THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

CONSTITUTIONAL APPEALS NOS. 02 AND03 OF 2020

1. THE ATTORNEY GENERAL

2. THE ELECTORAL COMMISSION::::::APPELLANTS

VERSUS

EDDIE KWIZERA::::::::::::::::::::::::::::::RESPONDENT

CONSTITUTIONAL TAXATION RULING

Introduction

This is a taxation of the respondent's Bill of costs. Counsel for the respondent Mr. Wandera submitted that the Bill of costs was a true representation of the costs incurred and commented on the instruction fees, but briefly the facts of the case are as follows:-

This was an appeal arising from the Judgment of the Constitutional Court in the ***Constitutional Petition No. 20 of 2018, Eddie Kwizera vs Attorney General and Electoral Commission*** whereby the

petition challenged the creation of Municipalities of Apac, Sheema, Ibanda, Nebbi, Bugiri and Kotido and the holding of the elections in the said constituencies, the resolution of Parliament creating the said constituencies as being null and void sought for a permanent injunction restraining Electoral Commission from holding elections in the said Municipalities and costs of the petition.

The Court found in favour of the Petitioner who filed a Bill of costs 1,437,478,200. The Bill was taxed and allowed at costs 415,881,600/=. A cross appeal was filed under Rules 74, 76, 84, and 87 (1), (2) and (3) of the Rules of this Court and was based on one ground.

1. The learned Justices of the Constitutional Court erred in law and in fact when they condemned the cross-appellants to lose their seats in parliament without any hearing as they were not parties and neither were they served a hearing notice.

The respondents appealed to the Supreme Court on grounds that:

Ground one, that the learned Justices of the Constitutional Court erred in law by holding that elections were a nullity in Apac, Sheema, Ibanda, Nebbi, Bugiri and Kotido and cannot stand.

Ground two, the learned Justices erred in law when they held that the right to fair hearing is only challenged individually. Ground three, the Constitutional Court erred in law when they failed to correctly apply the cardinal principle of Constitutional interpretation. Ground four, that the court erred in law when interpreting Article 63(2) of the Constitution.

Ground five, that the Hon. Justices of the Constitutional Court erred in law when they failed to demarcate the constituencies. Ground six, that the Justices of the Constitutional Court erred in law and fact when they held that the respondent be paid half of the taxed costs of the petition.

The appeal went through a normal hearing and on the 6th January 2021 passed judgment in favour of the respondent.

The orders were:-

1. *The appeal be dismissed with costs to the respondent.*
2. *The respondent be awarded half the taxed costs in the court below.*
3. *The cross-appeal also be dismissed with costs to the respondent.*

From the above, its evident that this was a long drawn out appeal involving the Attorney General, Electoral Commission, the respondent and 6 cross-appeals.

In the **Taxation Reference of Bank of Uganda vs Sudhir Ruparelia and Meera Investments Ltd No. 1 of 2023.** Justice Mike Chibita held that "..... *the instruction fee should cover the advocates work, including taking instructions as well as other work necessary for presenting the case for trial on appeal. Each case has to be decided on its own merits and circumstances.*

For example, a lengthy or complicated case involving lengthy preparations and research will attract high fees".

In that case the appeal was withdrawn and the Judge awarded instruction fees of 500,000,000/= for the main appeal and costs of 5,000,000/= for the applications.

Therefore, since the present case was a long drawn out appeal involving two appellants and six cross appellants I am inclined to grant 750,000,000/= as instruction fees. The rest is taxed accordingly to scale.

Dated this **6th** day of **September**, 2023

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Ssali Harriet Nalukwago

REGISTRAR, SUPREME COURT.