

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS CAUSE NO 25/27 AND 28 OF 2011
ARISING FROM HCCS NO 1455 OF 1998**

JB BYAMUGISHA]

T/A BYAMUGISHA & COMPANY ADVOCATES]..... APPLICANT

VS.

NATIONAL SOCIAL SECURITY FUND]..... RESPONDENT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA

RULING

This ruling arises from a reference by the Registrar of the Commercial Court Division for directions as to her jurisdiction. The background of the reference is that on the 7th of September, 2011 the Applicant Joseph B Byamugisha trading as J.B. Byamugisha & Company Advocates applied to the Registrar of the Commercial Court Division under sections 55, 57 and 60 of the Advocates Act, section 65 (3) of the Value Added Tax Act, rule 10 (1) of the Advocates (Remuneration and Taxation of Costs) Rules and order 52, rules 1 and 3 of the Civil Procedure Rules for orders that the Applicants Advocate/Client bill of costs be taxed. It is also for orders that the Respondent pays interest to the Applicant on the taxed and allowed amounts for instruction fees, drawings, perusals, correspondence, attendances and disbursements at the rate of 15% per annum from the 12th of July, 2011 until payment in full. For orders that the Respondent pays penalty interest on the taxed and allowed bill in accordance with section 65 (3) of the Value Added Tax Act cap 349 to the Applicant with effect from the first of August, 2011 until payment in full. Lastly for the Respondent to pay costs of the application. The Respondent opposed the notice of motion and its affidavit in reply was filed on the 21st of September, 2011.

The record shows that on the 19th of October, 2011 the parties appeared before the Registrar. In the proceedings the Registrar asked the Respondents Counsel whether she conceded to any
Decision of Hon. Mr. Justice Christopher Madrama

item whereupon she indicated that she conceded to item "A". Item "A" seeks an order that the Advocate Client's bill of costs be taxed. This later became contentious hence reference to a Judge for directions.

The application was argued and the ruling of the Registrar thereon is dated 4th of November 2011. The Registrar ruled in favour of the Applicant. By letter dated 14th of November, 2011 and addressed to the Applicant's lawyers, the Respondent, National Social Security Fund, sought adjournment of the taxation of the bills of costs to facilitate negotiations and get the necessary approvals from the management of NSSF. Thereafter the Registrar heard submissions on the bill of costs and her ruling on preliminary objections on the issues arising from the Client/Advocate bill of costs is dated 6 December 2011. The matters on which she ruled were (a) whether NSSF should have been given statutory notice and (b) whether the matter should be referred for mandatory mediation. Her ruling on the above questions is as follows:

"It is clear there is dishonesty on the part of NSSF. Last time these issues did not come up, and NSSF conceded to the fact that the bill should be taxed. To come up with further objections is a sign of dishonesty. If the taxation of the Bill of costs were to be treated as an original suit for purposes of statutory notice and mandatory mediation, then we would be losing the backlog battle.

I don't think, and this is my ruling that the legal requirement to give statutory notice and to mandatorily refer suits for mediation covers taxation of bills of costs. The objections are overruled. Taxation should proceed."

She further indicated that she would deliver her ruling on 10 January 2012 and directed that the Applicant's submissions be on record by 13 December 2011 and the Respondent's reply by the 20th of December 2011. Rejoinder by applicant was to be by the 28th of December 2011. The above proceedings are dated 6th of December 2011. There was a lapse in the filing of written submissions. The Respondent put in written submissions on 31st of January 2012 and additional supplementary submissions on 2nd of February 2012. In the letter dated 16th January 2012 Kasirye, Byaruhanga and Company Advocates notified the court that they had been given instructions to handle the controversy. In another letter also dated February 16, 2012 the lawyers of NSSF wrote to the honourable Registrar of the court and said:

"The Applicants sought and were subsequently granted leave by your Worship, to tax Advocate Client bill of costs against the Respondent. Further orders were sought in the notice of motion including:

(i) That the Respondent pays interest on the taxed instruction fees.

(ii) That the Respondent pays penal interest on the allowed VAT under section 65 (3) of the Value Added Tax Act cap 349.

Following orders made by your Worship, the parties filed and exchanged written submissions which now await your ruling.

There is however a serious question of law which was not brought to your attention by the previous Counsel which we consider prudent and imperative to raise at this stage;

Under section 57 of the Advocates Act cap 267, which provides for actions to recover Advocates costs, there is no jurisdiction conferred on the Registrar, as taxing officer, to tax Advocate Client Bill of costs. Under this provision of the law, an Advocate can only Institute a suit by way of plaint to recover costs. This legal position was pronounced by honourable justice Geoffrey Kiryabwire in the case of Kibuuka Musoke and Co versus the Liquidator of African Textile Mills Ltd High Court civil appeal number 6 of 2006 [a copy is enclosed for ease of reference].

It should also be observed that there is no jurisdiction conferred upon the Registrar, as taxing officer, under section 65 (3) of the Value Tax Act cap 349, to impose penal interest. This is the preserve of the Commissioner General, Uganda Revenue Authority under section 66 (6) of the Value Added Tax Act cap 349.

We therefore respectfully wished to opine that by granting the orders sought for in the three motions above, your worship assumed jurisdiction in contravention of the law.

With due respect to your honour, we are of the considered view that the three pending tax matters ought to be referred to a Judge of the High Court for a decision or direction under section 62 (2) of the Advocates Act cap 267. ... "

When the matter was referred to me I requested for address by Counsels for both parties before I could deal with the reference. The parties consequently appeared before me on the 16th of May 2012.

Learned Counsels Andrew Kasirye represented Respondent while learned Counsels Masembe Kanyerezi and Albert Byamugisha jointly represented the Applicant.

When the parties appeared for the address to the court, learned Counsel Masembe objected to the procedure on points of law. He contended that the parties were not properly before court by way of an appeal but were informally addressing the court. Secondly as far as the reference is concerned learned Counsel gave a background thereof. As far as the application for taxation of Advocate/Client Bill of costs is concerned, the Registrar had already ruled on the points raised in the reference. Consequently the Registrar on those points was *functus officio*. In other

Decision of Hon. Mr. Justice Christopher Madrama

words the Registrar could not refer the matter where she had ruled to a justice of the High Court. Counsel submitted that the reference is intended to be an appeal and is a disguised appeal because the very questions being asked for the Judge to revisit have already been decided. They are points that should have been taken on appeal and no appeal has been preferred.

Learned Counsel further referred to the merits of the notice of motion decided by the Registrar and contended that there is a distinction between an action to recover costs and taxation of Advocate/Client bill of costs. The foundation of the reference is a letter from the Respondent's Advocates.

In reply learned Counsel for the Respondent Counsel Andrew Kasirye disagreed with the interpretation of section 62 (2) of the Advocates Act by his learned colleague. He further disagreed that the court was *functus officio* and submitted that the provision should not receive a narrow construction. The expressions used in the section apply to any matter arising out of taxation. Secondly he submitted that where there is an illegality manifest on the face of the record, it can be raised at any stage. He contended that the Registrar can refer a matter at any stage even before she gives a ruling. It is a matter arising out of the taxation. **He relied on the case of Makula International versus Cardinal Nsubuga [1982] HCB at page 11.** An illegality once brought to the attention of the court overrides any questions of pleadings including any admissions made therein. He further relied on the case of **Mercantile Credit Ltd versus Hamblin [1964] 1 ALL ER 680.** The basis of the objection of learned Counsel for the Respondents is section 57 of the Advocates Act. He submitted that under the section taxation cannot proceed without an action filed for recovery of costs in cases of Advocate/Client Bill of costs. Such an action is preceded by service of the Advocate/Client bill of costs within the time stipulated therein. He contended that this went to jurisdiction of the Registrar. He therefore disagreed that the only course of action for the Respondent was to appeal. Learned Counsel agreed that the section for taxation is section 58 and He wanted to know what happens if the two sections are inconsistent and incompatible sections? The application should be struck out and another application filed if necessary. The submissions of Counsel for the Applicant were based on sections 55, 57 and 60 of the Advocates Act. Discretion to impose tax under the VAT Act is vested in the Commissioner General and the Registrar has no power to impose such tax.

In rejoinder learned Counsel Masembe submitted that a distinction should be made between actions to recover costs and other proceedings for taxation of costs. He agreed that section 57 of the Advocates Act deals with actions for recovery of costs. However such an action can only be brought after taxation of costs. In other words an Advocate can bring a summary suit to recover the amount taxed against the Client. Under section 1 (n) of the Advocates Act, a suit has the same meaning as in the Civil Procedure Act. Section 60 of the Advocates Act, deals with

the taxation and is distinct from suits for recovery. A certificate is obtained from taxation before filing a suit. Rule 10 of the Advocates Remuneration and Taxation of Costs Rules was made pursuant to section 60 of the Advocates Act. Finally learned Counsel referred to two judgments namely the case of **Kibuuka Musoke versus Liquidator of African Textile Mills High Court civil appeal number 6 of 2006** and **Sharma v Uhuru Highway Development Ltd [2001] 2 EA 530**.

In the case of **Kibuuka Musoke and Co.** (supra) the High Court held that no suit shall be brought to recover an Advocate/Client Bill of costs until after one month upon the delivery of the Bill of costs in accordance with the requirements of section 57. This section deals with proceedings for recovery of costs. Application for recovery of costs ought to be brought by way of the plaint under section 57 of the Advocates Act. In a suit for recovery of costs, the taxing officer has no jurisdiction. On the other hand the taxing officer may be moved under regulation 10 of the Advocates (Remuneration and Taxation of Costs) Regulations which provides for taxation of costs as between Advocate and Client on application of either party. The taxing officer may tax costs as between Advocate/Client without any order for that purpose, upon the application of the Advocate or the Client. The court concluded that the provision does not deal with the recovery of costs but only with taxation of cost the result of which could be the basis of a suit for recovery of costs. In the second case of **Sharma versus Uhuru Highway Developments Ltd** (supra) the Court Of Appeal of Kenya made a distinction between an action to recover costs and an application for taxation of costs between Advocate/Client provided for in regulation 13 of the Advocates (Remuneration) Order. They noted that the provisions for recovery of costs are not in conflict with the provision for taxation of costs.

Lastly Counsel concluded that the Registrar is taxing a bill which one day may be used in an action for recovery of costs. Learned Counsel further noted that the case of **Makula International** (supra) is inapplicable because one cannot approach the court wrongly and be allowed to raise points of law.

I have carefully considered the matter before me and listened to the spirited submissions of both Counsels. I will start with the question of whether the reference was properly brought before a Judge of the High Court. The contention of learned Counsel for the Applicant Counsel Masembe is that the Registrar was *functus officio* and had no power to refer any matter to a Judge under section 62 (2) of the Advocates Act. Section 62 (2) of the Advocates Act provides as follows:

"If any matter arising out of a taxation of a bill of costs appears to the taxing officer proper for the decision of a Judge of the High Court, he or she may on his or her own motion refer the matter to such a Judge who may either dispose of the matter or refer it back to the taxing officer with such directions as the Judge may think fit to make."

Decision of Hon. Mr. Justice Christopher Madrama

Learned Counsel for the Respondent submitted that no restrictions should be put on the language used in the provision. On the other hand Counsel Masembe submitted that the questions for reference were matters which had been ruled upon by the Registrar rendering her *functus officio*. I have carefully considered the above provision. The first ingredient of the provision is that there has to be a matter arising out of a taxation of a bill of costs. Such a matter has to appear to the taxing officer to be proper for the decision of a Judge of the High Court. Consequently, it is upon the taxing officer who thinks that the matter appears to be proper for decision of the Judge to refer the matter. The time within which to refer the matter is not very material except that it has to be before the registrar makes any decision in the relevant matter. This may be any time before ruling or judgment. The registrar may refer any matter arising even during the preparation of her ruling. Secondly, reference is at the motion of the taxing officer. In other words it is not at the motion or instance of the parties. Last but not least the provision gives the Judge power to refer the matter back to the taxing officer with directions or dispose of it as the Judge deems fit.

Consequently, it is upon the Registrar to refer any matter which appears to be proper for directions to the Judge. No restriction should be imposed on the wording of the provision. I agree with learned Counsel for the Respondent that it cannot be construed narrowly. It is wide enough to refer to any matter arising out of the taxation and which is fit for the decision of the Judge as determined by the registrar before he or she delivers any ruling or makes a decision on the issue. What is material is that it has to be in his or her opinion or his or her decision to refer the matter to the Judge for directions or decision. She may be wrong and that is a matter for the Judge to decide. Being unnecessary to refer the matter to the Judge cannot vitiate the reference *per se*. The way this matter was commenced was at the instance of the Respondent's lawyer who wrote a letter dated February 16, 2012. In order to establish the propriety of the reference, it would be necessary to establish whether the reference complied with the regulations dealing with references.

The rules which deal with references are the Advocates (Taxation of Cost) (Appeals and References) Regulations Statutory Instrument 267 - 5. The regulations are made under section 62 of the Act. Regulation 2 defines a "reference" to mean a reference to a Judge of the High Court made with the consent of the parties under section 62 (3) of the Act. It is clear from the objections of the Applicants Counsel that there was no consent to refer the matter to the Judge by any of the parties. Under regulation 6 references by consent of the parties are supposed to be in writing. Rule 6 provides as follows:

"6. Written consent for reference.

(1) The consent of the parties to a reference shall be in writing, signed by the parties or their Advocates, and shall set out in paragraphs numbered consecutively the matters in dispute.

(2) If the taxing officer, on being furnished with the written consent, decides to refer the matter to a Judge, he or she shall endorse the consent accordingly."

In this case there was no reference to taxation by any of the parties in terms of section 62 (3) of The Advocates Act. It follows that the reference could only have been reference by a taxing officer and not the parties. A reference by a taxing officer is provided for by section 62 (2) of the Advocates Act. Under that provision it is at the discretion of and on the motion of the taxing officer to refer any matter he or she deems fit to the Judge and such reference is not at the instance or motion of any of the parties. Reference by the taxing Officer is provided for by regulation 5 which provides as follows:

"5. References by taxing officer

When, under section 62(2) of the Act, a taxing officer on his or her own motion refers any matter arising out of the taxation of a bill of costs to a Judge of the High Court, no person affected by the reference shall have any right to be heard either in person or by Advocate before the Judge, but the Judge may, in his or her discretion, hear any person so affected or his or her Advocate."

Where a matter is referred by the taxing officer to the Judge, the parties have no right of audience except as directed by the Judge. I have carefully gone through the record and established from the handwritten note of the Registrar dated 30th of April 2012 what she referred. She wrote as follows:

"This matter came before me for taxation. Counsel for the Respondent has raised the issue of jurisdiction as per attachment. I hereby refer the file to you my Lord for directions."

At this stage, it would have been sufficient for me to indicate that there was no proper reference by the Registrar since the reference has to be on the motion of the registrar and not the parties except if it is by consent and with the endorsement of the Registrar. However, when the matter came to me I was not apprised of the law when I requested the registrar to inform the parties to address me on the reference. As we will later note this in itself is not prejudicial since the court retains the jurisdiction and discretion to request the parties to address it on any reference by the registrar. I was extensively addressed on the provisions of section 62 (2) of the Advocates Act and there is no other writing or any indication as to what the Registrar seeks direction on other than the letter of the Respondent's lawyers dated 16th of

February 2012. So the million dollar question is what is the matter arising out of taxation of a Bill of costs which appears to the taxing officer proper for the decision of a Judge of the High Court? The plain and obvious answer would be that it concerns the letter of the Respondent's Lawyers dated 16th of February, 2012.

Perhaps it can be submitted that a clue of the reference can be gleaned from the correspondence of the parties. In a letter dated 2nd of May 2012 and addressed to the Registrar, Counsel for the Applicants indicated that the Registrar had notified them that the application had been referred to me on the basis of the letter of the Respondents Counsel dated 16th of February 2012.

As far as the Registrars handwritten reference is concerned, the question for a decision or direction is on jurisdiction. The jurisdiction in issue should be critically examined as to whether it is based on the ruling of the Registrar which has already been delivered or arises out of the taxation. The question is whether the taxation can go ahead after receiving the letter of 16th of February 2012. The Registrar therefore would like direction whether section 57 of the Advocates Act bars her from proceeding with the taxation. The second issue is whether she has jurisdiction under section 65 (3) of the Value Added Tax Act cap 349 to impose penal interest.

I will start with the first concerns of jurisdiction under section 57 of the Advocates Act. The first point to be made is that the Registrar agreed to proceed with the taxation of Advocate/Client Bill of costs upon application of the Applicant. The application was made by notice of motion. In that application which is miscellaneous cause number 25 of 2011, the enabling rules cited are sections 55, 57 and 60 of the Advocates Act, section 65 (3) of the Value Added Tax Act, under rule 10 (1) of the Advocates (Remuneration and Taxation of Cost) Rules and order 52, rules 1 and 3 of the Civil Procedure Rules.

The application was argued and the ruling of the Registrar thereon is dated 4th of November 2011. At the beginning of the ruling the honourable Registrar ruled as follows: "At the beginning of the hearing the Respondents conceded to the issue of taxation of the Advocate Client bill". She goes on to rule on the rest of the grounds of the notice of motion as follows:

"I have considered all factors brought to my attention and especially the nature of the claim and feel that it would be unfair to require the Applicant pay penal interest on VAT when the delay was due to matters beyond his control. In the circumstances where liability to clear the bill is not denied, and the Applicant had to come to court to pursue his claim, there is no way the Respondent can avoid meeting the costs of the application.

The same argument is true for interest. The Applicant is entitled to interest on the taxed amounts at the rate provided for under the law.

In brief, since the Applicant was and is entitled to instruction fees and in the delay to pay the fees is not of his making, it would be burdensome for him not to get interest. It would be atrocious for the court to order him to pay the penal interest on VAT and to pay the costs of the suit. The application consequently succeeds. He be paid interest on the indicated items at the rate provided in the law, the Respondent pays the penal interest on VAT and costs of the application."

The ruling is dated 4th of November 2011. The Registrar there after proceeded to hear arguments on the items on the taxation. On 6 December 2011 she made a ruling on preliminary objections to the taxation. The matters on which she ruled were (a) that NSSF should have been given statutory notice and (b) that the matter be referred for mandatory mediation. Her ruling on those questions is as follows:

"It is clear there is dishonesty on the part of NSSF. Last time this issues did not come up, and NSSF conceded to the fact that the bill should be taxed. To come up with further objections is a sign of dishonesty. If the taxation of the Bill of costs were to be treated as an original suit for purposes of statutory notice and mandatory mediation, then we would be losing the backlog battle.

I don't think, and this is my ruling that the legal requirement to give statutory notice and to mandatorily refer suits for mediation covers taxation of bills of costs. The objections are overruled. Taxation should proceed."

As far as the reference is concerned and having concluded that this can only be a reference on the motion of the Registrar only and not by any of the parties, the Registrar cannot refer the matter in which she has already ruled. This is because the wording of section 62 (2) of the Advocates Act to which I was extensively addressed means a reference on an issue proper for decision of a Judge of the High Court. The explicit question that was referred for decision was the question of jurisdiction. As far as the question of penal interest on VAT is concerned, the Registrar has already ruled on it with or without jurisdiction. Penal tax is payable by a person who fails to pay tax imposed under the Act on or before the due date under section 65 (3) of the Value Added Tax Act. Such a tax is imposed by law and not by the Commissioner. Section 66 allows the Commissioner for good cause shown to remit in whole or any part any penal tax imposed or payable under section 65 for late payment. Section 66 (6) allows the Commissioner General to assess penal tax. Whether or not the registrar can rule that the respondent pays penal tax that is imposed by law is a matter that has already been ruled upon by the registrar and cannot be handled in this reference. Whatever the case may be, the Respondent may seek

an extension of time within which to appeal that decision. Perhaps time will commence running after conclusion of the taxation. I will not prejudice the proceedings of the parties by deciding the question.

I agree with learned Counsel for the Applicant that the court cannot entertain a challenge to the decision of the Registrar on the ground that it is the exclusive preserve of the Commissioner General Uganda Revenue Authority to charge penal interest. This issue cannot come to court through the backdoor by way of an illegality brought to the attention of the court since the remedy of appeal has not been shut out. On the contrary, the Respondent cannot be taken to have referred any matter for the decision of the court. The case of **Makula International** (Supra) is not useful. In that case the taxation had already been completed and an appeal argued before the high court. There was a further appeal to the Court of Appeal which was at that time the highest Appellate Court in Uganda. Holding number 11 provides that the court has no residual or inherent jurisdiction to enlarge a period of time laid down by a statute and therefore the Judge's order extending the time within which to appeal several months after the expiry of the statutory period was made without jurisdiction, was a nullity and would be set aside. An appeal made from the order of extension was consequently incompetent. In holding number 16, the court went on to hold that it would interfere with the taxing officer's order despite the fact that the appeal was incompetent. It held that the court would not sanction an illegality and illegality once brought to the attention of the court, overrides all questions of pleading, including any admissions made thereon. In that case, if the award had not been set aside it would be enforced without any further recourse to any remedies. Apart from the court of appeal there was no other remedy. In the matter before this court, the registrar has not concluded the taxation. There is still room to address the issue on its merits.

The only matters that may be validly referred by consent of the parties is under section 62 (3) of the Advocates Act and regulations 6 of the rules made there under. In the premises, I cannot give any directions to the Registrar on the matter on which she has already ruled. It is upon any party who is aggrieved to appeal or apply for extension of time within which to appeal.

As far as section 57 of the Advocates Act is concerned, there are clear judicial precedents on the points raised on the jurisdiction of the Registrar. The first judicial precedent is that of **Kibuuka Musoke and company Advocates vs. the Liquidator of African Textile Mills Ltd civil appeal number 06 of 2006**. The appeal arose from an application brought before the Registrar/taxing officer by notice of motion under section 58 (5) and section 60 of the Advocates Act. Hon. Justice Geoffrey Kiryabwire held that section 57 (1) of the Advocates Act only relates to proceedings for recovery of costs. An application by an Advocate for recovery of costs should be brought by plaint and as an ordinary suit. In a suit for recovery of costs, the taxing officer has no jurisdiction. Secondly the learned Judge held that taxation of a bill of costs

by the taxing officer under section 58 (5) (a) of the Advocates Act can only be taxed by an order of the court.

Learned Counsel for the Respondent contended that there was a contradiction between section 57 and section 58 of the Advocates Act. However in the same suit of Kibuuka Musoke and Company Advocates (supra) the learned Judge honourable Justice Kiryabwire further held that the proper procedure for the taxing officer to tax the bill of costs without an order of the court is found under regulation 10 of the Advocates (Remuneration and Taxation of Costs) Regulations. The regulation enables the taxing officer to tax costs as between Advocate and Client and without any order of the court for that purpose. He further held that the provision does not deal with recovery of costs but only with the taxation of costs the result of which could be the basis of a suit for recovery of costs.

The Hon Judge further referred to the case of **Sharma versus Uhuru Highway Development Ltd [2001] 2 EA 530**. In the case of **Sharma versus Uhuru Highway Development Ltd** (supra) the Court of Appeal of Kenya at Nairobi considered similar provisions namely regulation 13 of the Advocates (Remuneration) Order which is in pari materia with the regulation 10 of the Advocates (Remuneration and Taxation of Cost) Rules of Uganda. They also considered section 48 (1) and (2) of the Advocates Act. Justice of Appeal Gicheru held that section 48 of the Act relates to the bringing of a suit for recovery of costs by an Advocate against his Client. On the other hand rule 13 of the Advocates (Remuneration) Order deals with taxation of a Bill of costs between Advocate/Client. He held that there was no contradiction between section 48 and rule 13 cited above. It was emphasised by Keiwua JA that regulation 13 of the Advocates (Remuneration) Order is concerned with taxation of costs while section 48 deals with the recovery of costs. The two provisions are not in conflict.

I have further considered the provisions of sections 57 and 58 of the Advocates Act. I agree with the above authorities that section 57 deals with a suit for recovery of costs due to an Advocate. The question is when costs are due to any Advocate? Secondly section 58 deals with taxation of bills on the application of the party chargeable or the Advocate. Section 58 is read together with section 57. This is because under section 58 within one month of the delivery of the Advocates Bill, the party chargeable may by notice in writing require the taxing officer to fix a date for the taxation of the bill. Delivery of the Bill of costs in accordance with the requirements of the law is made under section 57 of the Advocates Act. Section 58 thereof, ensures that the bill is taxed. However, where notice is given by a party chargeable with the Advocates bill under section 58, no suit shall be commenced on the bill to which the notice relates and any suit commenced on the bill shall be stayed until after taxation of the bill is completed.

Sections 57 and 58 deal with actions for recovery of costs and procedure thereof including the taxation of the bill of costs. Under section 57, the court may order the Advocates bill presented

Decision of Hon. Mr. Justice Christopher Madrama

to the person chargeable to be taxed after an action for recovery of costs has been commenced. There is however no need to for an order for taxation of the bill of costs if the party chargeable with the Advocates bill gives notice under section 58 for the bill to be taxed. Last but not least regulation 10 of the Advocates (Remuneration and Taxation of Costs) Rules is worded in such a way that it permits the taxation of a Bill of costs without an order of the court to that effect. It reads as follows:

“10. Taxation of costs as between Advocate and Client on application of either party.

(1) The taxing officer may tax costs as between Advocate and Client without any order for the purpose, upon the application of the Advocate or upon the application of the Client, but where a Client applies for taxation of a bill which has been rendered in summarised or block form, the taxing officer shall give the Advocate an opportunity to submit an itemised bill of costs before proceeding with the taxation, and in that event the Advocate shall not be bound by or limited to the amount of the bill rendered in summarized or block form.

(2) Due notice of the date fixed for the taxation shall be given to both parties, and both shall be entitled to attend and be heard.”

The rule permits the taxing officer to tax costs as between Advocate and party chargeable without any order for that purpose and upon the application of the Advocate or upon the application of the party chargeable. We can therefore think about three case scenarios. Where an Advocate serves the party chargeable with a bill of costs under section 57 of the Advocates Act, the court may order that the bill of costs so served to be taxed. The second situation is where an Advocate serves a bill of costs on the party chargeable under section 57 of the Advocates Act and the party chargeable upon whom the bill has been served gives notice as stipulated under section 58 of the Advocates Act for the taxation of the bill, the Registrar or taxing master may proceed to tax the bill without an order of the court to that effect. In such cases, a suit will not be filed or where a suit has already been filed, it will be stayed pending taxation by the Registrar. In the second scenario the Registrar has jurisdiction to tax the Advocate/party chargeable bill of costs without an order of the court. The third case scenario is where an Advocate or Client applies under regulation 10 of the Advocates (Remuneration and Taxation of Costs) Rules. In the third situation the Registrar has jurisdiction to tax the bill of costs without an order of the court. Before I conclude this matter, there are subtle differences in the use of the language under sections 57 and 58 of the Advocates Act and regulation 10 of the Advocates (Remuneration and Taxation of Costs) Rules. Sections 57 and 58 of the Act refer to "the party chargeable" under the bill of costs. Regulation 10 on the other hand specifically deals with Advocate/Client bill of costs. The question that comes to mind is whether sections 57 and 58 of the Act by using the term "party chargeable" have cast the net wider than regulation

Decision of Hon. Mr. Justice Christopher Madrama

10. In other words "the party chargeable" under the bill of costs may include other persons other than the client. Section 1 (b) of the Advocates Act specifically defines the word "client". If sections 57 and 58 of the Act with regard to the words "party chargeable" were meant to apply exclusively to a client of an advocate, why would the legislature adopt the use of the words "party chargeable" instead of using the defined word "Client"? The only plausible reason is that the term "party chargeable" is wider than the word "Client" and applies to other undefined categories.

In the premises, the Registrar has jurisdiction to continue with the taxation of the Advocate/Client bill of costs. As far as her ruling on other matters are concerned, particularly on the question of penal interest under the VAT Act, the Respondent is not precluded from appealing the same if need be on the particular issue. I have already held that there is no reference by the parties under section 62 (3) of the Advocates Act and the Advocates (Taxation of Costs) (Appeals and References) Regulations. Consequently, the file is referred back to the Registrar to complete the taxation of the Advocate/Client Bill of costs.

Costs shall be in the cause.

Ruling delivered to the 21st day of May 2012

Hon. Mr. Justice Christopher Madrama

Ruling delivered in the presence of:

Albert Byamugisha appearing with Masembe Kanyerezi for applicants,

Andrew Kasirye for the respondent

Applicant represented Byamugisha

Zawede Irene representative of the respondent in court.

Ojambo Makoha Court Clerk

Hon. Mr. Justice Christopher Madrama

21st May 2012

Decision of Hon. Mr. Justice Christopher Madrama