



“COSTS DISPUTES: HIGH COURT AND THE APPELLATE COURTS.”

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INTRODUCTION:

Taxation of costs under the advocates Act is often a complex matter which is a preserve of the taxing officer, who is often a deputy registrar or district registrar or registrar of the court or any other officer appointed by the Chief Justice except that in respect of taxation of costs between party and party arising out of any contentious business brought in a court subordinate to the High Court, the taxing officer shall be a chief magistrate or magistrate grade 1 with jurisdiction in the area where the suit was heard. The process of taxation is often tedious and laborious and raises tempers because all parties involved need to recover or cut down costs of litigation. Sometimes, the billed costs are grossly exaggerated or oversubscribed hence the need for regulation. To illustrate the importance attached to taxation of costs by the taxing officers, I would like to borrow the words of Ojwang J of the High Court of Kenya in the case of *Republic versus The Minister of Agriculture ex parte W'njuguna & Others [2006] 1 EA 359 (HCK)*, where he said;

“Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorizing clause in the law, or a particularized justification of the mode of exercise of any discretion provided for. The complex elements in the proceedings that guide the exercise of the taxing officer’s discretion must be specified cogently and with conviction. The nature of forensic responsibility placed upon counsel when they prosecute the substantive proceedings must be described

with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time consuming the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated apart, of course, from the need to show if such works have not already been provided under a different head of costs”

THE LAW APPLICABLE:

The law governing taxation of advocates costs are; *The Advocates (Remuneration and Taxation of Costs) (Amendments) Rules, 1996, SI 3-1996*. These rules are made under paragraph (e) of subsection (1) of Section 77 of *The Advocates Act (cap 267)*. These rules are to be read as one with the principal rules of 1982. It provides: -

“The scale of fees to be charged by advocates for conveyancing and other non-contentious business and of costs in respect of contentious business whether as between party and party or advocate and client and providing for the manner and procedure of taxation thereof by officers of the courts and all matters connected with the allowance and disallowance of costs, fees and disbursements”

The taxation of advocate’s bill of costs in the high court and the magistrates’ courts is governed by the 6th schedule of the said rules whilst the taxation in the court of appeal and the Supreme Court is governed by *The Judicature (Court of Appeal) Rules S.1 13-10*, and *the Judicature (Supreme Court) Rules S.1 13-12*. These latter rules are made under S. 48 (1) (b) of the *Judicature Act (Cap 13)*.

COSTS DISPUTES:

In the process of taxing costs, disputes sometimes arise between party and party or between party and client or between party/client and the taxing master, which, if not resolved amicably at the time of taxation lead to appeals and references being made to a judge of a higher court.

Section 62 of the Act provides: -

“ (1) Any person affected by an order or decision of a taxing officer made under this part of this Act or any regulation made under this part of this Act may ap-

peal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer may have made.

(2) If any matter arising out of taxation of a bill of costs appears to the taxing officer proper for the decision of a judge of the High Court, he or she may on his or her own motion refer the matter to such judge who may either dispose of the matter or refer it back to the taxing officer with such directions as the judge may think fit to make.

(3) With consent of both parties the taxing officer may refer any matter in dispute arising out of the taxation of a bill of costs for the opinion of a judge of the High Court.

(4) The Law Council may make any regulations as to the manner in which appeals and references shall be made under this section and the fees, if any, that shall be paid on such appeals or references and the persons who shall be liable for the payment of the fees

(5) An appeal or reference under this section shall not act as a stay of execution unless the taxing officer or judge so orders.”

PROCEDURE (HIGH COURT AND APPELLATE COURTS)

The procedures for lodging appeals and references in both the High Court and the appellate courts are contained in the *Taxation of Costs (Appeals and References) Rules S.1. 258-6; the Judicature (Court of Appeal) Rules S.1. 13-10 (rule 109) (3rd schedule); and rule 105(1) of The Judicature (Supreme Court) Rules S.1. 13-12 (3rd schedule)*. The reasons for appealing or making references against the taxing officer's order are varied but most importantly the judge will only entertain appeals where the taxing officer did not apply correct principles of law of taxation of costs. In the case of *Attorney General & Another Versus 1. Turyamureeba Benon & 132 others HCT-00-CU-MA-0785-2001 (unreported)*, V.P Musoke-Kibuuka J (HC), allowed an appeal against the taxation order of the taxing registrar which had been brought by a chamber summons under S. 61(1) of the Advocates Act 1970 and rule 3 of the *Taxation of Costs (Appeal and References) Rules*, he also held that the principles of taxation which apply in the supreme court also apply to all other courts. In the case of *Kasim versus Habre international Ltd [2000] EA 98 (SCU)* it was held by the supreme court that: -

“A reference on taxation would only be entertained either on a point of law or principle or on the ground that the bill of costs as taxed was in all circumstances manifestly excessive or manifestly inadequate...”

This case also re iterated with approval the principles governing taxation of costs by a taxing master laid out in the leading case of; *Phemchand Raichand Ltd Another versus Quarry services of East Africa Ltd and Another* [1972] EA 162; their lordships also cited with approval the decisions in the cases of; *Attorney General versus Uganda blanket Manufacturers CA No. 17 of 1993 (SCU)*; *Bashiri versus Vitafoam (u) Ltd civil application No. 13 of 1995*. The principles laid out are: -

The instruction fee should cover the advocates work including taking instructions and preparing the case for trial or appeal

Although there was no rule of law requiring a court to do so, it would be proper to give slightly a higher award to counsel for the appellant

The taxing master was expected to tax each bill on its merits.

The value of the subject matter had to be taken into account

The taxing master's discretion was to be exercised judicially and not whimsically or capriciously

Though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not allowed to rise to a level that would confine access to the courts to the wealthy while, at the same time, the general level of remuneration of advocates had to be such as to attract recruits to the profession.

No appeal or reference can be allowed unless the appellant can show or demonstrate that above mentioned principles have been breached because judges on appeal as a principle do not like to interfere with an assessment of costs by the taxing officer unless the officer has misdirected himself or herself in a matter of principle, but if the quantum of an assessment is manifestly extravagant, a misdirection of principle may be a necessary inference. See *Steel construction and Petroleum Engineering (EA) Ltd versus Uganda Sugar Factory Limited* [EA] 141; *Kabanda versus Kananura Melvin Consulting Engineers, supreme court civil application No. 24 of 1993*; *Makumbi and Another versus sole electricians (U) Ltd* [1990-1994] 1 EA 306 (SCU). In this particular case the court observed that a mere production of a long list of authorities does not necessarily mean that there was protracted research by counsel and that an advocate should not be reimbursed for what he has not spent (advocate could not produce receipts for Commercial Transactions Levy)

In the case of *Bank of Uganda versus Banco Arabe Espanol [1999] EA 45(SCU), Mulenga JSC (as he then was)*, when considering to reverse the order of the taxing officer laid down the following principles;

The court will not normally interfere with the taxing master's ruling simply because it thinks it would have awarded a different figure had it been the one taking the bill

The court can interfere if it is proved that the amount taxed was manifestly excessive or low; and

The court can interfere if there is proof that the taxing officer followed a wrong principle in reaching his decision.

LESSONS TO LEARN:

Lessons to learn from the above discourse are varied but most importantly that the role played by the taxing officer is very crucial for all the parties because it determines whether or not the fruits of litigation will be reaped. It's also important for advocates learn not to downplay the importance of taxation hearings; most often senior lawyers dodge these proceedings preferring to send lowly assistants to conduct the hearings. Sometimes, advocates casually write to the taxing officer to proceed with ex parte taxation without giving a reason for his non-attendance. Sometimes advocates ring the taxing officer to proceed ex parte. Is this not being rude and contemptuous! Surely, after a tedious and protracted battle why do you surrender fruits of your labour cheaply? You surely cannot appeal against ex parte taxation, which was a result of your own negligence. Party to party taxation of costs is just as important as advocate to client taxation.

Lastly, advocates are encouraged to draw their bill of costs in accordance with the rules. Taxing officers have a higher respect of lawyers who play according to the rules so please take note and act accordingly.

I thank all of you for listening to me.

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