

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCA NO. 0001 OF 2012

NATIONAL SOCIAL SECURITY

FUND:.....APPELLANT

VERSUS

JOSEPH BYAMUGISHA

(T/A

J.B

BYAMUGISHA

ADVOCATES) :.....RESPONDENT

BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO

JUDGMENT

1. Background:

This is an Appeal arising from a Taxation Ruling of the Registrar made on the 6th of December 2011.

The Appeal raises the following issues/questions of law for determination by this Honorable Court;

1. Whether an Application to tax an Advocate- Client Bill of Costs is a suit and if so, whether a party filing such an application against a Scheduled Corporation must first serve the Scheduled Corporation with a Statutory Notice.
2. Whether an Application to tax an Advocate- Client Bill of Costs in the Commercial Court must initially be referred to Mediation under the Judicature (Commercial Court) (Mediation) Rules,2007.
3. Whether the Registrar (Taxing Officer) is vested with Jurisdiction to order that Penal Tax be paid under the Value Added Tax Act Cap.349

2. Procedure:

The Appeal proceeded by way of written submissions by either side. The submissions are on record and they have been considered accordingly.

I will resolve the grounds of the appeal individually as below.

3. Ground 1: Whether an Application to tax an Advocate- Client Bill of Costs is a suit and if so, whether a party filing such an application against a Scheduled Corporation must first serve the Scheduled Corporation with a Statutory Notice.

In her taxation ruling, the Learned Registrar of this Court overruled the Applicant's objection as to competence of the suit for lack of Statutory Notice on the ground that the matter was not a suit. This was on the basis that Appellant now had submitted before the Learned Registrar that the Respondent now ought to have served the Appellant with a Statutory Notice prior to filing Miscellaneous Cause No. 25 of 2011 for leave to tax the respondent's Advocate Client Bill of Costs.

This position is similarly reflected in this appeal the gist of which is that it is the Appellant's submission that as a matter of procedure, an Application for leave to tax an Advocate-Client Bill of Costs is brought before court by way of a Notice of Motion and as was held in the case of **S. Investments Ltd versus Mukabura Foundation Investments Ltd HCMA No. 105 of 2004** a notice of motion is a suit and that further that it is also a

legal requirement that no suit can lie against a Scheduled Corporation unless and until such Corporation has been served with the mandatory forty five (45) days' notice as per **Section 2 of the Civil Procedure and Limitation (Miscellaneous provisions) Act Cap 72** and that that an Application to tax an Advocate-Client Bill of Costs falls within the ambit of civil Proceedings contemplated by that section.

In response, the respondent through its counsel differed from the position offered by the Appellant in that it argued that firstly the Appellant had on the 4th November 2011 consented to the taxation of the bill of costs and in fact conceded to all items in the bill save for item 2 being the instruction fee and item 3 being the one third increment so the appellant could not without first setting aside the said Consent Order now take issue with Statutory Notice. Secondly, the Respondent submitted that an application for taxation of a bill of costs by the taxing officer is not a suit for recovery of costs and is in fact an application arising out of an existing matter in court and hence distinguishing it from the facts in ***S. Investments Ltd v Mukabura Foundation Investments Ltd HCMA No. 105 of 2004*** which counsel for the

Appellant seeks to rely on since in the instant matter, the taxation was arising from already an existing suit and so it could not be said to be an independent suit.

This was generally the submissions in this matter.

The gist of this appeal is on the issue of the nexus between a scheduled corporation and a statutory notice. Thus it would be suitable to first reflect on what the purpose of a statutory notice is.

In my reading of the intention of the law makers, it would appear to me that the purpose of issuing a a statutory notice to a scheduled corporation is to notify the corporation of an intended suit such that the corporation may investigate the claim and where possible settle it out of court. If this was the intention then, in the instant case, the Appellant can be said to have already been aware of the taxation of the bill of costs between itself and the Respondent as it was correctly identified by the learned registrar of this court that the Application to have the bill taxed was not a suit per se between the parties but a matter which was

known between the parties and therefore did not require a statutory notice.

I agree with the findings of the learned registrar and would find that there was no requirement for a statutory notice to issue since the matters being disputed were already known between the parties who were well aware of and matters of taxation of costs cannot be stated to be suits on their own since they result from already an existing suit. This ground of appeal would accordingly fail for seeking to overstretch the legal requirement for a statutory notice.

Ground 2: Whether an Application to tax an Advocate-Client Bill of Costs in the Commercial Court must initially be referred to Mediation under the Judicature (Commercial Court)(Mediation) Rules,2007.

As regards this issue, it was submitted by counsel for the Appellant that the registrar ought to have initially referred the dispute to mediation under **Rule 2 of the Judicature (Commercial Court) (Mediation) Rules SI No. 55 of 2007** which applies to all civil actions filed in or referred to the court.

To this contention, counsel for the Respondent in reply submitted that taxations of bills of costs as opposed to suits for recovery of costs do not fall within the scope of the Mediation Rules and the Taxing Master correctly held that no bills of costs have ever been referred for mediation.

My view of this seems to be in consonance with that held by the learned registrar of this court. From its framing, it appears to me that mediation rules contemplate that there is a dispute before such a having been adjudicated by court. They appear to envisage an alternative resolution of the dispute besides litigation.

When this is related to the issue of a bill of costs, I would think that a bill of costs is the aftermath of litigation as it arises after the court has pronounced itself on the dispute and after the parties have failed to resolve the dispute through mediation.

Be that as it may, it would appear to me that Bills of costs on their own cannot therefore be said to fall within the confines of the Judicature (Commercial Court) (Mediation) Rules SI No. 55 of 2007 since they do not arise out of the blue but as one of the tail ends

of adjudication which clearly arise from the fact that parties had failed amicably to resolve their differences and the matters had to be resolved through adjudication. With due respect to the learned counsel to the appellant, I would find that this ground would collapse for failing to establish that nexus between a bill of costs and matters which must first be referred to mediation as envisaged in the rules cited earlier. This ground accordingly fails.

4. Ground 3: Whether the Registrar (Taxing Officer) is vested with Jurisdiction to order that Penal Tax be paid under the Value Added Tax Act Cap.349

It was the Appellant's submission that the learned Registrar erred in Law when she granted the prayer for penal Tax.

Learned Counsel for the Appellant relied on **Article 152(1) of the Constitution of the Republic of Uganda 1995** which is to the effect that no tax shall be imposed except under the authority of an Act of Parliament. To this effort, learned counsel submitted that under **section 66(6) of the Value Added Tax Act Cap.349**, Parliament did enact the law relating to the power to levy Penal Tax to be a preserve of the Commissioner General of

the Uganda Revenue Authority under **section 65(3) of the Value Added Tax Act Cap.349**. The said section provides thus;

“Penal Tax shall be assessed by the Commissioner General in the manner as the output tax to which it relates and an assessment of Penal Tax shall be treated for all purposes as an assessment of tax under this Act”.

In reply to this contention, learned counsel for the Respondent submitted that the his counterpart on behalf of the appellant had misconstrued the taxing officer’s ruling and misinterpreted section **65(3) of the Value Added Tax Act** which provides:

“Penal Tax shall be assessed by the Commissioner General in the manner as the output tax to which it related...⁴”.

That this sub-section dealt with assessment and that the taxing master did not assess any penal tax. He quoted the taxing master’s ruling at page 3 from line 10 which provided thus;

“...the respondent pays the penal interest on VAT...”

With this meaning that the taxing master only determined the appellant’s liability to pay the penal interest, but not making any

assessment which assessment should be related to a specific amount which a taxpayer is liable to pay and yet here there was none. Looking at the words composed in that part of the ruling , I would tend to agree with Counsel for the Respondent in this regard as my reading of it shows that the Learned Registrar made no assessment of the penal interest but clearly indicated that such obligation existed which is a preserve of the Commissioner General of the Uganda Revenue Authority. This was merely determining the Appellant's liability. Accordingly, this ground also fails.

5. Orders:

My finding on all the issues disposes the appeal in that it fails on all the grounds cited and is accordingly dismissed with costs.

Henry Peter Adonyo

Judge

30th October, 2014

