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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Taxation Reference No. 01 of 2023

(Arising from Miscellaneous Application 03 of 2023)

(Arising from Civil Suit No. 08 of 2015)

10 Ebetu John Henry and 2 Others Applicants

Versus

Etiru Patrick and 11 Others Respondents

15 Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Introduction:

Ebetu John Henry (beneficiary of the estate of the late Enwangu Esegu), Adong Janet (widow and beneficiary of the late Ebwalu Jonathan) and Enwangu Simon (heir and
20 beneficiary of the late Ebwalu Jonathan) are the applicants in this matter. They filed this application by way of a Notice of Motion under Section 98 of the Civil Procedure Act, Cap 71, and Order 50 Rule 8 of the Civil Procedure Rules, for orders that;

- a) The taxing master's taxation ruling arising out of Miscellaneous Application No. 03 of 2022 be set aside.
- 25 b) Costs of this application be provided for.

5 2. Grounds of the application:

The grounds of this application, as set out in the application, affidavit in support, affidavit in rejoinder and supplementary affidavit in support sworn by Ebetu John Henry, the 1st applicant, are briefly that;

- 10 a. The deponent filed Civil Suit No. 08 of 2015 before the High Court, seeking, among other things, a declaration that the defendants trespassed on the applicants' land.
- 15 b. The Court dismissed the Civil Suit No. 08 of 2015 on 31st March 2022.
- 15 c. All through the Court sittings, the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th respondents were personally represented by Mr Ariko Charles of M/s Atigo and Co. Advocates.
- 20 d. On June 26, 2023, the first applicant's lawyers wrote to the Chief Registrar requesting the status of Ariko Charles. *A copy of the letter annexed as "A"*
- 20 e. On 6th October 2023, the Chief Registrar replied to Annexure A saying that they have no record of Ariko Charles of Atigo & Co. Advocates. *A copy of the letter annexed as "B"*
- 25 f. Mr Ariko Charles has never been enrolled and is not entitled to costs and practice in Courts of Judicature.
- 25 g. The respondents filed a bill of costs against the Applicant. *A copy of bill of costs is hereto attached as "B".*
- 25 h. The Bill of costs was taxed at Ugshs. 19,616,000 (Uganda Shillings nineteen Million Six hundred sixteen thousand) which is excessively high. *A copy of Certificate of Taxation is hereto attached as "C".*

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- 5 i. The award of Ugshs. 19,616,000 (Uganda Shillings nineteen million six hundred sixteen thousand), as the taxed bill of costs has no legal justification, and this matter has never been heard.
- j. The award of costs of Ugshs. 19,616,000 (Uganda Shillings nineteen Million Six hundred sixteen thousand) as costs for the bill of costs in Misc. Application
10 No. 03 of 2022 arising from Civil Suit No. 08 of 2015 be set aside on the ground that it is excessively high.
- k. The award of costs was made in disregard of the relevant applicable Laws.
- l. The Taxing Officer's Ruling be revised, set aside and substituted with appropriate amounts.

15 3. Joint affidavit in reply:

Etiru Patrick, Ebitu Geoffrey, Opio George, Okorio Emmanuel, Ejoku Mackay, Ojulong Patrick, Musana Samuel, Dr Okwana Nicholas, Futch Peters, Registered Trustees of the Church of Uganda, Soroti District Land Board and Registrar of Titles are the responents herein.

20 Etiru Patrick who is the 1st respondent upon the joint authority of the 2nd, 3rd, 4th, 5th, 6th, and 7th respondents opposed the application and deponed a joint affidavit in reply. He stated that;

- a. The applicants filed Civil Suit No. 08 of 2015 in this Court, and the respondents individually instructed M/s Atigo & Co. Advocates to represent them, and a
25 defence was filed with respect to the said suit for the seven defendants.
- b. At all times, the said law firm defended the respondents till Civil Suit No. 08 of 2015 was dismissed on 31st March 2022 for being a bad case with non-



5 follow up of the court orders and the suit was considered an abuse of court processes. *-Order annexed as Annexure "B".*

c. The respondents have at all times been represented by M/s Atigo & Co. Advocates to which they gave instructions and not Ariko Charles as claimed by the applicants.

10 d. The applicants sued 12 respondents, seven (7) represented by M/s Atigo & Co. Advocates, who fully paid up the instruction fees individually to defend the suit.

15 e. The applicants filed Civil Suit No. 08 of 2015 in 2015, and the matter has been in court since then until 31 March 2022, which was eight (8) years down the road. The respondents incurred costs in terms of transport for the advocates and respondents, among other costs to which they are entitled.

20 f. The respondents were advised by their lawyers that the taxing master was lenient to the applicants; she allowed and taxed the bill that involved seven (7) respondents at a cost of Ugx. 19, 616,000 /= (Nineteen Million Six Hundred Sixteen Thousand) against the proposed bill of UGX 89,596,000/= (Eighty-Nine Million Five Hundred Ninety-Six Thousand). (*Annexed is the said proposed bill of costs and a certificate of taxation marked as annexures "C" and "D", respectively.*)

25 g. The taxing officer followed the rules of taxation in taxing the said bill of costs, and it is only just and fair that the bill is allowed at that cost.

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h. The respondents pray without prejudice that this Honourable Court exercises its powers to revise the bill of costs upwards considering the proposed bill of costs.

4. Representation:

The applicants were represented by M/s Omongole & Co. Advocates and M/s Atigo & Co. Advocates represented the respondents.

This matter proceeded through written submissions in support of each party's respective cases.

The same has been studied and comprehended and used in determining the issues in this instant application. Counsels are thanked for the effort made in the submissions.

5. Issues:

The applicants' counsel formulated one issue which was adopted by the respondents' counsel. Upon studying the same I find that it clearly suffices in resolving this instant application. That is is;

- *Whether the taxation ruling arising out of Miscellaneous Application No. 03 of 2022 be set aside?*

6. Court's Determination:

This application was brought under Section 98 of the Civil Procedure Act (CPA), which inherently empowers this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.



5 As this application arises from a civil matter then it is trite that the applicants have the singular duty and burden of proof as they are the ones who seek to get a decision from this court in their favour See: Sections 101 and 102 of the Evidence Act, Cap 6.

a) Whether the taxation ruling arising out of *Miscellaneous Application No. 03 of 2022* be set aside?

10 The 1st applicant avers that the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th respondents were represented by Ariko Charles of Atigo & Co. Advocates who is not an enrolled advocate of the High Court of Uganda and not entitled to costs.

The 1st applicant avers that on June 26, 2023, the applicants' lawyers wrote to the Chief Registrar requesting the status of Ariko Charles through **annexure "A"** which
15 was replied to on on 6th October 2023, through annexure "B" to the supplementary affidavit in which they stated that they had no record of one Ariko Charles of Atigo & Co. Advocates.

The applicants' counsel in their submissions reiterated that the respondents are not entitled to any costs since Ariko Charles who represented them was not then a
20 qualified advocate and therefore not entitled to costs pursuant to Sections 64 and 69 of the Advocates Act.

On the other hand, the respondents contend that the respondents have at all times been represented by M/s Atigo & Co. Advocates to which they gave instructions and not Ariko Charles as claimed by the applicants and that they incurred costs in terms
25 of transport for the advocates and respondents, among other costs to which they are entitled.

- 5 The respondents contended that the taxing officer followed the rules of taxation in taxing the said bill of costs, and it is only just and fair that the bill is allowed at that cost and without prejudice; the Honourable Court should exercise its powers to revise the bill of costs upwards considering the proposed bill of costs.

The respondents' lawyers submitted that Ms Atigo & Co Advocates is a firm
 10 constituted by three advocates that is Atigo Hellen, Akello Christine and Kisiki Ben, as per their headed paper and at all times represented the respondents in turns during the trial and on the day the said order dismissing the suit was delivered two Advocates, that is Akello Christine and Kisiki Ben were representing the respondents in court. The respondents' counsel submitted that Ms Atigo and Co Advocates
 15 received instructions to represent the said respondents and diligently prosecuted the said instructions and as such the assertions of the applicants are unfounded and only intended to defeat the respondents from benefiting from the award from this honourable court which attempt is noted by various applications filed by the applicants still manoeuvring around the same point like Miscellaneous Application
 20 No. 61 of 2023 which was withdrawn on a realisation that it had no merit.

b) Resolution:

An application of such a nature was rightly brought in this court under Order 50 rule 8 of the Civil Procedure Rules which stipulates that;

Any person aggrieved by any order of a registrar may appeal from the order to the
 25 **High Court. The appeal shall be by motion on notice.**

The purpose for this application as can be deduced from the parties' pleadings is that one Ariko Charles said to be from M/s Atigo & Co. Advocates is not an enrolled advocate of the High Court of Uganda yet he allegedly represented the 1st, 2nd, 3rd

5 , 4th , 5th , 6th , and 7th respondents in Civil Suit No. 08 of 2015, the consequence of which he is not entitled to costs as per the law cited by the applicants.

The major countering submission of the respondents is that they have always been represented by M/s Atigo & Co. Advocates to which they gave instructions, and not Ariko Charles, as claimed by the applicants.

10 A brief background to the instant application is that the applicants filed Civil Suit No. 08 of 2015 before the High Court, seeking, among other things, a declaration that the defendants trespassed on the applicants' land.

The suit was dismissed on 31st March 2022 and consequently, the respondents filed a bill of costs *vide* Taxation Application No. 56 of 2022 which was taxed by the then
15 Assistant Registrar at Ug. shs. 19,616,000 (Uganda Shillings Nineteen Million Six Hundred Sixteen Thousand Only).

This instant application was then filed for orders to set aside the taxed award for the reason that Mr Ariko Charles who represented the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th respondents was not an advocate and thus not entitled to costs.

20 The 1st applicant in his pleadings averred that on June 26, 2023 the applicants' lawyers wrote to the Chief Registrar requesting the status of Ariko Charles through Annexure "A" which was replied to on 6th October 2023 as per Annexure "B" to the supplementary affidavit, in which the Chief Registrar stated that they have no record of one Ariko Charles of M/s Atigo & Co. Advocates.

25 I have had the occasion to peruse Annexure "A" and Annexure "B" to the supplementary affidavit of the 1st applicant. It is true the same state that Ariko Charles is not known by the enrolling authorities as he was not in their records.



5 The respondents do not oppose Annexure "A" and Annexure "B". I also have no reason to doubt both.

I have further perused the proceedings in Civil Suit No. 08 of 2015 and I have noted that indeed one Ariko Charles did represent the respondents while they were defendants in that case on a number of occasions to mention such on 16.11.201,
 10 10.04.2018, 17.08.2020, 06.03.2019, 12.03.2020, 03.07.2018, 31.08.2018, 16.03.2021 and 27.05.2021.

This factual finding contradicts the respondents' submission vehemently denying that the said Ariko Charles never represented them yet the record to that effect is so self explanatory and succinct.

15 The assertions of the applicant is that by Ariko Charles purporting to represent the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th respondents while not enrolled he not only broke the law but render the respondents not entitled to any costs.

The position of the law in regard to such situation is found in Section 64 of the Advocates Act Cap 267; It provides thus;

- 20 1) No person, not being an advocate, shall pretend to be an advocate, or shall take or use any name, title, addition or description implying that he or she is qualified or recognised by law as being qualified to act as an advocate.
- 2) No person shall take or use any name, title, addition or description implying that he or she holds any legal qualification unless he or she in fact holds that
 25 legal qualification.
- 3) Any person who contravenes any of the provisions of this section commits an offence.

5 By the above provision of the law, not only is the legal profession a close shop but whoever purports to act as an advocate commits an offence.

In this case it is clearly on record that a one Mr Charles Ariko represented the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th respondents in Civil Suit No. 08 of 2015.

Annexure "B" to the supplementary affidavit of the 1st applicant show that the said
 10 Charles Ariko is an advocate as per the records of the Chief Registrar who is the advocate enrolling authority. As a consequence, then Section 69 of the Advocates Act, Cap 267 would invariably come into play. It provides;

**No costs shall be recoverable in any suit, proceeding or matter by any person in respect of anything done, the doing of which constitutes an offence under this Act
 15 whether or not any prosecution has been instituted in respect of the offence.**

Aligning both Section 64 of the Advocates Act Cap 267 and Section 69 of the Advocates Act, Cap 267 to the the factual expose from this instant application, my finding and conclusion would be that the said Charles Ariko who allegedly represented the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th respondents in Civil Suit No. 08 of
 20 2015 on the various dates such as on the 16.11.201, 10.04.2018, 17.08.2020, 06.03,2019, 12.03.2020, 03.07.2018, 31.08.2018, 16.03.2021 and 27.05.2021 was not entitled to costs awarded in Taxation Application No. 56 of 2022 at all. In fact he committed an offence as per the provisions of Section 69 of the Advocates Act, Cap 267 for which he must be held liable and accountable.

25 Conclusions:

For the reasons above, this application is allowed with the following orders issued.

- 5 - The unlawful award as costs of Ug. shs. 19,616,000 (Uganda Shillings Nineteen Million Six Hundred Sixteen Thousand Only) vide Taxation Application No. 56 of 2022 to the said Charles Ariko is set aside.
- 10 - Charles Ariko is ordered to be charged in a criminal offence under Section 69 of the Advocates Act, Cap 267 for acting as an advocate whereas he was not.
- The costs of this application is to be met personally by the said Ariko Charles.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

18th April 2024