THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 284 OF 2020

M/S KAMPALA ASSOCIATED ADVOCATES :::::::::::::::::::::::::::: APPELLANT

VERSUS

AL SHAFI INVESTMENT GROUP LLC :::::::::::::::::::::::::::: RESPONDENT

CORAM:

HON. MR. JUSTICE RICHARD BUTEERA, DCJ

HON. MR. JUSTICE KENNETH KAKURU, J.A.

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

JUDGMENT OF HON MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

The Brief facts

This Appeal arises from execution proceedings at the High Court to recover professional fees from a client. The common thread in this Appeal is Ahmed Darwish Dagher Darwish Al (generally referred to as "Darwish" in this Appeal) who is resident of Abu Dhabi. The Respondent sued Darwish in Abu Dhabi and Uganda for issuing him a cheque (US $ 41,472,820) that was dishonoured. The Appellants on the other hand represented Darwish in two law suits in Uganda; but were not paid their legal fees (both suits taxed variously at Ug Shs 429,289, 384/= and Ug Shs 539,406,884/= total being Ug Shs 968,696,268/=). So both the Appellant and Respondent claim as creditors for professional fees/cost from Darwish. Darwish not having assets in Uganda

both parties to my mind then zeroed on recovery by way of attachment of Darwish's shares in three companies namely M/s Aberdeen Real Estates Ltd, M/s Emirates Africa Link Real Estates Ltd and M/s Magma International Ltd. It would further appear to me that this dispute arose as a result of "*a race to the finish line*" to determine who would get the attachment of the said shares first.

The Respondents armed with their Decree then prepared to execute against Darwish's shares in order to be paid. In the meanwhile, Appellants having had their bill of costs taxed also applied for execution to recover the amount. The Appellants sought to execute against the same Darwish shares and progressed with a court ordered notification of the sale of shares.

This action of sale of shares reeled the Respondents who lodged an administrative complaint with the Principal Judge who decided that the matter be decided by court. The Respondents subsequently filed an Application MA No. 567 of 2020 from which this Appeal emanates. In MA No. 567 of 2020 the Respondents (as Applicant) sought Orders that the present Appellant's Bill of Costs and Certificates derived there from were defective, illegal and barred by law. The Court held in favour of the Respondent and allowed the Respondent to continue with their execution.

The Appeal

The Appellant, now appeals to the Court of Appeal of Uganda against the whole decision in Miscellaneous Application No. 567 of 2020 on the following grounds, namely that: -

"

1. The learned Trial Judge erred in law when she found that the Respondent's Application in Miscellaneous Application No. 567 of 2020 disclosed a cause of action and locus standi;
2. The Learned Trial Judge erred in law when she found that the Respondent had no specific remedy for its grievances.
3. The Learned Trial Judge erred in law in holding that Miscellaneous Application No. 567 of 2020 was not barred by the doctrine of limitation;
4. The Learned Trial Judge erred in law when she disregarded the Appellants preliminary objection under Section 95 of the Civil Procedure Act on the basis of its alleged illegalities;
5. The Learned Trial Judge erred in law when she found that Miscellaneous Application No.567 of 2020 was not barred by the doctrine of *res judicata*;
6. The learned Trial Judge erred in law when she found that issues in respect of connivance did not constitute fraud and could be properly brought by way of a Notice of Motion;
7. The Learned Trial Judge erred in law when she found that the Respondent's Advocate could depone an affidavit in H.C.M.A 567 of 2020;
8. The Learned Trial Judge erred in fact and in law when she relied on a letter written by a Judge, after delivery of the said Court's decision, as justification for an Order made by the court;
9. The Learned trial Judge erred in law when she held that the illegalities of the Respondent dealing with its ex parte application, decree and

advertisement could not be dealt with as preliminary points of law but needed facts to be successfully concluded;

10. The Learned Trial Judge erred in law and fact when she held that the Appellant did not demonstrate that they were dissatisfied with the illegalities of the Respondent;

11. The Learned Trial Judge erred in fact and in law when she found that there was no service of Bills of Costs upon its former Client and that the bills of costs in 2018 were way before the judgment in HCCS 695 of 2017;

12. The Learned Trial Judge erred in law and fact when she held that there were no suits filed by the Appellant to recover its costs and that any suits ought to have been filed by way of plaint and an ordinary suit;

13. The Learned Judge erred in law and fact when she held that issues regarding communications surrounding the service of the bills of costs between the Appellant and its former client do not fall within the advocate-client privilege;

14. The Learned Trial Judge erred in fact and in law when she placed the burden of proof on the Appellant to prove service of the bills of costs;

15. The Learned Trial Judge erred in fact and in law when she found that the Appellant's taxed bills of costs and respective application for attachment and sale by the Appellant was irregular and illegal;

16. The Learned Trial Judge erred in fact and law when she held that the Appellant and its former client connived to deny the Respondent entitlement to execute the decree by attachment and sale of the subject shares;

17. The Learned Judge erred in law making orders that had the effect of setting aside H.C.M.A 14 of 2020, EMA 131 of 2020, H.C.C.S 534 of 2020 and H.C.M.A 684 of 2020;

18. The Learned Trial Judge erred in law and fact when she relied on evidence that had neither been presented at the Trial nor availed to the Appellant;

19. The Learned Trial Judge erred in law and fact when she allowed the Respondent to proceed with execution of its decree despite glaring illegalities and fraud;

20. The Learned Trial Judge erred in law and fact when she failed to properly evaluate the evidence on record thereby coming to a wrong conclusion..."

The Appellant further prayed for reliefs that: -

"

a) Allow this Appeal;
b) Set aside all the findings, the Ruling and Orders of the High Court of Uganda at Kampala [Commercial Division] in Miscellaneous Application No. 567 of 2020 (Arising out of Civil Suit 695/2017) read at the High Court of Uganda at Kampala [Commercial Division] by Her Worship Susan Kanyange on the 22nd October 2020;
c) Declare that the Respondent's Application in Miscellaneous Application No. 567 of 2020 discloses no *locus standi* or cause of action;
d) An order striking out the Respondent's Application in Miscellaneous Application No. 567 of 2020 with costs to the Appellant.

e) Award the Appellant the costs of this Appeal and in the court below..."

Representations

At the Hearing the following counsel appeared in this Appeal. Mr. Fredrick Ssempebwa (SC) and Mr. Brian Kabayiza appeared for the Respondents and Mr. Joseph Masiko and Bruce Musinguzi appeared for the Appellants.

Duty of this Court

This is a first Appeal and this court is charged with the duty of reappraising the evidence and drawing inferences of fact as provided for under Rule 30(1) (a) of the **Judicature (Court of Appeal Rules) Directions SI 13-10.** This court also has the duty to caution itself that it has not heard the witnesses who gave testimony first hand. On the basis of its evaluation this court must decide whether to support the decision of the High Court or not as illustrated in **Pandya v R [1957] EA 336 and Kifamunte Henry v Uganda Supreme Court Criminal Appeal No.10 of 1997.**

Due to the Global pandemic of Covid 19, this court issued directions for lawyers of the parties to address it in written submissions and the Judgment would follow thereafter.

Memorandum of Appeal

Before I address the grounds of appeal I shall start by making some observations on the Memorandum of Appeal in this matter. The Appellant raises twenty (20) grounds of Appeal. A close look at these grounds shows that the said grounds are to a large extent a duplication of each other or reflect arguments in other already existing grounds. This of course is an unacceptable form of pleading and unduly complicates the resolution of the Appeal. Rule 86

(1) of the **Judicature (Court of Appeal) Directions** (S.I. 13-10) [hereinafter referred to as the "Rules of this Court"] provide; -

"...

A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongfully decided, and the nature of the order which it is proposed to ask the court to make..."

In the Appeal of **Mulindwa V Kisubika** CA No. 12 of 2014 the Supreme Court while dealing with Rule 82 (1) of the Supreme Court Rules (which are in pari materia with Rule 86 (1) of the Court of Appeal Rules) held that noncompliance with the Rule may lead to the memorandum of Appeal being struck out. The Supreme Court in Mulindwa Appeal (Supra) held: -

"... The grounds of appeal are set out in the Memorandum of Appeal filed in this Court on the 22nd July, 2014 where the appellant set out 29 grounds of appeal and an Additional Memorandum of Appeal dated 3rd August 2013 where he raised 16 grounds of appeal. Essentially, both documents contain submissions mixed up with what the appellant considers as grounds of appeal. This obviously offends Rule 82(1) of the Supreme Court Rules which provides that:

[" (1) A memorandum of appeal shall set forth concisely and under distinct heads without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the court to make. "]

The appeal would actually be struck out for this reason..."

In that Appeal the court exercised its discretion not to strike out the Appeal because it was filed and argued by the Appellant without counsel.

I am reminded in this regard of the speech of Lord Templeman in **Ashmore V Corporation of Lloyd's** [1992] All ER 486 at page 488; he stated: -

"... It is the duty of counsel to assist the Judge by simplification and concentration and not to advance to advance a multitude of ingenious arguments in the hope that out of ten bad points the Judge will be capable of fashioning a winner..."

This passage is equally apt for grounds of Appeal.

On the other hand, it is worth noting that this Appeal is being determined on the basis of written submissions and the Respondents in their written submissions have distilled from the 20 grounds of Appeal, 4 issues for determination in this matter namely: -

1) Whether the execution process by the Appellant for attachment and sale of their clients shares was illegal for non-compliance with the law particularly Section 57 of the Advocates Act.
2) Whether the execution process by the Appellant for attachement and sale of their client's shares was illegal and an abuse of the process of court ?
3) Whether the preliminary objections made to the Respondent's application in the High Court were valid or relevant ?
4) Who should bear the costs of the Appeal ?

I agree with the approach of the Respondents in raising concise issues. In this matter I find that the grounds of the Appeal may also fall foul of Rule 86 (1) of the Court of Appeal Rules and counsel should take caution when filing memoranda of Appeals to avoid this manner of pleading.

Having said that, I am inclined to exercise my discretion not to strike out the Appeal because of some of the legal issues that are embedded in the some of the said grounds; which can give guidance in disputes such as this one. I shall however cluster the grounds in manner easier for me to address without being repetitive. In this regard I shall address together grounds 1, 2, 3 and 5 (on cause of action); 11, 12, 13, 14, 15, 16 and 19 (on the Bill of costs); 4, 6, 9 and 10 (on fraud and illegalities) and 7, 8, 17, 18 and 20 (on procedure).

Grounds (1, 2, 3 and 5): -

1. The learned Trial Judge erred in law when she found that the Respondent's Application in Miscellaneous Application No. 567 of 2020 disclosed a cause of action and locus standi;
2. The Learned Trial Judge erred in law when she found that the Respondent had no specific remedy for its grievances.
3. The Learned Trial Judge erred in law in holding that Miscellaneous Application No. 567 of 2020 was not barred by the doctrine of limitation;
4. The Learned Trial Judge erred in law when she found that Miscellaneous Application No.567 of 2020 was not barred by the doctrine of res judicata;

Arguments of the Appellant

The submissions of the Appellant on these grounds can be aggregated into five broad arguments.

First, that the Respondent's former client and not the Respondent had the locus standi to contest the Bill of Costs before the taxing master. Counsel for the Appellant submitted that the Respondent was a third party to the matter before the tax master. They contested the finding of the reference Court that the Respondent as decree holder could have locus standi to challenge a taxation and attachment against a third party. In this regard Counsel relied on the decision in **Fakrudin Vallibhai and anor V Kampala District Land Board and Anor** HCCS No. 570 of 2015 and **Black's Law Dictionary** (11th Edition at page 1026) as to what constitutes a cause of action. I shall return to the issue of locus standi later in my Judgment.

The Appellant further argued, that the Respondent was a busy body dealing with issues that only his former client could raise and that the Respondent could not purport to represent a party or a client without its knowledge or consent. In this regard counsel relied on the Constitutional Court Case of **Dr. James Rwanyarare and anor V Attorney General** Const. Petition No 11 of 1997. Counsel argued that the question at hand was who could challenge the taxation of the bill of costs and a suit for the recovery of costs on the grounds of alleged non-service and non-appearance of a party? He submitted that Sections 57 and 58 of the Advocates Act are clear that only the party chargeable or their advocate could launch such a challenge and the Respondent was neither of them. The Respondent was a decree holder in another matter altogether being Civil Suit No. 695 of 2017 whereas the contest taxation in this matter arose from HCCS No. 656 of 2014 which was totally different; and to which the Respondent was not a decree holder.

It was further argued for the Appellant, that the Respondent lacked sufficient interest in the impugned taxation. Counsel argued that even though the

Respondent claimed the right to raise a question of law as to locus standi, nonetheless it is only the proper party that can raise such a question in court and not just anyone. In this regard, the Appellants relied on the cases of **The Attorney General V East African Gold Sniffing** CA No. 155 of 2013 (CA) and **Auto Garage V Motokov** [1971] EA 315.

Secondly, counsel for the Appellant argued that it is only the Appellant who has a court ordered attachment on the contested shares and not the Respondent and therefore only the Appellant would have a cause of action in respect of those shares. Alternatively, even though court found that the Respondent had a right to the contested shares then the issue would be who would have priority of attachment in accordance with Section 51 of the Civil Procedure Act; and that party in this matter would be the Appellant.

Thirdly, counsel for the Appellant submitted that the Reference Judge also erred when she found that the Respondent had no other remedy in law other than to contest the attachment of the shares as they did against the Appellant. It was further argued that the Reference Judge erred when she found that under these circumstances, the Respondent was correct to move court using Section 98 of the Civil Procedure Act (inherent powers); Section 33 of the Judicature Act; and Sections 56; 57 and 58 of the Advocates Act.

Counsel for the Appellant submitted that the Respondent had alternative avenues which included appealing the decision of the Registrar in EMA No. 131of 2020 in MA No 14 of 2020 under Section 62 (1) of the Advocates Act. That Section allows ***"any person"*** affected by an order or decision of the taxing officer within 30 days to Appeal to a Judge of the High Court. Alternatively, the Respondent could also have sought Review under Section 82

of the Civil Procedure Act and Order 46 of the Civil Procedure Rules. This is because the Respondents allege that they had suffered a legal grievance [See **Yusufu V Nokrach** (1971) E.A. 104 and **In Re Nakivubo Chemists (U) Ltd** (1971) HCB 12]. A third option suggested by the Appellant's counsel is to trigger Section 34 (1) of the Civil Procedure Act which allows for all questions arising between parties relating to execution, discharge or satisfaction of a decree to be determined by the court executing the decree but not by separate suit. In this regard I was referred to the decision in **Francis Micah V Nuwe Walakira** CA No. 24 of 1994. However, in order to benefit under this type of Application the Respondent would have had to add their former client.

Fourthly, the Appellant raised a preliminary objection that the Application was time barred by reason of Section 62 (1) of the Advocates Act not having filed the Appeal within 30 days of the Registrar's Order. Counsel submitted that the trial Judge erred when she found that the Respondent was not a party to the impugned taxation and there was no order given that would trigger any grievance on their part and therefore the Respondents did not have the right to Appeal such Orders as if it was a party to the taxation; whereas not. This is because the Respondent for all purposes was challenging the bill of costs and certificate of taxation of the Registrar. It followed therefore that the Respondent had to Appeal within the prescribed time of 30 days; this being substantive law and not a mere technicality. In this regard we were referred to the case of **Uganda Revenue Authority V Uganda Consolidated Properties Ltd** CA No 31 of 2000 (CA) and **Makula International V His Eminence Cardinal Nsubuga Wamala** CA No 4 of 1981 (SC).

Counsel further argued that the Respondent was also time barred in in challenging Orders by the Registrar in MA 131 of 2020 under Section 79 (1)

(b) of the Civil Procedure Act. The said section required that the Appeal had to be filed within 7 days of the order of the Registrar. The Execution Orders in MA No 131 of 2020 were issued in March, 2020 while the Respondent's Application MA No. 576 of 2020 was filed in August 2020 well outside the prescribed time. Furthermore, such orders could not also be challenged under Section 79 of the Civil Procedure Act by a person who is not a party to the appeal; like the Respondent.

Counsel also argued that the reference Judge having found that the Respondent was not party to the Appellant's taxation and recovery of costs suits, it followed that the court should have also found that the Respondent could not have locus standi and a cause of action in this matter.

Fifthly, counsel for the Appellant argued that the Application in MA No. 67 of 2020 was equally barred under the doctrine of Res Judicata with regard to EMA No. 131 of 2020. In this regard counsel relied on the case of **Ponsiyano Semakula V Susane Magala & Ors** CA No. 2 of 1977.

In this regard, counsel submitted that the reference Judge had not been availed an Order of the court and it was erroneous for the reference Judge to insist on being availed the submissions, Rulings or Judgment in the matter. Counsel argued that under Section 2 of the Civil Procedure Act an "Order" is a formal expression of the decision of the court.

Counsel furthermore submitted that the Respondent was a party to the execution proceedings in EMA No. 131 of 2020 and records shows that the Respondent was represented in Court by Mr. Nsubuga Ssempebwa and yet the same counsel is now challenging EMA No 131 of 2020 in HCMA No 567 of 2020.He argued that this offended the Rule of Res Judicata. Counsel further

argued that litigation must be allowed to come to an end and litigants should not be allowed to handle their grievances piecemeal in the courts.

Arguments of the Respondent

The Respondent opposes the Appeal. They however have as I indicated earlier, responded to the grounds of Appeal through 4 issues and may not have therefore approached the Appeal in the same manner as the Appellant has.

The above notwithstanding, the Respondents in relation to the existence of a cause of action and the matter of limitation of time argue that their action was grounded on acts of illegality by the Appellant which they brought to the attention of the court which therefore overrides all issues of pleadings. In this regard were referred to the Supreme Court decision in **Makula International** (Supra).

In relation to a cause of action, counsel for the Respondent submitted that the **Auto Garage case** (Supra) was distinguishable because there was an illegality in that the access to property to be attached by the Respondent was being withdrawn and therefore the Respondent had a right to intervene. The Respondent had determined that the Appellant's Client Ahmed Darwish was part of a scheme not to challenge the "flawed" execution process against it so as to deny the Respondent justice in the suit.

As to the possible alternative remedies for the Respondent, counsel submitted that the Respondent was not a party to the taxation process and therefore could not appeal and or evoke the alternative suggested remedies. Furthermore, the process of Review has limitations in its Application which

were not in the Respondent's favour. So the Respondent could not resort to that procedure.

As to limitation of time in ground number 3, counsel for the Respondent submitted that the matters in issue had not arisen from any other proceedings for which time would then run.

Counsel further submitted that the preliminary objection could not be sustained because of the presence of an illegality proved against the Appellant. Counsel argued that they were also entitled to execute against the Appellant's client's shares which the Appellant and their client were now trying to put away from their reach by way of parallel proceedings.

On the issue of Res Judicata in ground 5, counsel for the Respondent insisted that their grievance had not been handled in any previous suit and so the doctrine of Res Judicata could not apply

Findings and decision

I have considered the submissions of both counsels and authorities considered for which I am grateful.

The Application at the reference court in my experience is not one that is common. I shall paraphrase the said Application and what it sought to achieve. It is filed under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Sections 57, 58 and 60 of the Advocates Act and Orders 52 rules 1 and 2 of the Civil Procedure Rules. It sought Orders that the Respondent's (now Appellant) Bill of Costs and certificates derived therefrom are defective, illegal and barred in law; that the Orders that spring from EMA No. 250 of 2020 and EMA No. 131 of 2020 are null and void; that the

Respondents (now Appellants) are in connivance with the Judgement debtor in Civil Suit No. 695 of 2017 to deny the Applicants (now the Respondents) its entitlement to execute the decree by attachment and sale of the subject shares; and that the Applicant (now Respondent) as Decree holder in Civil Suit No 695 of 2017 proceeds with the execution under EMA No. 120 of 2020.

The thrust of the Respondent's objection is that at the time the Appellants applied to attach Darwish's Shares, they had not filed a suit to recover the costs from him nor had they obtained a decree against which the execution could be levied. Counsel for the Respondent repeatedly argued that the objective of the appealed application was to bring to the attention of the trial court an illegality / irregularities perpetuated by the Appellants and once such illegalities are brought to the attention of the court this itself overrides all pleadings (**Makula International Case** Supra cited) and such an Application can be brought at any time.

On the other hand, it is the case of the Appellants, as preliminary points of law, that the Respondents had no *locus standi* to have brought the application which in any case is *Res Judicata* and time barred as well. Furthermore, the actions of the Respondent are nothing more than that of a busy body which objections should have raised by their client Darwish who would lose his shares in his companies; but were not.

It is the case for the Appellants that the Respondents are nothing more than busybodies who this Court should ignore. A busybody is *"...one who officiously*

concerns himself with the affairs of others; a meddling person. Related Terms: affair, affect, concern, himself, meddling, officious..."[1]

Lord Denning in the **City of London Council, Ex Parte Blackburn** [1976] 3 All ER 184 did refer how the courts should regard busybodies. He held that court: -

"... will refuse ... a mere busybody who is interfering in things which do not concern him..."

It has equally been argued that if the purpose of the Respondents were to Appeal the taxation and attachment of the Registrar then the Respondents were time barred.

In respect of Appeals from Registrars, Section of the 79 Civil Procedure Act provides: -

"Limitation for appeals

(1) *Except as otherwise specifically provided in any other law, every appeal shall be entered—*

(1) *...*

(2) *within seven days of the date of the order of a registrar, as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed..."*

There is a proviso in the section that the appellate court for good cause may still admit an appeal from an order of a registrar that is filed out of time.

[1] See http://www.easylawlookup.com/Legal-Dictionary/Busybody/_easylookup.blp?site=easy&dictitem=busybody&data=abccod2

These are all interesting scenarios that are being played out by the Appellant to advance their Appeal. However, to my mind it is trite law and practice that parties are bound by their pleadings and this Appeal arises from a motion which is grounded on totally different provisions of several laws. These are Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Sections 57, 58 and 60 of the Advocates Act and Orders 52 rules 1 and 2 of the Civil Procedure Rules. Section 98 of the Civil Procedure Act and Section 33 of the Judicature Act appear to be the main procedural sections. It is from these provisions that I will concentrate.

Section 98 of the Civil Procedure Act provides for the inherent powers of court and reads: -

"...Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court..."

Section 17 of the Judicature Act in respect of the High Court reechoes the same criteria for the exercise of inherent powers and reads: -

"...With regard to its own procedures and those of the magistrate's courts, the High Court shall exercise its inherent powers ***to prevent abuse of the process of the court*** *by curtailing delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice..." (emphasis mine).*

Section of 33 of the Judicature Act provides: -

"...The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided..."

It is the case for the Respondent that the issue before the trial Court which is the subject of this Appeal is the legality of the purported attachment of a client's assets in purported satisfaction of an advocate–to-client Bill of Costs without compliance with the law relating to attachments. The Respondent also faults the Appellants for carrying out the purported attachment in circumstances that indicated an intention of a scheme with the client and other counsel to defeat justice. In this regard, the Respondent argues that the Appellant sort to attach the shares of their client without having filed a suit to get judgment in accordance to Section 57 of the Advocates Act or even to have filed a suit at all in order to secure a decree. In this regard court was referred to the cases of **J B Byamugisha t/a Byamugisha and Company Advocates Vs National Social Security Fund** Misc. Cause No. 25/27 and 28 of 2011.

Section 57 of the Advocates Act provides as follow: -

"...Action to recover Advocates costs

(1)Subject to this Act, no suit shall be brought to recover any costs due to an advocate until one month after a bill of costs has been delivered in accordance with the requirements of this section; except that if there is probable cause for believing that the party chargeable with the costs is about to quit

Uganda, or to become a bankrupt, or to compound with his or her creditors, or to do any other act which would tend to prevent or delay the advocate obtaining payment, the court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence a suit to recover his or her costs and may order those costs to be taxed.

(2) The requirements referred to in subsection (1) are as follows—

(a) the bill must be signed by the advocate, or if the costs are due to a firm, one partner of that firm, either in his or her own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and

(b) the bill must be delivered to the party to be charged with it, either personally or by being sent to him or her by registered post to, or left for him or her at, his or her place of business, dwelling house, or last known place of abode,

and where a bill is proved to have been delivered in compliance with these requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill (which shall be presumed until the contrary is shown) to be a bona fide bill complying with this Act..."

Secondly, the impugned bill of costs was never served on Mr. Darwish as required by law. Counsel for the Respondent further argued that this being the law, it did not matter that Mr. Darwish did not contest these violations.

Now is the Respondent a busybody; that is one who officiously concerns himself with the affairs of others? I find not. The Appellant and Respondent have been part of a multiplicity of cases on the same subject matter in the Courts (HCCS No. 656 of 2014; HCCS No. 695 of 2017 and their attendant

Applications like MA No. 14 of 2020 and much later HCCS No. 534 of 2020 a summary suit). It would therefore not be just and equitable for this Court to sideline the Respondents.

The real question that would have resolved the issue of costs and attachment is whether the Appellant had followed the correct procedure to have them taxed and certified and thereafter pursued by way of attachment of shares. If the answer to that question is yes, then certainly the Respondents could be properly regarded as busybodies. He who comes in equity must come with clean hands. In this Appeal, the Appellant in all its arguments has not to my mind answered that question in the affirmative. It appears that there was a slip by the Appellant in the procedure at the time they pursued their costs and they have not denied that. This Appeal therefore has nothing to do with the existence or not of a cause of action. I agree with the Respondent that this be distinguished.

At its core, this is a simple matter, it is about what Advocates do all the time when pursuing Advocate/Client Bill of Cost when they are not paid. All they had to do was comply with Section 57 of the Advocates Act and be guided by the jurisprudence in the case of **J B Byamugisha t/a Byamugisha and Co Advocates** (Supra). I agree with counsel for the Respondent that the Appellant subsequently realized this slip in procedure and tried to rectify it about six months later under a summary suit HCCS No. 534 of 2020. On the ground of the absence of a court decision under Section 57 of the Advocates Act, I further agree with the reference Judge that the Appellant's original attachment of their client's shares by way of execution for costs was irregular and illegal. This Court shall not look the other way because Darwish has not contested the flawed process but someone else has. Of course the Appellant

having subsequently rectified this slip can reapply for attachment with the proper documentation and orders. Counsel for the Appellant raised an alternative argument of determining the priority of attachment under Section 51 of the Civil Procedure Act. The section provides: -

"...Where assets are held by any court and more persons than one have, before the receipt of those assets by the court, lodged applications in court for the execution of decrees for the payment of money issued against the same judgment debtor and have not obtained satisfaction of the decrees, the assets, after deducting the costs of realisation, shall be distributed among the decree holders in accordance with the priorities of the lodging of their several applications; but where any property is sold subject to a mortgage or charge, the mortgagee or encumbrancer shall not be entitled to share in any surplus arising from that sale..."

Here counsel for the Appellant may have a point but still that is for the execution Court and not this Court to preside over.

The above in my view is sufficient to dispose of the whole Appeal without delving into the other grounds.

Final Result

This Appeal stands dismissed and the decision of the reference Judge is upheld. In this Appeal I would also make the following consequential Order. In line with the provisions of Section 33 of the Judicature Act to bring litigation to a close and pursuant to the powers vested in an Appellate Court under Section 80 of the Civil Procedure Act this dispute on costs and attachment is remanded back to the court that issued the decree to handle the issue of execution in line with Section 51 of the Civil Procedure Act.

The costs of this Appeal go to the Respondent.

I so Order.

Dated at **Kampala** this.....11th.....day of .....Aug..... 2021

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HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

THE REPUBLIC OF UGANDA

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Hon. Mr. Justice Geoffrey Kiryabwire; JA.

JUDGMENT OF JUSTICE RICHARD BUTEERA; DCJ

I have had the benefit of reading in draft the Judgment of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA.

I agree with the decision and the reasons he gives for dismissal of the appeal.

I also agree with the orders he proposes.

As Justice Kakuru, JA agrees, the Court's orders shall be as proposed by Hon. Mr. Justice Geoffrey Kiryabwire, JA.

Dated at Kampala this ..11th.. Day of ...Aug..... 2021.

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Richard Buteera

DEPUTY CHIEF JUSTICE

THE REPUBLIC OF UGANDA

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M/S KAMPALA ASSOCIATED ADVOCATES..... APPELLANT

VERSUS

AL SHAFI INVESTMENT GROUP LLC.....RESPONDENT

CORAM: HON.MR. JUSTICE RICHARD BUTEERA, DCJ

HON. MR. JUSTICE KENNETH KAKURU, JA

HON.MR. JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGEMENT OF JUSTICE KENNETH KAKURU ,JA

I have had the benefit of reading this draft ,the Judgment of my learned brother Hon Kiryabwire JA .

I agree with him that this appeal has no merit for the reasons he has set out in his judgement .I also agree with the orders he has proposed. I have nothing else to add.

Dated at Kampala this .....11th.....day of .....Aug.....2021

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Kenneth Kakuru
Justice of Appeal