

The REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS CAUSE NO 8 OF 2011

**IN THE MATTER OF AN APPEAL AGAINST AN ORDER/DECISION OF A
TAXING OFFICER**

BETWEEN

LIBERTY CONSTRUCTION CO. LTD}..... APPELLANT

VERSUS

R.C. MUNYANI & CO ADVOCATES}..... RESPONDENT

BEFORE HON. JUSTICE CHRISTOPHER MADRAMA

RULING

The Appellant Messrs Liberty Construction Company Ltd lodged this appeal under section 62 (1) of the Advocates Act and Regulations 3 and 4 of the Advocates (Taxation of Costs) (Appeal and References) Regulations, S.I. 267 – 5 for orders that the ruling and orders of the Taxing Officer in Miscellaneous Cause No. 26 of 2009 read on the 11th day of February 2011, where she taxed and allowed the Advocate/Client bill of costs presented by the Respondent, at Uganda shillings 36,900,000 be varied and/or set aside. Secondly and in particular that the said ruling and orders be substituted with the finding that the Respondent was fully paid for the services he rendered to the Appellant. Thirdly that award of Uganda shillings 35 million being 7% of the value of the subject matter as instruction fees was based on wrong principles and the same be set aside and/or varied; execution of the orders of the Taxing Officer is stayed and the cost of the appeal be paid by the Respondent.

The grounds of appeal are:

- 1. The learned Taxing Officer erred, when she awarded the Respondent 7% of the value of the subject matter of his instructions, that is to say Uganda shillings 35 million as instruction fees, a sum that was so excessive that on its face, it was manifestly founded on wrong principles and considerations.**
- 2. The learned Taxing Officer erred when she separately allowed claims for perusal of documents which constituted the instructions to the Respondent while at the same time making a general allowance for instruction fees.**
- 3. The learned Taxing Officer erred when she disregarded the evidence of the Appellant, to the effect that when the Respondent was paid a sum of Uganda shillings 3 million, he accepted the same as full and final settlement of his fees and is therefore barred by estoppels from turning around to claim afresh.**
- 4. They learned Taxing Officer erred when she shifted the onus onto the Appellant, to prove that the Respondent did not attend all the meetings the letter claimed to have attended and for the duration claimed.**

The Appellant was represented by Benson Tusasirwe of Tusasirwe and Company Advocates while the Respondent was represented by Evans Ochieng of Ayebazibwe – Makorogo & Co Advocates.

On 26 October 2011 the Court directed Counsels for both parties to file written submissions and the ruling of Court was to be delivered on the 16 December 2011 at 9:30 am. By 10 November 2011 the Appellant had not filed written submissions. The Respondent filed his submissions on 17th of November 2011 while the Appellant filed his submissions afterwards on 18th of November 2011. Upon perusal of the submissions I realized that the record of the Taxing Officer had not been submitted together with the appeal. Upon my request to the registrar to correct this, the available record was forwarded to the Court by the Appellant's lawyers in a letter dated 2nd of April, 2012 and filed on Court record on the 2nd of April, 2012. The late filing of the available record explains the delay in the delivery of the decision of this Court since December 2011.

I have however duly considered the written submissions of learned counsels for both parties. I have also perused the available but incomplete record of the Taxing Officer. The ruling of the Taxing Officer is in Miscellaneous Cause No. 26 of 2009. It shows that the ruling challenged on appeal was delivered in an application to tax an Advocate/Client bill of costs in non-contentious matters.

The Respondent advocate had filed a bill for inter alia Uganda shillings 500,000,000/= as instruction fees. The subject matter was an amount paid under a joint-venture contract valued at Uganda shillings 11,087,327,316/=. The ruling of the Taxing Officer shows that the Appellants counsel had argued that the instructions fees should be based on actual negotiated payment to Dembe Enterprises of **Uganda shillings 500,000,000/=** for getting out of the joint-venture. She found that the subject matter of the negotiation was **Uganda shillings 500,000,000/=** and awarded 7% thereof as instruction fees.

In the application for the taxation of Advocate/Client Bill of costs, the Applicant/advocate indicated in the notice of motion that he had been instructed by the client company to mediate in a dispute with the joint-venture partner on the contract whose subject matter was **Uganda shillings 11,087,327,613/=**.

I have carefully perused the record of appeal forwarded by learned counsel for the Appellant. There is a notice of motion in Miscellaneous Cause number 26 of 2009 filed by the Respondents advocates Messrs Ayabazibwe – Makorogo & Company Advocates. However, there is no affidavit in reply by the Appellant Company. Secondly there are no notes of what transpired before the ruling of the Taxing Officer. The Taxing Officer refers to arguments in opposition. This is inferred from the observation in her ruling that it was not in dispute that the sum of **Uganda shillings 3,000,000/=** was paid to the Advocate/Respondent. The basis of this information is not on record and presumably was presented during submissions by counsels. She noted however that it was in dispute whether this payment was in full and final settlement of the services rendered by the Applicant/advocate in that application.

I must note that it is always necessary to have a typed record of what transpired in the Taxing Officer's Court for purposes of appeals and references. In this particular case, there is no record of what transpired other than the ruling of the Court and the pleadings.

The Taxing Officer found that the advocate rendered services for mediation and other related services to the client. The Taxing Officer also found that it was not in dispute that the

Applicant/Advocate received a sum of **Uganda shillings 3,000,000/=** for the services rendered to the Appellant. What was in contention was whether the sum paid was in full and final settlement of the services rendered by the Advocate/Respondent to this appeal. The ruling of the registrar does not expressly resolve the issue of whether the payment of **Uganda shillings 3,000,000/=** was in full and final settlement of fees for services rendered to the client. Ground 3 of the chamber summons is to the effect that:

"The learned Taxing Officer erred when she disregarded the evidence of the Appellant, to the effect that when the Respondent was paid a sum of Uganda shillings 3,000,000/=, he accepted the same as full and final settlement of his fees and is therefore stopped from turning around to claim afresh."

The ruling of the Taxing Officer on this issue is found at page 2 of her ruling where she states as follows:

"It is not in dispute that the Applicant received 3,000,000/= for the services rendered; however it remained in dispute as to whether this was payment in full and final settlement of the services rendered by the Applicant..."

Thereafter the Taxing Officer proceeds to determine the subject matter of the bill for taxation purposes. She remained silent about the issue of whether the undisputed payment of **Uganda shillings 3,000,000/=** for services rendered was in full and final settlement of the advocates fees. This issue had to be determined before she embarked on the taxation of the bill of costs and could not be implied.

In making judicial decisions there are certain guidelines to be followed. The first guideline is provided for under order 15 of the Civil Procedure Rules which deals with the framing of issues. Issues arise when a material propositions of law or fact is affirmed by one party and denied by the other. Much as I have been unable to trace any affidavit in reply to the application for taxation of an Advocate/Client Bill of costs in which the Taxing Officer made a ruling, she did raise the issue as to whether the payment of **Uganda shillings 3,000,000/=** was in full and final settlement of the advocates fees. Having raised the issue it was a controversy that had to be tried first. It is also evident that the dispute about this question was in the submissions of counsels for the parties though the handwritten notes or typed record of this is unavailable.

If the alleged payment was in full and final settlement of the advocate's fees, there would be no need to proceed with the taxation. Having raised the issue, it was incumbent upon her to make a pronouncement on that issue because it was very material in the conduct of the taxation. I am assuming that the issue was validly raised in the course of the application to tax the Advocate/Client bill of costs.

As far as judicial decisions are concerned, judicial officers are also guided by order 21 of the Civil Procedure Rules. Contents of a judgment are provided for under order 21 rules 4 of the Civil Procedure Rules which provides as follows:

"Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision on the case and the reasons for the decision."

Although the pleadings are incomplete in the sense that the record does not indicate whether there was any affidavit in reply, the ruling of the Taxing Officer shows that the application was opposed by the Appellant. Where the application is opposed, it was incumbent upon the Taxing Officer to make a finding on the points in controversy in that application.

Order 21 rule 5 of the Civil Procedure Rules provides that the Court shall state its decision on each issue or controversy. It provides as follows:

"In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons for the finding or decision, upon each separate issue, unless the findings upon any one or more of the issues is sufficient for the decision of the suit."

An application for taxation as in Miscellaneous Cause No. 26 of 2009 between an Advocate/Client is a suit. The issue of whether the advocate has already been paid is a preliminary issue the determination of which would direct whether the Court should proceed to determine other questions or dismiss the application. If the question is resolved in favour of the Respondent, that would be the end of the application.

Section 2 of the Civil Procedure Act defines a "suit" to mean

"all civil proceedings commenced in any manner prescribed."

Secondly, section 19 of the Civil Procedure Act provides for the institution of suits and stipulates that:

"Every suit shall be instituted in such manner as may be prescribed by rules."

In this case application for taxation was made under sections 57, 58 and 60 of the Advocates Act and rule 8 of the Advocates (Remuneration and Taxation of Costs) Rules. It was also made under order 52 rules 1, 2 and 3 of the Civil Procedure Rules by notice of motion. It is therefore a civil suit commenced in a manner prescribed by the rules and the provisions of the Civil Procedure Act and the rules made there under as to the framing of issues and the making of decisions thereon apply.

In the premises the Taxing Officer was obliged to determine the issue as to whether the payment of **Uganda shillings 3,000,000/=** was in full and final settlement of the fees of the advocates before proceeding with the taxation as she did. In the premises, the taxation could not proceed without determination of the question that was preliminary. Ground 3 of the appeal as contained in the chamber summons succeeds.

Because the preliminary question was not determined, it cannot be said that the taxation was valid. For that reason, I set aside the taxation and order that the question of whether payment of **Uganda shillings 3,000,000/=** to the Respondent was in full and final settlement of the fees of the advocate be determined before taxation, if at all the bill of costs is to be taxed.

For the reason that the failure to determine the preliminary point was a failure on the part of the taxing officer and not the parties, each party will bear its/his own costs of the appeal. Miscellaneous Application No. 26 of 2009 shall be heard afresh for purposes of determination of the preliminary point referred to above and taxation may or may not proceed thereafter.

Ruling Delivered on the 8th of June 2012

Hon. Justice Christopher Madrama

Ruling delivered in the presence of:

Evans Ochieng for the Respondent

Benson Tusasirwe for the Appellant

Nobody for the respondent

Ojambo Makoha Court Clerk

Hon. Justice Christopher Madrama

8th June 2012.