

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA
[COMMERCIAL DIVISION]**

**TAXATION NO. 482 OF 2021
(ARISING FROM CIVIL SUIT NO. 837 OF 2020)
(ARISING FROM MISCELLANEOUS APPLICATION NO. 922 OF 2020)
(ARISING FROM MISCELLANEOUS APPLICATION NO. 003 OF 2021)
(ARISING FROM MISCELLANEOUS APPLICATION NO. 224 OF 2021)
(ARISING FROM MISCELLANEOUS APPLICATION NO. 719 OF 2021)
(ARISING FROM MISCELLANEOUS APPLICATION NO. 718 OF 2021)**

- 1. EQUITY BANK UGANDA LIMITED**
- 2. MEERA INVESTMENTS LIMITED**
- 3. LUWALUWA INVESTMENTS LIMITED.....APPLICANTS/PLAINTIFFS**

VERSUS

- 1. SIMBAMANYO ESTATES LIMITED**
- 2. PETER KAMYA.....RESPONDENTS/DEFENDANTS**

BEFORE HIS WORSHIP KISAWUZI E. O., REGISTRAR

RULING

This is the ruling on the submissions of the first, second and third applicants/defendants' bills of costs filed on 4th August 2021, seeking costs arising from original **Civil Suit No. 837 of 2020, Miscellaneous Application No. 922 of 2020, Miscellaneous Application No. 003 of 2021, Miscellaneous Application No. 224 of 2021, Miscellaneous Application No. 719 of 2021 and Miscellaneous Application No. 718 of 2021 .**

The background leading to this taxation as discernible from the pleadings and submissions by counsel is that the respondents brought an action against the applicants seeking mainly cancellation of the sale and transfer of properties comprised in LHR Volume 2220 Plot 3, Folio 33, Lumumba Avenue known as Simbamanyo House and Kyadondo Block 243 Plots 95, 487, 957,958 and 2794 land

at Mutungo known as Afrique Suites Hotel for having been illegally and fraudulently procured. On the 23rd of October 2020, the respondents filed **Miscellaneous Application No. 922 of 2020** for a temporary mandatory injunction application seeking orders to restore the first respondent ownership, possession, control and operations of office block rental business under the name of Simbamanyo House which was dismissed. Subsequently, on the 17th of February 2021, the original suit was declared abated for failure by the respondents to take out summons in time and aggrieved by the order of abatement, the respondents further filed **Miscellaneous application (Appeal) No. 224 of 2021** appealing against the order and seeking to reinstate **Civil Suit No. 837 of 2020** which was dismissed too with costs. At the same time, the respondents had filed three applications **Miscellaneous Application No. 3 of 2021** seeking a stay of the orders in **Miscellaneous Application No. 922 of 2020**, **Miscellaneous Application No. 719 of 2021** and **Miscellaneous Application No. 718 of 2021** seeking a stay execution of the abatement in **Civil Suit No. 837 of 2020**. Meanwhile, the respondents had filed a fresh suit on 2nd August 2021 vide **Civil Suit No. 464 of 2021** now pending before this Honourable court.

At the outset, it should be noted that the court awarded costs in **Miscellaneous Application (Appeal) No. 224 of 2021**, **Miscellaneous Application (Appeal) No. 3 of 2021**, **Miscellaneous Application No. 370 of 2021** and **Miscellaneous Application No. 718 of 2021**. I was not able to come across **Miscellaneous Application No. 370 of 2021** and no mention was made of the same in the respective submissions by counsel. There were, however, no costs ordered in original **Civil Suit No. 837 of 2020** and **Miscellaneous Application No. 922 of 2020**.

The law relating to costs and taxation thereof is that costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

Rwantale V Rwabuhanga 1988 – 1990 HCB 100

Costs include; fees, charges, disbursements, remuneration and reimbursements allowed to a litigant in person.

The general rule remains that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order. In other words, the court may decide that a successful party must not be awarded his/her costs.

Costs may be taxed once they are ordered. It is nonetheless a rule of practice that taxation is held until the main cause is determined. Implied in this aspect is that final costs should be paid after the main cause is determined. There is however, no law prohibiting taxation of costs in interlocutory applications.

Uganda Development Bank V Muganga Construction Co. 1981 HCB 35
Orient Bank V Avi Enterprises HCCA No. 002/2013.

Taxation of costs is at the discretion of the taxing master which must be exercised judiciously and not whimsically. How a court or judge exercises such discretion depends on the facts of each case and the facts which determined the exercise of discretion in favour of one party against another don't necessarily apply to any other case.

Impressa Ing Fortunato Federice V Nabwire (2001) E.A 383 (S.C.U) per Order Jsc.

The principles governing taxation of costs by a taxing master were well stated in **Patrick Makumbi V Sole Electrics (U) Ltd Supreme Court Civil Application No. 11 of 1994** as follows: -

- (a) The instruction fee should cover the advocate's work, including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be. However, the instruction fee should not be excessive. An instruction fee is said to be manifestly excessive if it is out of proportion with the value and importance of the suit and work involved.
- (b) There is no legal requirement for awarding the appellant a higher brief fee than the respondent, but it would be proper to award the appellant's counsel a slightly higher fee since he or she has the responsibility to advise his or her client to challenge the decision.
- (c) There is no mathematical or magical formula to be used by the taxing master to arrive at a precise figure. Each case has to be decided on its own merit and circumstances.
- (d) The amount of the subject matter.
- (e) Taxing master has the discretion in the matter of taxation but he or she must exercise the discretion judiciously and not whimsically. However, the taxing officer does not have to give reasons for exercising his discretion.
- (f) The successful litigant should be fairly reimbursed the costs he or she has incurred, the taxing master owes it to the public to ensure that costs do not rise above a reasonable level so as to deny the poor access to court. However, the level of remuneration must be such as to attract recruits to the profession.

- (g) There should be consistency in the awards made, so far as practicable.
- (h) The taxing master in considering bills taxed in comparable case an allowance may be made for the fall in value of money.

In the instant case, there are three bills of costs presented by the lawyers for the first, second and third applicant(s)/defendant(s). As earlier stated, costs were awarded in two appeals and one application. There were, however, no costs awarded in the original Civil Suit and one other application. Accordingly, it follows that no awards are to be made in respect to items or claims arising out of those causes, action or matters where no costs were ordered by court. I intend to deal with the applicants/defendants' bill of costs in their order and will handle the issue of the instruction fees at the end of this ruling.

Guided by **The Advocates (Remuneration and Taxation of costs) Regulations, 2018**, I make the following awards as indicated in columns "A", "B", and "C".

(A) First Applicant's bill of costs

	Item	Award (in shillings)
23	Drawing affidavit in reply in HCMA 224 of 2021	200,000
24	Making copies	120,000
25	Attendance by clerk for assessment of affidavit in reply in HCMA 224 of 2021	20,000
26	Attendance by clerk to Bank make payments for affidavit in reply in HCMA 224 of 2021	20,000
27	Attendance by Clerk to file affidavit in reply	20,000
28	Attendance by counsel for hearing HCMA 224 of 2021	100,000
29	Attendance by counsel for hearing of HCMA 224 of 2021	100,000
30	Drawing submission on preliminary points in HCMA 224 of 2021	300,000
31	Making copies	300,000
32	Drawing submissions in rejoinder	300,000
33	Making copies	300,000

34	Extracting order in HCMA 224 of 2021	50,000
35	Making copies	120,000
39	Attendance by clerk for assessment of fees for affidavit in reply	20,000
48	Drawing affidavit in reply in HCMA 718 of 2021	200,000
49	Making copies	120,000
50	Drawing submissions in HCMA 718 of 2021	300,000
51	Making copies	300,000
52	Drawing bill of costs	200,000
53	Making copies	120,000
54	Drawing hearing notice taxation	50,000
55	Making copies	120,000
56	Attendance by clerk for assessment of bill of costs	20,000
57	Attendance by clerk to Bank to pay for the bill of costs	20,000
58	Attendance by clerk to file bill of costs	20,000
59	Attendance by counsel for taxation	100,000
71	Clerk's transport to 3 rd respondent's affidavit in reply in HCMA 224 of 2021	10,000
72	Filing fees for 3 rd respondent's affidavit in reply in HCMA of 2021	-
73	Transport to serve affidavit in reply on counsel for the parties	30,000
74	Transport by counsel to attend hearing of HCMA 224 of 2021	100,000
75	Transport to counsel to attend hearing of HCMA 224 of 2021	100,000
76	Transport by clerk to file respondent's submissions with preliminary points in HCMA 224 of 2021	20,000
77	Transport by Clerk to serve submissions in reply on all the parties	30,000
78	Transport by clerk file respondent's rejoinder submission on the preliminary objections	20,000

79	Transport by clerk to serve respondent's submission on all the parties	30,000
82	Transport by clerk to file affidavit in reply in HCMA 718 of 2021	10,000
83	Transport by clerk to file bill of costs	10,000
84	Transport by counsel to attend taxation	100,000

(B) Second applicant's bill of costs

	Item	Award (in shillings)
29	Drawing affidavit in reply in HCMA 224 of 2021	200,000
30	Making copies	120,000
31	Attendance by clerk for assessment of affidavit in reply I HCMA 224 of 2021	20,000
32	Attendance by clerk to Bank make payments for affidavit in reply in HCMA No. 224 of 2021	20,000
33	Attendance by clerk to file affidavit in reply	20,000
34	Attendance of court by counsel HCMA 224 of 2021	100,000
35	Attendance of court by counsel HCMA 224 of 2021	100,000
36	Drawing submissions in HCMA 224 of 2021	300,000
37	Making copies	300,000
38	Drawing submissions in rejoinder HCMA 224 of 2021	300,000
39	Making copies	300,000
40	Extracting decree in HCMA 224 of 2021	50,000
41	Making copies	120,000
42	Drawing letter to Registrar of Titles	-
43	Attendance of clerk to Registrar of Titles	-
56	Drawing affidavit in reply in HCMA 718 of 2021	200,000
57	Making copies	120,000
58	Drawing submissions in HCMA 718 of 2021	300,000
59	Making copies	300,000
60	Drawing bills of costs	200,000

61	Making copies	120,000
62	Drawing taxation hearing notice	50,000
63	Making copies	120,000
64	Attendance by clerk for assessment of bill of costs	20,000
65	Attendance by clerk to bank to pay for the bill of costs	20,000
66	Attendance by clerk to file bill of costs	20,000
67	Attendance by counsel for taxation	100,000
79	Clerk's transport to file second respondent's affidavit in reply in HCMA 224 of 2021 to all the parties	30,000
80	To filing fees for the second respondent's affidavit in reply in HCMA 224 of 2021	-
81	Transport to serve affidavit in reply on counsel for all the parties	30,000
82	Counsel's transport to attend hearing of HCMA 224 of 2021	100,000
83	Counsel's transport to attend hearing in HCMA 224 of 2021	100,000
84	Clerk's transport to file submissions in HCMA 224 of 2021	10,000
85	Clerk's transport to serve submission in reply on all the parties	30,000
86	Clerk's transport in court to file submissions in rejoinder	10,000
87	Clerk's transport to serve submissions in rejoinder on all the parties	30,000
90	Clerk's transport to file affidavit in reply in HCMA 718 of 2021	10,000
91	Clerk's transport to file bill of costs	10,000
92	Counsel's transport to attend taxation	100,000

(C) Third applicant's bill of costs

	Item	Award (in shillings)
23	Drawing affidavit in reply HCMA 224 of 2021	200,000
24	Making copies of affidavit	120,000

25	Attendance by Clerk to affidavit in reply HCMA 224 of 2021	20,000
26	Attendance by clerk to Bank to make payments of the affidavit	20,000
27	Attendance by clerk to file affidavit in reply	20,000
28	Attendance of court by counsel of HCMA 22 OF 2021	100,000
29	Attendance of court by counsel in HCMA 224 of 2021	100,000
30	Drawing submissions	300,000
31	Making copies	300,000
32	Drawing submissions in rejoinder	300,000
33	Making copies	300,000
34	Extracting order in HCMA 224 OF 2021	50,000
35	Making copies	120,000
48	Drawing an affidavit in reply in HCMA 718 of 2021	200,000
49	Making copies	120,000
50	Drawing submissions in HCMA 718 of 2021	300,000
51	Making copies	300,000
52	Drawing bills of costs	200,000
53	Making copies	120,000
54	Drawing taxation hearing notice	50,000
55	Making copies	120,000
56	Clerk's attendance to court for assessment of bill of costs	20,000
57	Clerks attendance to bank bill of costs	20,000
58	Clerks attendance to file bill of costs	20,000
59	Attendance by Counsel for taxation	100,000
71	Clerk's transfer to file 3 rd respondent's affidavit in reply in HCMA 224 of 2021	10,000
72	To filing fees for 3 rd respondent's affidavit in reply in HCMA 224 of 2021	-
73	Transport to serve affidavit in reply	20,000
74	Counsel's transport to attend HCMA 224 of 2021	100,000
75	Counsel's transport to attend hearing in HCMA 224 of 2021	100,000
76	Clerk's transport to file respondent's submission with preliminary points in HCMA 224 of 2021	10,000

77	Clerk's transport to serve submissions in reply on all parties	20,000
78	Clerk's transport to court file respondents rejoinder submissions	10,000
79	Clerk's transport to serve respondents' rejoinder submission	10,000
82	Clerk's transport to file affidavit in reply in HCMA 718 of 2021	10,000
83	Clerk's transport to court file bill of costs	10,000
84	Counsel's transport to court to attend taxation	100,000

I now turn to the issue of instruction fees in **Miscellaneous Application (Appeal) No. 224 of 2021, Miscellaneous Application (Appeal) No. 3 of 2021 and Miscellaneous Application No. 718 of 2021**, which I will deal with jointly since were also handled in a similar manner. The two appeals and the application as the record stands were against the decision of abatement of **HCCS No. 837 of 2020** and sought to set aside the order of the abatement and reinstate the suit whose subject matter was described and pleaded in Paragraph 14(p) of the amended plaint. The subject matter in the two appeals was the same value of the suit from which the appeal (s) arose and stated as: -

"That the market value of the suit property 'A' was in the region of the US\$ 12m and the market value of suit property 'B' was in the region of US\$ 11m but the 1st defendant sold the suit property at an under value to recover an alleged and disputed debt of US\$ 10.5m"

It is trite law that costs are based on the scale and the value of the subject matter which is dependent on the amount claimed in the plaint.

Stanbic Bank Uganda Limited and 2others V Western Highland and Creamaries Ltd and Anor Taxation Appeal No. 5 of 2013.

In the premises, taking into account the value of the subject matter and based on the scale, I accordingly make the following awards as instruction fees

1. First applicant/defendant – Six Hundred million shillings (Ugx 600,000,000)
2. Second applicant/defendant – Four hundred million shillings (Ugx 400,000,000)
3. Third applicant/defendant – Three hundred million shillings (Ugx 300,000,000)

Dated this 5th day of November 2021


Kisawuzi E. O
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