

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

*[Coram: Egonda-Ntende, Kibeedi & Gashirabake, JJA]*

Consolidated Civil Appeal Nos. 78 of 2014 & 79 of 2014

**BETWEEN**

- 1) **WESTERN HIGHLAND CREAMERIES LTD ]**  
2) **LEE NGUGI ] ::::::::::::::::::::::::::::::::::: APPELLANTS**

**AND**

**STANBIC BANK UGANDA LTD ::::::::::::::::::::::::::::::::::: RESPONDENT**

*(On appeal from the Judgments of High Court of Uganda (Commercial Division), [Madrama, J] (as then he was) delivered on 30<sup>th</sup> April, 2013 in Taxation Appeal No. 05 of 2013, and on 30<sup>th</sup> August 2013 in Taxation Appeal/Reference No. 10 of 2013)*

**JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JA**

**Introduction**

- [1] The major question that has been at the center of the litigation ping-pong between the above parties, which eventually metamorphosized into the above consolidated appeals, is the determination of the appropriate fee scale for purposes of assessment of the instruction fees due to the respondent as the successful litigant following the dismissal of the appellants' claim against the respondent in Civil Suit No. 462 of 2011 of the High Court of Uganda, Commercial Division, for being barred by limitation.

**Background facts**

- [2] The appellants filed an action against the respondent and two others in the High Court of Uganda, Commercial Division, alleging breach of the mortgage deed, the debenture deed, further charge and mortgage deed. They sought among others, an order for recovery of physical and vacant possession of land, plant and business comprised in

LRV 2849 Folio 23 Plot 4-8 Ntengye Road, Mbarara (suit land). In the alternative, the appellants sought restitution and/or restoration of the plaintiff's land, plant and buildings at the market value of US\$. 5,000,0000, compensatory damages for economic and financial loss, loss of profits and investment return amounting to Ugx 36,818,885,665/=, and interest on the above sums at the rate of 20% per annum.

- [3] The respondent denied the allegations of the breaches, illegality, and loss and contended that the suit was barred by the law of limitation and disclosed no cause of action against it. It then prayed for dismissal of the suit.
- [4] At the trial the parties agreed to address court on the preliminary issues raised by the respondents of whether the appellants' action raised a cause of action against the respondents and whether the suit was barred by the law of limitation.
- [5] The learned trial Judge, in his ruling made on 25<sup>th</sup> of October 2012, held that the appellants' action had been filed out of time. He accordingly dismissed the same with costs.
- [6] Following the dismissal, the respondent filed its Bill of Costs for taxation by the Registrar. The contentious item of the said Bill of Costs related to the claim for instructions fees which the respondents stated to be Ugx 589,527,646/= based on the appellants' claims as set out in the plaint.
- [7] In his ruling dated 5<sup>th</sup> April 2012, the Registrar/Taxing Master awarded the Respondent the sum of Ugx 104,867,500/= as the Instruction fees and the sum of Ugx 146,248,610/= as the total taxed costs.
- [8] The respondent was aggrieved with the taxation decision of the Registrar in respect of the sole item of instruction fees and it appealed to the Judge of the High Court under Taxation Appeal No. 05 of 2013.
- [9] In his decision dated 30<sup>th</sup> April, 2013, Hon. Justice Christopher Madrama (as he then was) allowed the taxation appeal, and set aside the award of the taxing master relating to



the instruction fees. He referred the matter back to the Registrar with a direction to calculate the instruction fees afresh on the basis of the correct value of the subject matter as can be discerned from the plaint.

- [10] The appellants were aggrieved with the above decision of the High Court Judge and on the 02<sup>nd</sup> of May 2013, they lodged their Notice of Appeal to this Court. They subsequently filed their Memorandum of Appeal under reference number Civil Appeal No. 78 of 2014 in which they set out 16 grounds of appeal against the High Court decision, which I will revert to later in my judgment.
- [11] In the meantime, in the purported implementation of the directive of the High Court Judge of 30<sup>th</sup> April 2013 in Taxation Appeal No. 05 Of 2013, the learned Registrar of the High Court on the 2<sup>nd</sup> May, 2013, re-calculated the instruction fees and awarded the respondent the sum of Ugx 499,676,356/= in respect thereof. She subsequently issued a revised Certificate of taxation in the total sum of Ugx 612,123,060/= inclusive of the sum of Ugx 499,676,356/= as instruction fees and Value Added Tax (VAT) of Ugx 93,374,704.19. The respondent then called on the Bank Guarantee that had been issued by the appellants as security for costs in the High Court and it was accordingly paid by NC Bank Uganda Limited.
- [12] The appellants were, once again, aggrieved with the Registrar's award as contained in the revised Certificate of Taxation, especially the award of Ug. Shs. 499,676,356/= as instruction fees plus VAT of Ug. Shs. 93,374,704.19 and they appealed to the Trial Judge under Taxation Appeal/Reference No. 010 Of 2013.
- [13] In his judgment dated the 30<sup>th</sup> August 2013, the learned High Court Judge, found that the re-taxation of the respondent's bill of costs having been done **ex parte** by the Registrar and in violation of the appellants' right to a fair hearing, the resultant award of the Taxing Master could not stand. The Judge once again referred back the item on instruction fees to the Taxing Master for taxation after affording the appellants a hearing.

- [14] Further, the trial Judge directed that if, after the re-taxation, the Taxing Master establishes that the respondent had been overpaid by a certain amount, then the said sum would be refunded to the Appellants. But where no amount is established, there would be no refund. And that in the absurd extreme where more instruction fees are established, the respondents would be entitled to enforce for the balance.
- [15] There is no evidence before this court indicating that the matter was fixed for taxation inter parties by the Registrar in pursuance of the High Court orders for re-taxation. Instead, the Appellants filed Civil Appeal No. 0079 of 2014 against the High Court decision of 30<sup>th</sup> August 2013 in Taxation Appeal/Reference No. 10 of 2013.
- [16] Civil Appeal No. 0078 of 2014 and Civil Appeal No. 0079 of 2014 were later consolidated and heard together.

#### **Grounds of Appeal in Civil Appeal No.78 of 2014**

- [17] As already stated in this judgment, the appellant set out 16 grounds of appeal against the decision of the High Court delivered on the 30<sup>th</sup> April 2013 in Taxation Appeal No. 5 of 2013 namely:
- 1) *The learned Judge erred in law and fact when he failed to apply the appropriate scale fee under Schedule 6 and used the wrong scale of rule 6(1)(a)(iv) instead of 6(1)(a)(vii)*
  - 2) *The learned Judge erred in law and fact when he failed to find that a dismissal of a suit on a point of law was a result of an application taxable under rule 1(a)(vii) and not 1(a)(iv) of the sixth schedule.*
  - 3) *The learned Judge erred in law and fact when he decided that this was an appropriate case where the value of the subject matter could be used as the basis for taxation of the instruction fees under rule 6(i)(a)(iv) of the sixth schedule.*



- 4) *The learned Judge erred in law and fact when he made his decision on the basis that the respondent/1<sup>st</sup> defended a suit where the value of the subject matter of the suit could be determined from the amount claimed in the plaint.*
- 5) *The learned Judge erred in law and fact when he held that "it is inconsequential whether the dismissal was made pursuant to an interlocutory application for determination of the point law.*
- 6) *The learned Judge erred in law and fact when in holding that the scale of fees applicable to a dismissal resultant from a preliminary objection is the subject matter value, he failed to consider the other side when the preliminary objection is dismissed what scale is applicable.*
- 7) *The learned Judge erred in law and fact when he held that costs are based on a scale and not the actual work done.*
- 8) *The learned Judge erred in law and fact when in reaching his decision he failed to give effect to the principle of equal treatment before the law and consistency of taxation awards.*
- 9) *The learned Judge erred in law and fact when in his decision he overruled the application by the Taxing Master, in taxation of instruction fees under rule 6(i)(a)(iv) of the 6<sup>th</sup> Schedule, of the taxation principles laid down in the previous precedents of **Makula International Ltd V. Cardinal Nsubuga [1982] HCB 11; Alexandra Jo Okello and in the matter of Messers Kayondo and Company Advocates: SCCA No.1 of 1997; Attorney General V. Uganda Blanket Manufacturers (1973) Ltd- SCC Appln. No.17 of 1993; and Shumuk Investments Ltd V. Noble Builders (U) Ltd & Others: High Court Civil Appeal No. 24 of 2010.***
- 10) *The learned Judge erred in law and fact when his decision in effect denied the appellants similar treatment as the other litigants before the same court where the principles of taxation as laid out in the numerous precedents were followed,*

including but not limited to **Shumuk Investments Ltd V. Noble Builders (U) Ltd & Others: High Court Civil Appeal No. 24 of 2010.**

- 11) *That the learned Judge erred in law and fact when he failed to take into account the amount consented to as reasonable fees by the 2<sup>nd</sup> defendant.*
- 12) *That the learned Judge erred in law and fact when he decided that there is no discretionary power given to the taxing master to discount what is claimed.*
- 13) *That the learned Judge erred in law and fact when he found and held that the value of the subject matter from the plaint was USD 5,000,000 plus loss of UGX. 36,8181,885,665/=.*
- 14) *The learned Judge erred in law and fact when he held that the instruction fees would be calculated on the basis of the current value of the subject matter discerned from the plaint viz USD 5,000,000 and UGX 38,818,885,665/=.*
- 15) *The learned Judge erred in law and fact when he referred back item 1 on instruction fees to the Taxing Master to calculate according to the stated current value discerned from the plaint viz USD 5,000,000 and UGX 38,818,885,665/=.*
- 16) *The learned Judge erred in law and fact when he held that the respondent's defence of the suit was on the basis of a preliminary objection that was not quantifiable rather than the subject matter value.*

#### **Grounds of appeal in Civil Appeal No. 79 of 2014**

[18] In Civil Appeal No. 79 of 2013 filed before this court, the appellants set out 22 grounds of appeal against the decision of the High Court delivered on the 30<sup>th</sup> August 2013 in Taxation Appeal/Reference No. 10 of 2013 namely:

- 1) *The learned Judge erred in law and fact when he ignored to follow the doctrine of precedent and apply the taxation principles laid down in Alexandra Jo Okello and in*



*the matter of Messers Kayondo and Company Advocates-Supreme Court Civil Appeal No.0001 of 1997.*

- 2) The learned Judge erred in law and fact when he failed to follow the “thought process” in assessing and taxing instruction fees under rule 6(i)(a)(iv) of the 6th schedule as per the ratio decidendi in the decision of Alexandra Jo Okello and in the matter of Messers Kayondo and Company Advocates: SSCA No.0001 of 1997.*
- 3) The learned Judge erred in law and fact when he held that the fee scale under the 6th schedule is only consideration that is taken into account by the Taxing Master in assessing instruction fees due to an advocate.*
- 4) The learned Judge erred in law and fact when he failed to find that Section 55(3) of the Advocates Act, Cap.267 confers discretion on the Taxing Master to apply the taxation principles stated in the binding precedent of Alexandra Jo Okello and in the matter of Messers Kayondo and Company Advocates-Supreme Court Civil Appeal No.0001 of 1997.*
- 5) The learned Judge erred in law and fact when he held that the foundation in the Makula International Ltd V Cardinal Nsubuga [1982] HCB 11 case had been revoked and was therefore not good law.*
- 6) The learned Judge erred in law and fact when in reaching his decision that the Taxing Master had no discretion to decrease or increase the scale fee under the item 1(a)(iv) of the 6th schedule of the Advocates (Remuneration and Taxation of Costs) Rules, he ignored and/or failed to apply the provision of Section 55(3) of the Advocates Act, Cap.267 and Regulation 13 of the Advocates (Remuneration and Taxation of Costs) Rules SI 267-4.*
- 7) The learned Judge erred in law and fact when he misinterpreted Section 55(3) of the Advocates Act, Cap.267 that the sub-section is subject to regulations made under the Act and that the discretionary powers of the Taxing Master are limited by*

*the provisions of the Sixth Schedule which applies to taxation in contentious matters.*

- 8) *The learned Judge erred in law and fact when he held that Section 55(3) of the Advocates Act, Cap .267 is subject to the Regulations made under the Act and that the discretionary powers of the Taxing Master are limited by the express provision of the Sixth Schedule.*
- 9) *The learned Judge erred in law and fact when he held that the broad principles of taxation cannot be applied without regard to the clear and explicit rules binding on the Court and made by the Rules Committee.*
- 10) *The learned Judge erred in law and fact when he failed to apply the golden rule of statutory interpretation in interpreting S.55(3) of the Advocates Act, Cap.267, he applied the literal rule of interpretation instead of the golden rule of purposive rule leading to absurdity or repugnant result of extinguishing judicial discretion in taxation of costs.*
- 11) *The learned Judge erred in law and fact when in interpreting S.55(3) of the Advocates Act, Cap.267, he applied the literal rule of interpretation instead of the golden rule of purposive rule leading to absurdity or repugnant results of foreclosing or extinguishing the Taxing Master's discretionary powers in taxation thereby turning them into mere calculators of fees.*
- 12) *The learned Judge erred in law and fact when he held the basic fee calculated under item 1(a)(iv) of the 6th Schedule of the Advocates (Remuneration and Taxation of Costs) Rule is not subject to be decreased or increased by the Taxing Master's discretion.*
- 13) *That the learned Judge erred in law and fact when he contradicted himself when after finding that the Taxing Master had not accorded the appellants a fair hearing*



he proceeded to re-assess the quantum of the instruction fees and thereafter remitted the matter to the Taxing Master for confirmation.

- 14) That the learned Judge erred in law and fact when he condoned an illegality by upholding a decision made in breach of the fair hearing principle.
- 15) That the learned Judge erred in law and fact when he upheld the taxation award of the Taxing Master that had been made in breach of the fair hearing principle.
- 16) The learned Judge erred in law and fact when he usurped the discretion of the Taxing master conferred by law and precedents.
- 17) The learned Judge erred in law and fact when he held that the Appellant's case was clearly distinguishable from other decisions on appeal or the High Court itself.
- 18) The learned Judge erred in law and fact when he upheld the Award of the Taxing Master who in taxing the instruction fees did not exercise her discretion judiciously as required by the precedents and taxation principles thereby awarding the whole of the basic fee which was manifestly excessive, unfair and unreasonable.
- 19) The learned Judge erred in law and fact when he upheld the Taxing Master's Award who in taxing the instruction fees ignored and failed to apply the principles of taxation and the doctrine of precedent in relation to taxation of costs and award of reasonable, proportionate and fair instruction fees.
- 20) The learned Judge erred in law and fact when he upheld the Taxing Master's Award that was not a reasonable, proportionate and consistent compensation and remuneration for work done but unjust enrichment for the decree holder.
- 21) The learned Judge erred in law and fact when he upheld the Taxing Master's Award that did not place a fair value upon the work or responsibility involved or apply a sense of proportion before assessing reasonable, fair and proportionate instruction fees.

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22) *The learned Judge erred in law and fact when he upheld the Taxing Master's Award that did not take into account the circumstances of the case and taxation principles thereby allowing the whole of the basic fee, as computed based on the subject matter value.*

[19] The respondent opposed the appeals.

### **Representations**

[20] At the hearing, the appellants were represented by the Mr. Muhammad Mbabazi, while the respondent was represented by Mr. Pope Ahimbisibwe.

[21] Leave was granted to the parties to file written submissions. As such, the resolution of this appeal is based on the written submissions filed by the parties.

### **Resolution of the consolidated appeals**

[22] As noted at the beginning of this judgment, the gist of the appellant's complaint in these consolidated appeals is basically about the propriety of the fee scale applicable to the assessment of the instruction fees due to the respondent as the successful litigant following the dismissal of the appellants' claim against the respondent in Civil Suit No. 462 of 2011 of the High Court of Uganda, Commercial Division, for being barred by limitation. This complaint is covered by grounds 1, 2,3,4,5,6,7,9,13,14,15 and16 of Civil Appeal No. 78 of 2014, and grounds 3,18,20,21, and 22 of Civil Appeal No. 79 of 2014 which I intend to analyze and resolve under one cluster. However, the process of resolving the above cluster, will determine all the grounds in which the appellants fault the process by which the High Court Judge arrived at his decision and choice of the fee scale applicable to the taxation of the impugned item of instruction fees. This will cover grounds 1,2,5 and18 of Civil Appeal No. 79 of 2014 which fault the High Court for departing from the binding court precedents in breach of the principle of ***stare decisis***, and grounds 8,10 and11 of Civil Appeal No. 78 of 2014 which fault the High Court for contravening the principle of consistence of awards.



- [23] Thereafter, I will consider under the second cluster all the grounds which fault the High Court's decision regarding the discretionary powers of the Registrar/ Taxing Master when assessing costs. Included under this cluster is ground 12 of Civil Appeal No. 78 of 2014 and grounds 4,6,7,8,9,10,11,12 and 16 of Civil Appeal No. 79 of 2014.
- [24] Lastly, I will resolve the appellant's complaint that the High Court judge condoned an illegality when he declined to order a refund of the guarantee amount.

### **Appropriate Fee Scale**

- [25] The appellant's contention is that HCCS No 462 of 2011 having been disposed of on a preliminary point of law, then the ascertainable value of the subject matter of the suit as derived from the judgment is zero/nil. As such, argued the appellants' Counsel, value as a basis for assessment of the instruction fee as set out in the 6<sup>th</sup> Schedule of the Advocates (Remuneration and Taxation of Costs) Regulations, S.I No. 267 – 4, Item 1(a)(iv), is inapplicable to the instant matter. Counsel contended that value as a basis for assessment of the instruction fee is applicable only when the suit has been determined through a full trial. Counsel invited this court to find that the applicable law for the proper assessment of the instruction fees arising from the dismissal of the High Court suit was item 1(vii) of the 6<sup>th</sup> Schedule as was decided in the cases of ***Nicholas Roussos Vs Gulian Hussein Habib Virani & Others, Civil Appeal No.0030 of 1998; the Registered Trustees of Kampala Institute Vs Departed Asians Property Custodian Board, Supreme Court Civil Application No.0003 of 155; Lumweno and Company Advocates Vs Transafrica Assurance Company Limited Court of Appeal, Civil Application No.0095 of 2004 (Court of Appeal); Mayers, vs Hamilton [1975] E.A 16; and Bank of Uganda Vs Banco Arabe Espanol, Supreme Court Civil Application No.0023 of 1999***
- [26] The respondent's Counsel disagreed. He submitted that the dismissal of the appellants' suit by the trial court having conclusively determined the rights of the parties to the suit, it

resulted in a “decree” as defined by section 2 (C) of the Civil Procedure Act, Cap. 71 and not “an order”. For this submission, the respondent’s counsel cited ***Hwan Sung Ltd v M and D Timber Merchants and Transporters Ltd Supreme Court Civil Appeal No. 02 2018 (unreported)***. The respondent’s Counsel averred that the value of the subject matter of the dismissed suit could be determined from the plaint and the trial judge rightly ordered the Registrar/Taxing Master to conduct the taxation of the respondent’s bill under item 1(a)(iv) of the 6<sup>th</sup> schedule of the Advocates (Remuneration and Taxation of Costs) Regulations, S.I. No. 267- 4. He prayed to this court to uphold the decision of the High Court

[27] I have reviewed the record of appeal with special focus on the two judgments of the High Court from which these consolidated appeals arise. Before the High Court Judge came to the decision in Taxation Appeal no. 5 of 2013 referring the item of instruction fees back to the Registrar to be calculated on the basis of the value of the subject matter as can be discerned from the plaint, he first considered the law under which the suit had been dismissed and the consequence of the dismissal of the suit on the point of law. The High Court held that the dismissal resulted in a “decree” which conclusively determined the rights of the parties to the suit. Thereafter, it went ahead to determine whether the subject matter of the suit ought to be taken into account in determining the instruction fees and what the subject matter of the suit was in the circumstances of the case. The High Court judge then held thus:

*“The taxation is determined according to the scale set out in the sixth schedule. Item number 1 prescribes the fees for instructions to sue or defend. Item 1(a)(iv) prescribes how to determine fees or sue or defend in any case or to present or oppose an appeal where the value of the subject matter can be determined from the amount claimed or judgment.*

*Under the item 1(a) (iv), there are two ways to determine the value of the subject matter. Either from the amount claimed or the judgement. The amount claimed*





had to be discerned from the plaint whereas the judgement indicates what amount has been awarded. Where there is a judgement from which an amount can be determined, it can be deduced that the plaintiff would have succeeded in the suit and an award would have been made against the defendant to the plaint or defendant to the counterclaim. In such cases the amount can be determined from the judgment. Where the suit is dismissed, there is no amount determinable from the judgement because the suit was dismissed. Consequently, the taxing master will determine the value of the subject matter from the plaint or counterclaim.

The second scenario is provided for by item 1 (a) (v) which deals with how to determine instruction fees to sue or defend or to present or oppose an appeal in any case not provided for in any court. It provides that it shall not be less than 75,000 Uganda shillings. The second scenario has the same objective as the first scenario which is to determine the subject matter before arriving at the instruction fees among other determinants. For instance, there may be no amount claimed where there is an action to recover land and the value of the subject matter has not been pleaded. All it does is to prescribe a minimum amount. This rule caters for scenarios where the value of the subject matter cannot be determined from the amount claimed or the judgement.

In the current appeal, and perusal of the plaint shows that the amount claimed can be determined from the plaint itself. Paragraph 8 which particularises the loss as claimed by the plaintiff shows that as far as the land is concerned namely LRV 2849 folio 23 plot 4 – 8 Ntegye Road, Mbarara, the value of the subject matter claimed is **US\$5 million**. As far as the claim for economic and financial loss comprising of loss of business, profits and return on investment computed from the date of takeover to date is concerned, the loss claimed in the plaint is **Uganda shillings 36,818,885,665/=**. The conclusion comes from a very clear

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and simple reading of the Advocates (Remuneration and Taxation of Costs) Regulations, sixth schedule, item 1 (a) (iv) which provides as follows:

*“To sue or defend in any case or to present or oppose an appeal where the value of the subject matter can be determined from the amount claimed or the judgement.”*

*The appellants defended a suit where the value of the subject matter can be determined from the amount claimed in the plaint. For emphasis, the amount claimed is the amount claimed by the plaintiff. The value of the subject matter cannot be determined from the judgement because there was no judgement for the plaintiff and against the defendant.*

*The taxing master erred in law and fact by not determining the subject matter of the suit from the plaint ...”*

[28] I am satisfied that the High Court cannot be faulted in its finding that the outcome of the dismissal of the main suit was a “decree” in the terms of Section 2 (C) of the Civil Procedure Act. The Supreme Court of Uganda has since resolved the issue of the outcome of an order dismissing a suit for being time-barred in the case of **Hwan Sung Ltd v M and D Timber Merchants and Transporters Ltd Supreme Court Civil Appeal No. 02 2018 (unreported)**. In the lead judgment of Buteera, JSC (as he then was) dated the 11<sup>th</sup> of July 2018, with which the other Justices concurred, it was held thus:

*“The trial Judge in the instant case dismissed the suit on a preliminary point of law with costs. The judge’s decision wholly determined the controversy between the parties since nothing remained to be heard by the court. I find that the High Court decision disposed of the suit conclusively and the decision was therefore a decree within the meaning of Section 2 (C) of the Civil Procedure Act though it was worded as an order.”*





[29] In the same way, I find that the High Court properly analysed the law and applied it to the facts of the matter before him and rightly came to the conclusion that in the circumstances of the case the value of the subject matter as discerned from the plaint was the proper basis for assessing the instruction fees due to the respondent following the dismissal of the appellants' claim on a point of law. Accordingly, the appellant's complaints in that respect are without merit.

[30] The appellants also faulted the High Court for contravening principles of consistence of awards and **stare decisis** in the process arriving at the impugned decision. Counsel quoted not less than seven authorities in support of this contention.

[31] Upon review of the record of appeal, especially the judgment of the High Court in Taxation Appeal/ Reference No. 10 of 2013, I noted that the High Court Judge reviewed what he termed "*the string of authorities*" referred to by the appellants in support of the same complaint before this court. He deeply analysed each one of the authorities and demonstrated that the matter before him was based on a matter which was clearly distinguishable and that the broad principles of taxation cannot be relied upon without regard to the clear and explicit Rules binding on the Court and made by the Rules Committee. This was on pages 265 to 276 of the record of appeal. Accordingly, I find no basis for faulting the High Court.

[32] In light of the foregoing, I would dismiss grounds 1, 2,3,4,5,6,7,8,9,10,11,13,14,15 and16 of Civil Appeal No. 78 of 2014, together with grounds 1,2,3,5,18,20,21, and 22 of Civil Appeal No. 79 of 2014 for lack of merit.

### **Discretionary powers of the High Court Registrar/ Taxing Master**

[33] As already stated in my judgment, the crux of the appellant's complaints in ground 12 of Civil Appeal No. 78 of 2014 and grounds 4,6,7,8,9,10,11,12 and 16 of Civil Appeal No. 79 of 2014 is about the discretionary powers of the Registrar/ Taxing Master. It is the appellants' contention that the High Court Judge erred in holding that the Taxing Master

upon computation of the basic fee has no discretion to increase or decrease the fees calculated. The appellants cited Section 55(3)(b) of the Advocates Act which, in their submission, gives the Taxing Master the discretion and that the precedents are very clear that the Taxing Master after calculating the basic fee should use his/her discretion to increase or decrease.

[34] The respondent disagreed and supported the finding of the trial Judge which, according to it, was to the effect that the Taxing Master is not vested with any discretion in calculation of instruction fees based on an ascertained value of the subject matter like the case under consideration.

[35] Section 55 (3) of the Advocates Act which was relied upon by the appellants is couched as follows:

***“Section 55. Miscellaneous provisions as to remuneration for contentious business.***

3) Subject to any regulations, upon every taxation of costs with respect to any contentious business, the taxing officer may—

(a) allow interest at such rate and from such time as he or she thinks just on monies disbursed by the advocate for the client, and on monies of the client in the hands of, and improperly retained by the advocate;

(b) in determining the remuneration of the advocate, have regard to the skill, labour and responsibility involved in the business done by him or her.”

[Emphasis added]

[36] When interpreting the above provision of the law, the High Court Judge stated thus:

*“Subsection (3) of section 55 is subject to regulations made under the Act. In other words, the taxing officer has discretionary powers subject to the regulations. In other words, the sixth schedule cannot be disregarded by the taxing officer. The discretionary powers of the taxing officer are limited by the*



*express provisions of the sixth schedule which applies to taxation in contentious matters in the High Court or Magistrates Courts”*

[37] The High Court Judge’s interpretation of Section 55(3) of the Advocates Act cannot be faulted. The interpretation was in line with the settled principle of statutory interpretation that the words in a statute must be given their ordinary, natural and plain meaning where there is no ambiguity See: ***Murisho Shafi & 5 Others Vs Attorney General and the Inspectorate of Government, Constitutional Application No. 2 of 2017, [2017] UGCC 1***, and ***The Returning Officer Kampala and Anor Vs Margaret Ziwa, Court of Appeal Civil Appeal No.39 of 1997 (Unreported)***

[38] In the particular context of the matter before this court, the real issue is whether the fee scale applicable for assessment of the instruction fee in High Court Civil Suit No. 462 of 2011 which the High Court Judge rightly found to be item1(a)(iv) of the 6<sup>th</sup> schedule of the Advocates (Remuneration and Taxation of Costs) Regulations, S.I. No. 267- 4, gives the Registrar the discretion to increase or decrease after calculating the basic fee stipulated therein.

[39] As far as is relevant to the resolution of the matter before this court, Item1(a)(iv) of the 6<sup>th</sup> schedule of the Advocates (Remuneration and Taxation of Costs) Regulations provides for the instruction fees in the following terms:

***“1. Instructions to sue or defend:-***

***(a) subject as hereafter provided, the fees for instructions shall be as follows:***

*(iv) to sue or defend ... where the value of the subject matter can be determined from the amount claimed or the judgment....” the instruction fee shall be ... [The regulations then set out the different formulae applicable in line with the value of the subject matter]”*

[40] In dealing with the above provision of the law, the High Court Judge stated thus:

'...item 1 provides that for instructions to sue or defend under (iv) where the subject matter can be ascertained from the amount claimed or the judgment, the instruction fees shall be as prescribed. Specific reference can be made to item 1(a) of the sixth schedule which provides that "subject as hereinafter provided, the fees for instruction shall be as follows:-". It is my holding in the case of *Shumuk Springs Development Ltd & Others [Vs Mwebesa & Others High Court Taxation Taxation Appeal Number 21 of 2012]* that the wording of item 1(a) of the sixth schedule is mandatory because of the use of the word "shall". When one further proceeds to the scale applicable as prescribed, they give specified formulas for the calculation of instruction fees based on the ascertained subject matter of the suit. In those circumstances it can be argued that the matter is beyond argument that since the calculation is mathematical and as subscribed by the respondent's counsel, indeed where a matter has been ascertained, calculation is prescribed by the rules and anybody who complies with the rules in making the calculation will arrive at the same answer."

- [41] The High Court Judge thereafter reviewed each one of the authorities cited by the appellants on the subject of the taxing master's discretion to either increase or decrease the "basic fee" namely: ***Shumuk Investments Ltd V. Noble Builders (U) Ltd & Others, High Court Civil Appeal No. 24 of 2010; Premchand Raichand Ltd & Another Vs Quarry Services of East Africa Ltd and Others (No. 3) [1972] 1 EA 162; Makula International Ltd V. Cardinal Nsubuga [1982] HCB 11; Alexandra Jo Okello vs Ms Kayondo and Company Advocates, SCCA No.1 of 1997; Attorney General V. Uganda Blanket Manufacturers (1973) Ltd, SCCivil Application. No.17 of 1993; and Yahaya Kariisa Vs Attorney General, High Court Civil Appeal Number 315 of 2002.*** He found that the authorities dealt with specific powers of the Registrar under the Supreme Court Rules and the Court of Appeal Rules; or the Registrar's discretionary powers under the revoked Advocates (Remuneration and Taxation of Costs) Rules, S.I 258 – 6 which was the law in force at the time of the decision in *Makula International Ltd*



(supra); or simply espoused the general principles of taxation and, as such, were not applicable in light of the clear statutory provisions covering the issue at hand.

[42] I am satisfied with the analysis and conclusions of the High Court Judge. The appellants' complaints are without merit. I would accordingly dismiss ground 12 of Civil Appeal No. 78 of 2014 and grounds 4,6,7,8,9,10,11,12 and 16 of Civil Appeal No. 79 of 2014.

**Refusal to order a refund of the guarantee amount.**

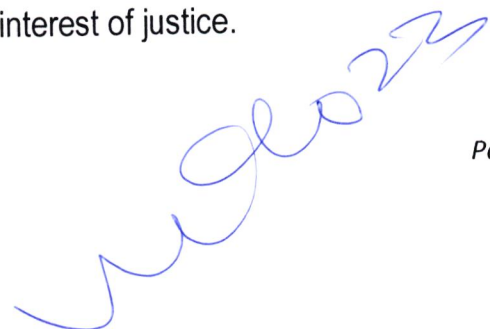
[43] The appellant's last complaint about the High Court decision in Taxation Appeal/Reference No. 10 of 2013 is that the Judge condoned an illegality when he declined to order the respondents to refund the guarantee amount after setting aside the revised Certificate of Taxation on account of breach of the appellants' right to a fair hearing as enshrined in Article 28 of the Constitution. This complaint was contained in grounds 13, 14 and 15 of Civil Appeal No. 79 of 2014.

[44] As such, the appellants prayed that this court orders the respondent to refund the money paid to them under what they termed as "an illegal taxation award" that was set aside by the High Court Judge.

[45] The respondent disagreed and supported the decision of the High Court Judge. The respondent submitted that payment and receipt of costs following an order of costs is a matter of substantive justice.

[46] The respondents further argued that the trial judge was alive to the fact that the 2<sup>nd</sup> appellant was a non-Ugandan citizen who was neither a resident of Uganda nor owned any known business in Uganda all of which would render it hard for the respondent to recover its costs.

[47] Last, the respondent submitted that in any event, the respondent was still entitled to receipt of costs even after the re-taxation which was ordered to be done *inter parties*. As such, the orders of the High Court met the interest of justice.



[48] When dealing with appellants' prayer to order the respondent to refund the instruction fees, the trial Judge stated that he found no basis for making such an order. Instead, he ordered that:

*"if the taxing master [upon retaxing the respondent's item on instruction fees inter parties] establishes that the respondent has been over paid by a certain amount, it is only that amount established by the taxing master as being an over payment which will be refunded to the appellants. Where no amount is established, there would be no refund. In the absurd extreme where more instruction fees are established, the respondent would be entitled to enforce for the balance."*

[49] There is no doubt that the revised Certificate of Taxation which the respondent based upon to claim payment from NC Bank Uganda Limited under the guarantee was a lawful order of the Court and enforceable at the time the payment was made. The Order of the High Court Judge which subsequently set aside the said Certificate of Taxation was issued after the respondent had already exercised its right as set out in the court order and got paid under the bank guarantee. The trial Court was alive to the said changed situation. It had the discretion to expressly nullify the benefits received under the nullified Court Order under the doctrine of "retrospective annulment". It also had the option of adopting the doctrine of "prospective annulment" under which only actions after the date of the court decision are affected by the annulment as happened in the case of **Bob Kasango v Attorney General and Anor (Constitutional Petition No 16 of 2016) 2021 UGCC 2 (18 March 2021)**. But in exercise of its discretion, the High court opted for the course that the refund ought to follow the taxation findings of the taxing master after hearing both parties.

[50] For this court to interfere with the exercise of unfettered discretion of the lower court, it must be satisfied that the lower court misdirected itself in some matter and as a result arrived at a wrong decision, or that it is manifest from the case as a whole that the lower



court was clearly wrong in exercise of its discretion and that as a result there was a failure of justice. See: **Banco Arabe Espanol Vs Bank of Uganda, Supreme Court Civil Appeal No. 8 of 1998, [1999] UGSC 1, and Mbogo and Another v. Shah (1968) E.A. 93.**

[51] I am not satisfied that the appellants have met the above criteria to warrant this court's interference with the exercise of the discretion of the High Court. Accordingly, I would dismiss grounds 13, 14 and 15 of Civil Appeal No. 79 of 2014.

### **Conclusion**

[52] I would dismiss Civil Appeal No. 78 of 2014 and Civil Appeal No. 79 of 2014 with costs to the respondent.

Delivered and dated at Kampala this 2<sup>nd</sup> day of November 2023



.....  
**MUZAMIRU MUTANGULA KIBEEDI**  
**Justice of Appeal**

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

[Coram: Egonda-Ntende, Kibeedi & Gashirabake, JJA)

Consolidated Civil Appeal Nos. 78 of 2014 & 79 of 2014

**BETWEEN**

WESTERN HIGHLAND CREAMERIES LTD=====APPELLANT NO.1

LEE NGUGI=====APPELLANT NO.2

**AND**

STANBIC BANK UGANDA LTD=====RESPONDENT

*(On appeal from the Judgments of High Court of Uganda (Commercial Division), [Madrama, J] (as then he was) delivered on 30<sup>th</sup> April, 2013 in Taxation Appeal No. 05 of 2013, and on 30<sup>th</sup> August 2013 in Taxation Appeal/Reference No. 10 of 2013)*

**JUDGMENT OF FREDRICK EGONDA-NTENDE, JA**

[1] I have had the opportunity to read in draft the judgment of my brother, Kibeedi, JA. I agree with it and have nothing useful to add.

[2] As Gashirabake, JA, also agrees these appeals are dismissed with costs.

Dated, signed and delivered at Kampala this <sup>2<sup>nd</sup></sup> day of <sup>November</sup> 2023



Fredrick Egonda-Ntende  
**Justice of Appeal**



**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

*(Coram: Egonda-Ntende, Muzamiru M. Kibeedi, Christopher Gashirabake, JJA)*

**CONSOLIDATED CIVIL APPEAL NOS. 78 OF 2014 & 79 OF 2014**

**BETWEEN**

**1. WESTERN HIGHLAND CREAMERIES LTD.**

**2. LEE NGUGI:.....APPELLANTS**

**AND**

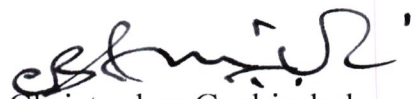
**STANBIC BANK (UGANDA) LTD.:.....RESPONDENT**

**JUDGMENT OF JUSTICE CHRISTOPHER GASHIRABAKE, JA.**

I have read in draft the judgment of Hon. Justice Muzamiru Mutangula Kibeedi, JA.

I concur with the judgment and the orders proposed therein and I have nothing useful to add.

Dated at Kampala the <sup>2nd</sup>..... day of <sup>November</sup>.....2023.

  
Christopher Gashirabake  
**JUSTICE OF APPEAL.**