed as in the present case not less than Shs. 100,000/- should be allowed.

20 Regulation 2 (a) Drawing Court papers. 2 folios or less Shs. 15,000/-.

Regulation 3: Copies of documents per folio Shs. 15,000/-.

Regulation 5: attendance

- 25 (a) Each necessary telephone call Shs. 10,000/-  
(b) Attendance for hearing application not less than Shs. 50,000/-.

Regulation 6: perusals of notices and other routine documents Shs. 5000/-

30 Bearing the rules in mind, it is apparent that Counsel for the Applicant had applied for excessive amounts in total disregard of what is provided for by the rules. The Taxing Master was accordingly justified to tax of the sums he did.

If Counsel for the Applicant had wished to apply for a higher fee for instructions for the garnishee proceedings, he ought to have applied to Registrar before whom he appeared, for a certificate applying for a higher fee. The Registrar would then have specified the fraction or 35 percentage by which the instruction fees would be increased. – Regulation (1) (ix).

40 For all those reasons, the Taxation decision of the Registrar is upheld and the reference is dismissed.

The Applicant to bear its own costs of the application.

45 **Flavia Senoga Anglin**  
**JUDGE**  
**01.08.17**