THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL APPEAL No. 1322 of 2021

(Arising from Civil Suit No. 0898 of 2019)

VISARE UGADA LIMITED ………………………………………… APPELLANT

VERSUS

M/S GADALA & NSHEKANABO ADVOCATES ………………… RESPONDENT

Before: Hon Justice Stephen Mubiru.

JUDGMENT

a) The background;

During or around February, 2017 the appellant secured from KCB Bank Limited, a term loan of up to US $ 2,500,000 repayable within a period of three years at a rate of interest of 8% per annum, to facilitate the construction of residential apartments at Plot 65A Lugogo Bypass in Kampala. As security for that loan, the appellant mortgaged its land comprised in LRV 2651 Folio 9 Plot 65A Lugogo Bypass Road, Kampala. It was agreed that the sale of the condominiums would be applied towards settlement of the loan. On account of the appellant's subsequent default on the terms of the loan, during or around May, 2019 KCB Bank Limited recalled the loan, foreclosed, issued a notice of default and then of sale, and advertised the collateral for sale. Considering that the condominium property far exceeded the amount outstanding due to the bank, the appellant filed a suit against the bank seeking orders and declarations that the mortgage was illegal for having been procured through deceit and undue influence, that the intended sale was unlawful, that the bank had fettered the appellant's right of redemption, etc. In is written statement of defence and counterclaim, KCB Bank Limited contended that the appellant owed it US $ 2,587,162.

For purposes of stopping the foreclosure, the appellant retained the services of the respondent firm of advocates. The respondent filed a plaint and an application for a temporary injunction. By way of written submissions supplemented by oral submissions, the respondent on 19th December, 2019 secured a grant of an interlocutory injunction, conditioned upon the appellant depositing with the respondent a sum of US $ 550,000 within fifteen days, i.e. by 31st December, 2019 in which event the order was to last until 16th June, 2019 or upon failure of which the order was to lapse. The appellant pad the sum ordered.

Subsequently, the appellant entered into negotiation with KCB Bank Limited which resulted in a consent judgment by which it was agreed that the appellant was to dispose of twelve (12) out of the forty four (44) apartments. The appellant did not involve the respondent in those negotiations. The suit having been settled, the respondent served the appellant with an advocate-client bill of costs. The respondent applied for and secured an order granting leave for the bill of costs to be taxed. At the taxation hearing, all other items were taxed by consent save the item on instruction fee which was contentious. While the respondent contended that the fee should be assessed on basis of the market value of the property forming the subject matter of the mortgage plus the amount outstanding on the loan, while the appellant contended it was only the amount outstanding on the loan and sought to be recovered by the bank.

b) <u>The taxation ruling;</u>

In her ruling delivered on 6th October, 2021 the learned Registrar found that by virtue of Item 1 (1) of the *6th Schedule* of the *Advocates (Remuneration and taxation of costs) Rules*, as amended in 2018, instruction fees are calculated on the basis of the value of the subject matter, where the value can be ascertained from the pleadings. The plaint showed that the appellant intended to prevent the bank from exercising its power of mortgagee by stopping the sale of the mortgaged property. At the time the bank advertised the mortgaged property for sale, it had been valued at US $ 13,260,000. On top of this, the appellant owed the bank US $ 2,500,000. The issues arising in the suit related to the validity of the mortgage and the appellant's right to redeem the security. The issues combined the value of the security and the amount sought to be recovered, hence a total of US. $ 15,760,000. At the exchange rate of US $ 1:3,600/= the total value of the subject matter is shs. 56,736,000/= Applying the formula for calculating instruction fees as outlined in the rues, the result is shs. 1,139,940,000/= out of which the appellant had paid shs. 11,674,800/= hence the balance outstanding is shs. 1,128,255,200 (US $ 313,404) which was awarded as instruction fees.

c) <u>The ground of appeal;</u>

Being dissatisfied with the decision, the appellant appealed to this court on the following ground;

1. The taxation award of shs. 1,139,940,000/= allowed as instruction fees be set aside for being excessive, unconscionable, oppressive and unlawful.

Consequently the appellant prays that the respondent's bill of costs be referred back to the Taxing Officer for re-taxation and that the costs of the appeal be provided for.

d) <u>The submissions of counsel for the appellant;</u>

Counsel for the appellant M/s. Muwema and Co. Advocates argued that the amount outstanding was US $ 2,400,000 which constituted the value of the subject matter. The learned Registrar erred when she included the value of the property on top of that amount. When the property was advertised for sale there was a figure of US $ 13,260,000 ascribed to it as the market value. The instructions were to stop the sale such that the money owed would be paid. The consent judgment shows the value eventually agreed was the amount outstanding. According to the 6th schedule item 1 the value of the subject matter could be determined from the judgment, pleadings etc. The matter was not heard in full. The respondent only secured an injunction. They therefore prayed that the appeal be allowed.

e) <u>The submissions of counsel for the respondent;</u>

Counsel for the respondent M/s KSMO Advocates submitted that the Registrar was properly guided by the 6th schedule rule 1. The suit was for challenging and stopping the sale of the mortgaged property in foreclosure proceeding initiated by the bank. The plaint stated that it was saving the mortgaged property. The success in saving the value of the mortgaged property should not be used against the respondent. The value was US $ 13,026,000 to secure a borrowed sum of US $ 2,500,000 for completion of the premises. In the alternative, the amount borrowed should be deducted, that is conceded. There was urgency involved. So the court should be guided by the value. The respondent represented the applicant to the very end and saved the property from a public sale. The appeal should therefore be dismissed.

f) <u>The decision;</u>

There is no inherent, inferred or assumed right of appeal (see *Mohamed Kalisa v. Gladys Nyangire Karumu and two others, S. C. Civil Reference No. 139 of 2013*). According to section 62 (1) of *The Advocates Act* any person affected by an order or decision of a taxing officer made under that part of the Act or any regulation made under it may appeal 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. It is according to Order 50 Rule 8 of *The Civil Procedure Rules* and Rule 3 of *The Advocates (Taxation of Costs) (Appeals and References) Regulations, S.I 267-5* that any person aggrieved by any order of a Registrar may appeal from the order to the High Court. The appeal is by summons in chambers. The appeal in the instant case is from an order of the Registrar of this court acting as Taxing Officer, awarding a sum of shs. 1,128,255,200 (US $ 313,404) as instruction fees, upon taxation of an advocate-client bill of costs.

The power exercised in taxation of costs is discretionary. The general rules governing appeals from such orders seem well settled. Courts in Uganda have, as a matter of judicial policy, exercised considerable restraint in intervening in decisions characterised as involving the exercise of a discretion (see *Banco Arabe Espanol v. Bank of Uganda, S. C. Civil Appeal No. 8 of 1998*). Where the decision challenged involves the exercise of a discretion, broadly described to include states of satisfaction and value judgments, the appellant must identify either specific error of fact or law or inferred error (e.g. where the decision is unreasonable or clearly unjust). The appellate court will not interfere with the exercise of discretion unless there has been a failure to exercise discretion, or failure to take into account a material consideration, or an error in principle. It should not interfere with the exercise of discretion unless it is satisfied that the Registrar in exercising his or her discretion misdirected himself or herself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the Registrar has been clearly wrong in the exercise of his discretion and that as a result there has been injustice (see *Mbogo and another v. Shah [1968] 1 EA 93*).

It is trite that an appellate court is not to interfere with the exercise of discretion by a court below unless satisfied that in exercising that discretion, the court below misdirected itself in some matter and as a result came to wrong decision, or unless manifest from case as whole, the court below was clearly wrong in exercise of discretion and injustice resulted (see *National Insurance Corporation v. Mugenyi and Company Advocates [1987] HCB 28; Wasswa J. Hannington and another v. Ochola Maria Onyango and three Others [1992-93] HCB 103; Devji v. Jinabhai (1934) 1 EACA 89; Mbogo and another v. Shah [1968' E.A. 93; H.K. Shah and another v. Osman Allu (1974) 14 EACA 45; Patel v. R. Gottifried (1963) 20 EACA, 81;* and *Haji Nadin Matovu v. Ben Kiwanuka, S. C. Civil Application No. 12 of 1991*). A Court on appeal should not interfere with the exercise of the discretion of a court below merely because of a difference of opinion between it and the court below as to the proper order to make. There must be shown to be an unjudicial exercise of discretion at which no court could reasonably arrive whereby injustice has been done to the party complaining.

The appellate court will intervene where the court below acted un-judicially or on wrong principles; where there has been an error in principle (see *Sheikh Jama v. Dubat Farah [1959] 1 EA 789; Hussein Janmohamed and Sons v. Twentsche Overseas Trading Co Ltd [1967] 1 EA 287; Banco Arabe Espanol v. Bank of Uganda, S. C. Civil Appeal No. 8 of 1998* and *Thomas James Arthur v. Nyeri Electricity Undertaking [1961] 1 EA 492*). As such, the Registrar is entitled to deference in the absence of an error in law or principle, a palpable and overriding error of fact, or unless the decision is so clearly wrong as to amount to an injustice. Generally, appellate courts will only interfere with exercise of discretion by a court below where the court has incorrectly applied a legal principle or the decision is so clearly wrong that it amounts to an injustice. Although there is a presumption in favour of judicial discretion being rightly exercised, an appellate court may look at the facts to ascertain if discretion has been rightly exercised.

The formulation and application of the above rule reflects an inherent tension where legislation both confers a power on a judicial officer to make a subjective choice and also provides a right of appeal from that choice. An appeal of this nature requires the appellate court to exercise judgment as to the appropriateness of its intervention, while deferring to the exercise of discretion by the Registrar, in light of the nature of the appeal, the issues of fact and law involved, the primary facts and inferences presented to the Registrar, the level of satisfaction, the value judgments involved, rule-application, reasonableness of the decision, proportionality and rationality of the decision, in particular as to whether its decision will provide a more just outcome.

Discretion is the faculty of determining in accordance with the circumstances what seems just, fair, right, equitable and reasonable. “Discretion” cases involve either the management of the trial and the pre-trial process; or where the principle of law governing the case makes many factors relevant, and requires the decision-maker to weigh and balance them. Just as the factors for consideration could never be absolute, there could never be a gauge to measure the accuracy of such decisions. Unless the exercise of discretion is obviously perverse, an appellate court should be slow to set aside discretionary orders of courts below.

Because these assessments call for value judgments in respect of which there is room for reasonable differences of opinion, no particular opinion being uniquely right, identification of error in the Registrar’s exercise of discretion is the basis upon which the court will uphold the appeal. It would be wrong to determine the parties’ rights by reference to a mere preference for a different result over that favoured by the Registrar at first instance, in the absence of error on his or her part. If the Registrar acted upon a wrong principle, or allowed extraneous or irrelevant matters to guide or affect him or her, if he or she mistook the facts, if he or she did not take into account some material consideration, or where it not evident how he or she reached the result embodied in his or her order, or where upon the facts the order is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the Registrar thus his or her determination should be reviewed.

Therefore, allowing an appeal from a discretionary order is predicated on proof of: (i) “specific error,” i.e. an error of law (including acting upon a wrong principle), a mistake as to the facts, relying upon an irrelevant consideration or ignoring a relevant consideration, or (exceptionally) giving inappropriate weight to such considerations (relevancy grounds); and (ii) “inferred error,” i.e. where, in the absence of identification of specific error, the decision is regarded as unreasonable or clearly unjust. Where inferred error is found, this will have been brought about by some unidentifiable specific error.

The circumstances in which a Judge of the High Court may interfere with the Taxing Officer's exercise of discretion in awarding costs have been stated in *Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492*; *Bank of Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999; [1999] EA 45; Steel construction and Petroleum Engineering (EA) Ltd v. Uganda Sugar Factory Limited [1970] EA 141; Kabanda v. Kananura Melvin Consulting Engineers, S. C. Civil Application No. 24 of 1993* and *Makumbi and another v. Sole Electrics (U) Ltd [1990-1994] 1 EA 306*, and generally are that;

i. Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters which taxing Officers are particularly fitted to deal with and the court will intervene only in exceptional circumstances.
ii. Where the fee allowed is higher than seems appropriate, and is so manifestly excessive as to justify treating it as indicative of the exercise of a wrong principle.

Taxation of bills of costs is not an exact science. It is a matter of opinion as to what amount is reasonable, given the particular circumstances of the case, as no two cases are necessarily the same. The power to tax costs is discretionary but the discretion must be exercised judiciously and not capriciously. It must also be based on sound principles and on appeal, the court will interfere with the award if it comes to the conclusion that the Taxing Officer erred in principle, or that the award is so manifestly excessive as to justify treating it as indicative of the exercise of a wrong principle or that there are exceptional circumstances which otherwise justify the court's intervention. Application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low (see *Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492* and *Bank of Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999).* Even when it is shown that the taxing officer erred on principle, the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would cause injustice to one of the parties.

In the instant appeal, while counsel for the appellant contends it was an improper exercise of discretion when the learned Registrar determined the subject matter of the litigation in respect of which the respondent was instructed to have been constituted by a combination of the amount outstanding due on the loan and the value of the property securing the loan, counsel for the respondent contends it was a proper exercise of discretion to which this court ought to defer by not interfering.

The dispute arises out of an advocate-client bill of costs. Advocate-client costs are the costs that an advocate claims from his own client and which the advocate is entitled to recover from a client, for professional services rendered to and disbursements made on behalf of the client. These costs are payable by the client whatever the outcome of the matter for which the advocates' services were engaged and are not dependent upon any award of costs by the court. In the wide sense, they include all the costs that the advocate is entitled to recover against the client on taxation of the bill of costs. The term is also used in a narrower sense as applying to those charges and expenses as between advocate and client that a client is obliged to pay his or her advocate which are not recoverable party and party costs, or costs which ordinarily the client cannot recover from the other party. These costs can arise either in contentious or non-contentious matters.

In an advocate-client bill of costs, the basic premise is that the advocate is entitled to be paid all costs claimed for, other than such costs as may be unreasonable. On a taxation as between advocate and own client, there is an almost irrefutable presumption that all costs incurred with the express or implied approval of the client evidenced by writing are presumed to have been reasonably incurred, and where the amount thereof has been so expressly or impliedly approved by the client, to have been reasonable in amount. For that reason, whereas any charges merely for conducting litigation more conveniently will be called "luxuries' in a party and party bill of costs and must be paid by the party incurring them, in an advocate-client bill of costs such "luxuries" are charged to a client, except where they were not incurred with the express or implied approval of the client.

The general principles which guide taxation of bills of costs were stated *Premchand Raichand Ltd and Another v. Quarry Services of East Africa Ltd and others [1972] EA 162*, and applied in *Attorney General v. Uganda blanket Manufacturers S.C. Civil Appeal No. 17 of 1993*; *Bashiri v. Vitafoam (u) Ltd S. C. Civil Application No. 13 of 1995* and *Habre international Ltd [2000] EA 98* as follows;

1. That costs should not be allowed to rise to such a level as to confine access to the courts to the wealthy;
2. That a successful litigant ought to be fairly reimbursed for the costs that he has had to incur;
3. That the general level of remuneration of advocates must be such as to attract recruits to the profession; and
4. That so far as practicable there should be consistency in the awards made;
5. The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party;
6. In considering bills taxed in comparable cases allowance may be made for the fall in value of money;
7. Apart from a small allowance to the appellant for the responsibility of advising the undertaking of the appeal there is no difference between the fee to be allowed to an appellant as distinguished from a respondent;
8. The fact that counsel from overseas was briefed was irrelevant: the fee of a counsel capable of taking the appeal and not insisting on the fee of the most expensive counsel must be estimated

It is evident that every case must be decided on its own merit and in variable degrees, the instructions fees ought to take into account the amount of work done by the advocate, and where relevant, the value of the subject matter of the suit as well as the prevailing economic conditions. The Taxing Officer should envisage a hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particular high fee sometimes demanded by counsel of pre-eminent reputation, then award a fee this hypothetical character would be content to take on the brief. Clearly it is important that advocates should be well motivated but it is also in the public interest that costs be kept to a reasonable level so that justice is not put beyond the reach of poor litigants.

Counsel fees are governed by the complexity, value and importance to the litigants of the matters in dispute. It follows that where the responsibility entrusted to counsel in the proceedings is quite ordinary and calls for nothing but normal diligence such as must attend the work of a professional in any field; where there is nothing novel in the proceedings on such a level as would justify any special allowance in costs; where there is nothing to indicate any time-consuming, research-involving or skill engaging activities as to justify an enhanced award of instruction fees or where there is also no great volume of crucial documents which counsel has to refer to, to prosecute the cause successfully or where the matter was not urgent, a certificate of complexity will not be granted. The mere fact that counsel does research before filing pleadings and then files pleadings informed of such research is not necessarily indicative of the complexity of the matter as it may well be indicative of the advocate's unfamiliarity with basic principles of law and such unfamiliarity should not be turned into an (see *First American Bank of Kenya v. Shah and others, [2002] 1 EA 64*).

The recommended practice when a Taxing Officer is to award an unusually high sum as instruction fee on account of novelty, complexity or deployment of a considerable amount of industry on the part of counsel, is found in *Republic v. Minister of Agriculture and 2 others Exparte Samuel Muchiri W'Njuguna and others [2006] 1 E.A.359* where it was held that;

> The complex elements in the proceedings which guide the exercise of the taxing officer's discretion must be specified cogently and with conviction. The nature of the 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 clarified, 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 for under a different head of costs.

Under Item 1 (1) of the *6th Schedule* of *The Advocates (Remuneration and taxation of costs) Rules,* as amended in 2018, instruction fees are calculated on the basis of the value of the "subject matter," where the value can be ascertained from the pleadings. The expression "subject-matter" is neither defined in *The Civil Procedure Act*, nor *The Civil Procedure Rules*, nor *The Advocates (Remuneration and Taxation of Costs) Rules*. It does not necessarily mean physical property. Depending on the context, it may refer to; (a) in a money suit to the amount claimed and (b) in a suit relating to property to the right or title of the plaintiff alleged to have been infringed. In the latter context, it has reference to a right in the property which the plaintiff seeks to enforce.

The expression "subject matter" includes the cause of action and the relief claimed. It may mean "the primary right asserted by the plaintiff," "the legal issue presented for consideration," or "the cause of action." It is frequently defined as "the right which one party claims as against the other," *Black's Law Dictionary* (4th ed. 1968); *The Cyclopedic Law Dictionary* (3d ed. 1940); *Cyclopedia of Law and Procedure* (William Mack, ed. 1911); William C. Anderson, *Anderson's Dictionary of Law* (T.H. Flood & Co., 1895). It is also sometimes defined as the "cause" or "cause of action." *Black's Law Dictionary*; *Cyclopedic Law Dictionary*; *Bouvier's Law Dictionary* (William Edward Baldwin, ed., Banks Baldwin Publishing Co., 1934); 27 American and English *Encyclopedia of Law* (Charles F. Willaims & David S. Garland, eds., Edward Thompson Co., 1896); *Anderson's Dictionary of Law*.

At common law, the "subject matter" of a suit is understood to refer to the primary right or core legal claim of the plaintiff, as opposed to the underlying facts of a case or the property in relation to which the right springs. Consequently the value of the subject-matter of suit is not necessarily the value of the property in respect of which the suit is filed. When the suit is founded on some claim to or question respecting property, it is the value of the claim or question and not the value of the property which is the determining factor. Just as different legal issues may arise from the same underlying facts, so may they arise out of the same physical property. It follows that claims of a different nature based upon the same physical property would not necessarily be the "same subject matter." It is constituted by the plaintiff's main or primary right which has been broken, and by means of whose breach a remedial right arises. It is the right which one party claims as against the other, and demands the judgment of the court upon.

The underlying dispute between the appellant and the bank was over the Banks's exercise of the mortgagee's power of sale. The appellant engaged the respondent in order to obtain a judicial stoppage of the sale of the mortgaged property that was already afoot. It is trite that mortgages are security interests. At the time of making the mortgage, neither party contemplates a sale of the property. The only intention is to obtain a loan protected with security; repayment of the loan being the principal aim, security the secondary objective. In its simplest form, the mortgage could be understood as an agreement that if the loan were not repaid, the mortgagee would satisfy the debt with the mortgaged property. On the other hand, a mortgagor has various opportunities to cure his or her default before the sale and redeem the collateral. The subject matter of the suit in the sense of "the primary right asserted by the plaintiff," "the legal issue presented for consideration," "the cause of action" or "the right which one party claims as against the other," therefore was the equity of redemption and not a recovery of the land.

Redemption simply means the process by which a mortgage is discharged upon payment of all sums due (see *Re Wallis (1890) LR 25 QBD 176*). The right to redemption exists until that time when sale of the mortgaged property has been confirmed. Once the sale is confirmed, the right to redeem is lost. It is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. Hence the equity of redemption is asserted by way of recovering the unencumbered enjoyment of the property by repaying the mortgage debt in full and the performance of any other obligations which may legitimately be required. The value of the subject matter therefore is the cost of removal of the encumbrance. In the instant case, that would be achieved by the appellant paying off the outstanding loan (US $ 2,587,162) and the costs incurred that far in the steps already taken in the process of realising the security before its stoppage. That became the value of the subject matter of the suit, and not the market value of the property.

The Taxing Officer is expected in addition take into account the importance to the client of the matters in dispute. In the case at hand at stake was the amount outstanding on the loan and that is why when the security is realised and its value exceeds the amount recoverable, the balance is paid to the mortgagor. In essence the mortgagor stands to lose that part of the value of the property, which is necessary to meet the amount outstanding, inclusive of the costs of realisation of the security. The potential loss a mortgagor may suffer in the event of failure to redeem the property is the difference between the market value and the forced sale value of the property, less the outstanding debt and the costs of realisation.

In the instant case, the market value of the property at the time the suit was filed was US $ 13,026,000. In the valuation report of 17th March, 2017 the forced sale value of the property was placed at 40% of the market value, hence in the instant case US $ 5,210,400 at the time of the stopped sale. When this is deducted from the market value, the appellant stood to lose US $ 7,815,600 that the respondent's intervention saved. From this is deducted the debt outstanding which by then was US $ 2,587,162 that eventually became the subject of the consent judgment. The total benefit to the client was thus in the range of US $ 5,228,438.

The Taxing Officer was expected further to take into account the complexity or the extent to which the matter at hand required deployment of a considerable amount of industry on the part of counsel. In this regard this was an ordinary, routine application for a temporary injunction that did not involve matters of novelty or extraordinary complexity, or a considerable amount of industry.

It turns out that whereas the Taxing Officer was alive to only one of the principles and factors which guide taxation of costs, she misconstrued the value of the subject matter and had undue regard to that as a factor guiding the assessment, at the expense of other considerations and thereby made an award that is manifestly excessive as to justify interference. The award was based on an error of principle in failing to balance all the considerations that go into the taxation of costs and also in the assumption that value of the subject matter was the market price of the property added to the amount outstanding on the loan, whereas not.

When the amount awarded is found to have been excessive as a consequence of the Taxing Officer having proceeded on a basis of a fundamental misapplication of the law to the facts, taxation *de novo* will be ordered by an appellate court. A taxation *de novo* should not be ordered unless the following conditions are met; (i) that the original taxation was null or defective; (ii) that the interests of justice require it; and (iv) no injustice will be occasioned to the other party if an order for taxation *de novo* is made. These conditions are conjunctive and not disjunctive. I find that the conditions are met in this case and therefore it is proper that the bill of costs should be remitted to the Taxing Officer for taxation de novo. In the final result, the appeal succeeds. The award is set aside, and the bill of costs is hereby remitted back to the Registrar for taxation. Each party is to bear their costs of this appeal.

Delivered electronically this 9^{th} day of December, 2021

……Stephen Mubiru…………..
Stephen Mubiru
Judge,
9^{th} December, 2021.