

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0481-2006

(Appeal from HCT-00-CC-MC-0004-2006
and arising from HCT-00-CC-CS-0466-2005)

Uganda Electronics & Computer Ltd

Appellant

Versus

Kituuma-Magala & Co. Advocates

Respondent

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The appellant was the plaintiff in the head suit. It retained the respondent, a firm of advocates to handle at some stage, the case for the plaintiff. It contends that this was at agreed lump sum. The respondent on the other hand, filed a notice of motion, applying for leave to commence a suit to recover its fees and costs from the appellant, and that the advocate/client bill of costs be taxed, among other relief sought. At the hearing of that application, the appellant objected to the taxation of the bill of costs, contending that it was not due, as they had agreed upon a lump sum to cover the fees for the respondent. The Taxing Master rejected this objection and made a decision to tax the advocate/client bill of costs filed by the respondent, and it is that decision, that the appellant now appeals from. The respondent bill of costs remains untaxed to date, and the rest of the application, vide HCT-00-CC-CS-0466-2005, has not been heard and determined.
2. I heard the appeal on 16th August 2006 and dismissed it with costs, and now proceed to provide the reasons for my decision.
3. The appellant, on the appeal, contends that the decision appealed from was wrongly arrived at, and is bad in law as it was against the evidence adduced by the appellant.

4. Mr. Stephen Mwandha, learned counsel appearing for the respondent, raised what he referred to as three points of law. He contended that this appeal was premature as the bill of costs in question had not been taxed as yet. Secondly that there was no notice of appeal to signify the commencement of this appeal. And thirdly, this appeal was time barred, as the ruling was delivered on 8th May August 2006 and this appeal was filed on 6th July 2006, contrary to Section 79(b) of the Civil Procedure Act.
5. I will take the final point raised by Mr. Mwandha first, as it is capable of bringing this matter to a close. Mr. Francis Katabalwa, learned counsel appearing for the appellant, submitted that this appeal was in time, as the appellant had shown it had received the proceedings and decision of the taxing master on 29th June 2006. Time must start from the date the proceedings were available to the appellant in accordance with Section 79 of the Civil Procedure Act.
6. I think it is useful, at the outset, to set out the provisions of Section 79 of the Civil Procedure Act. It provides,
 - ‘(1) Except as otherwise specifically provided in any other law, every appeal shall be entered—
 - (a) within thirty days of the date of the decree or order of the court; or
 - (b) within seven days of the date of the order of the 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.
 - (2) In computing the period of limitation prescribed by this section the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.’
7. Section 79 above is a general provision of limitation with regard to appeals but has no application where some other law has provided specifically for the period within which appeals should be lodged. This is clearly so, with its opening words, ‘*Except as otherwise specifically provided in any other law,*’. It has no application where another law deals with this issue. And in turn, subsection (2) thereof, applies only in respect of cases governed by subsection (1) of the same section. This is evident from its opening words, ‘*In computing the period of limitation prescribed by this section,*’.

8. The period within which this current appeal has to be lodged is provided for by Section 62 of the Advocates Act, Chapter 267. It provides,

‘(1) Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.’
9. The appeal in this case had to be lodged within 30 days of the decision of the taxing officer as it is provided for in Section 62(1) of the Advocates Act. The appeal was lodged long after 30 days had expired. It was out of time. No leave to file it out of time was sought by the appellant. The appeal is therefore time barred. The appellant can not call in aid, Section 79(2) of the Civil Procedure Act, as it is not applicable to matters not governed by Section 79 (1) of the Civil Procedure Act, such as the one before me.
10. As the appeal was incurably incompetent, for being out of time, I dismissed it with costs to the respondent. It is unnecessary to consider the other two matters raised by Mr. Stephen Mwandha.
11. For the benefit of the appellant, I take the liberty to draw its attention to the provisions of Sections 50 and 51 of the Advocates Act. It is possible to for an advocate and a client to reach agreement with regard to the sum of money to be paid for professional services rendered or to be rendered by an Advocate. And such an agreement on fees would not be subject to taxation by virtue of Section 54 of the Advocates Act. That agreement to take effect must be in writing, signed by the person or persons to be bound by it, and contain a certificate signed by a notary public certifying that the contents of the agreement were explained to the person bound by it.
12. The agreement that the appellant put forth in its objection before the taxing officer, and on this appeal, is not in compliance with Section 51 of the Advocates Act, and may, therefore, be unenforceable.

Signed, dated and delivered at Kampala this 23rd day of August 2006.

FMS Egonda-Ntende

Judge

