**Kassim v Habre International Ltd**

**Division:** Supreme Court of Uganda at Mengo

**Date of Ruling:** 12 July 2000

**Case Number:** 16/99

**Before:** Mukasa-Kikonyogo JSC

**Sourced by:** B Tusasirwe

**Summarised by:** H K Mutai

*[1] Constitutional lsaw – Administration of justice – Court enjoined to administer justice without undue*

*regard to technicalities – Constitution Act 126(2)(*e*).*

*[2] Practice – Taxation – Reference from taxing master to Supreme Court – Factors governing the*

*award of costs – Supreme Court Rules, Rules 104 and 105.*

**Editor’s Summary**

The Respondent, Habre International Limited, successfully sued the Applicants in the High Court for the sum of UShs 70 million being the sum spent on the redevelopment of the suit premises following a fire that had destroyed the premises. The Applicants appealed to the Court of Appeal, which reversed the High Court decision on the ground that the High Court had no jurisdiction to entertain the claim. Habre International Limited then appealed to the Supreme Court, which allowed the appeal and restored the High Court decision. Habre International Limited then filed a bill of costs amounting to UShs 87 470 500 but following taxation by the registrar, this was reduced to UShs 47 992 500 of which UShs 30 million was for taking instructions and UShs 15 million was for arguing additional grounds. The Applicants were dissatisfied with this taxation and brought this reference to a single judge of the Supreme Court under the Supreme Court Rules, Rule 105 primarily on the ground that the amounts awarded under item 3 for instruction fee and item 12 for arguing additional grounds were excessive.

**Held** – A reference on taxation would be entertained either on a point of law or principle or on the ground that the bill of costs as taxed was in all the circumstances manifestly excessive or manifestly inadequate. The principles governing the taxation of costs by a taxing master were that (i) the instruction fee should cover the advocate’s work including taking instructions and preparing the case for trial or appeal, (ii) although there was no rule of law requiring a court to do so, it would be proper to give a slightly higher award to counsel for an appellant, (iii) the taxing master was expected to tax each bill on its merits, (iv) the value of the subject matter had to be taken into account, (v) the taxing master’s discretion was to be exercised judicially and not whimsically or capriciously, (vi) though the successful litigant was entitled to a fair reimbursement, the taxing master had to consider the public interest such that costs were not to be allowed to rise to a level that would confine access to the courts to the wealthy while, at the same time, the general level of remuneration of advocates had to be such as to attract recruits to the profession; *Raichand Ltd v Quarry Services of East Africa Ltd* [1972] EA 162 followed, and (vii) the taxing master had to tax the bill in accordance with the Schedule to the Supreme Court Rules. The taxing master had correctly stated the position in law and had been alive to the principles governing both taxation in general and in the Supreme Court. However, he had erred in finding that the action was complex enough to justify an award of UShs 30 million under item 3 for taking instructions. The issues involved in the suit were clear, involved only one ground and there was no ambiguity. Though the assessment of the instruction fee in the Supreme Court was in the taxing master’s discretion, this was a discretion to be exercised judicially and in the circumstances the award of UShs 15 million under item 12 was excessive. In this instance, costs of UShs15 million and UShs 5 million, respectively, would be substituted as being appropriate and reasonable. Courts of law were enjoined by the Constitution to administer justice without due regard to technicalities. The slight difference in names of the Respondent in the record was not fatal to the award as there was no mistake as to the identity of the parties. No costs should have been awarded to Habre International Limited for the counterclaim as the matter had not been considered by the trial court.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Attorney-General v Uganda Blanket Manufacturers* civil appeal number 17 of 1993

*Bishari v Vitafoam (U) Ltd* civil application number 13 of 1995

*Phemchand Raichand Ltd and another v Quarry Services of East Africa Ltd and others* [1972] 3 EA 162