

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

HCT-00-CC-CS-92-2008

BITANGARO & CO. ADVOCATES.....PLAINTIFF

VS

EMMANUEL KATTO.....DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE ANUP SINGH CHOUDRY

R U L I N G

(Advocate seeks to enforce fees without a bill of cost or Agreement. Whether any cause of action Order 6 Rule 30)

This is a claim brought by a firm of Advocate for their Professional fees in the absence of a bill of costs or agreement to pay a fixed fee. The action is brought on a cheque issued by a third party. The claim is for US\$ 225,000. The period during which these fees were incurred is not pleaded.

The action is based on a dishonoured cheque No. 00025 for the sum of \$150,000. The cheque No. 00026 in the sum of \$75,000 was undated and blank and never presented for payment. Both cheques were issued by Ascot Associate Limited on a bank in London. The dishonoured cheque was dated 11th October 2003 over 5 years ago. The name of the signatory on the cheque is not stated. It was issued by a company in London that is non-existent.

Mr. David Nambale learned counsel for the Defendant submitted that for the Plaintiff to show cause of action against the Defendant they had to show that there was a bill of costs delivered and taxed, or that there was an agreement to pay a fixed sum and the cheque if issued in consideration of the bill or agreement and if dishonoured would give rise to a cause of action. The cheque issued by a third party could be for any number of reasons and not necessarily for fees and does not therefore support existence of a Solicitor client retainer.

Mr. David Nambale made a preliminary objection on a point of law under order 6 Rule 30 to strike off the claim as showing no cause of action because there is no bill of costs or agreement and that the action is based on a bounced cheque issued by a third party.

The Plaintiff's learned Counsel Mr. Simon Tendo Kabenge did not challenge the points raised by the Defendant's Counsel under Order 6 Rule 30 but submitted that this was case of special interest of the parties. I fail to understand these submissions when the parties have no privity of contract or the Defendant any interest in the cheque.

Mr. Kabenge contends that the action was brought on a dishonoured cheque. In my view the cheque was not issued by the Defendant and does not merit any cause of action against the Defendant.

Mr. Kabenge further contends that the Plaintiff was entitled to sue on the negotiable instrument because he submits that the negotiable instrument is a contract between 2 parties and so an agreement by the Defendant to pay Professional firm of Lawyers a specific and agreed amount. It is common place for an advocate to agree a fee with the client so that the client knows the service rendered by the Advocates.

The Court should therefore according to Plaintiff's Counsel allow evidence to be adduced on consideration not pleaded and that it would be premature if this was not allowed before scheduling.

Mr. Kabenge also contends that issue of Advocate/client bill does not arise in this case and that it arises where the parties have not agreed on a figure or where the Professional has made a demand for fees not yet established or taxed and client refused to pay. Advocate Act can

then come into operation but in this case both the events have been over taken by circumstances.

I do not accept that a negotiable instrument is evidence of contract between the 2 parties and that would be wrong interpretation of law. The question of any consideration on cheques issues by 3rd party does not arise particularly if the Defendant is not a party to the cheque and which in any event may be time barred and/or fake as it was paid by a defunct company.

For Advocate to bring any action against their client for fees, they must first establish that they have a retainer and that a bill of costs was delivered and taxed or that there was an agreement for fixed fees.

It would be conduct unbecoming an Advocate to demand fees from a client without rendering a proper bill of costs and/or agreement.

Mr. Kabenge Counsel for Plaintiff admits in his submission that the Advocates Act is invoked in circumstances where there is no agreement or demand not established or fixed and disputed by the client. This is the precise point which the learned Counsel for the Defendant was making in support of his submission to strike off the claim as showing no cause of action under Order 6 Rule 30. The Plaintiff's cause of action on the cheque should have been against Ascot Associate Limited. I find Defendant's Counsel's submissions rather convoluted and prefer submission on behalf of the Defendants. The claim is dismissed under Order 6 Rule 30 with costs.

Anup Singh Choudry

J u d g e

26/02/2009