

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

HCT - 00 - CC - MA - 1059 - 2013
(Arising out of Civil Suit No. 01 of 2000)

ABEL NAYEBAZA & CHARLES NYAKAHUMA :::: APPLICANTS/APPELLANTS

VERSUS

INTERNATIONAL CREDIT BANK LTD ::::::::::::::::::::::: RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

By this chamber summons counsel for the Applicants/Appellants seek this court to set aside a taxation in respect of Civil Suit 1 of 2000, Miscellaneous Application No. 2 of 2005.

It is also their prayer that the bills of costs be retaxed by this court.

The background to this appeal is that in the year 2000, the Appellants Abel Nayabaza and Charles Nyakahuma brought a representative action against the Respondent International Credit Bank Ltd (In liquidation). The Appellant being the successful parties were awarded salary arrears and general damages. The general damages were Ug.Shs.135,000,000/=.

The salary arrears were computed at Shs. 1.3 billion.

In the course of the trial counsel had also dealt with the applications.

He filed a bill of costs seeking Ug.Shs 724,569,900/=. The taxing master reduced it to Ug.Shs 55,316,900/=.

The two appealed contending that the learned Taxing Master had erred in that the Ug.Shs 55,316,900/= was manifestly low, harsh unjustified and contravened the law and principle governing taxation of costs.

In submission counsel for the Appellants agreed that the correct rule under which the taxation would have been computed was the 6th Schedule of the Advocate (Taxation of Costs) Rules.

He also agreed that the taxation would be achieved by subjecting the value of the subject matter to the 6th Schedule. In this case the value was Shs. 1.3 billion plus general damages of Ug.Shs.135,000,000/=: plus the 22% interest as in terms of the decree.

Going by the rules, the instruction fees would have fetched Ug.Shs 512,500/= for the first Ug.Shs 20,000,000/= to which he would have added 1% of the rest of the decreed sum.

I did not go into the details of working out the exact figure because of the reason that the matter was wrongly before me.

For this court to have jurisdiction, the Appellant was expected to have extracted a decree or order embodying the terms of the judgment, **Alexander Morrison V M. S. Versi and Another** (1953), 20 E. A. C. A 26. Without extracting the necessary decree or order, the appeal remains premature and incompetent, **Kiwege and Mgude Sisal Estates Ltd V M. A. Nathwani** (1952) 19 EACA 160.

The foregoing makes it clear that a record of appeal which does not have a certified copy of the decree or order appealed from is incurably defective. The simple reason is that it is not a document that can be contained in a supplementary record of appeal.

A case on all fours is **Security Group Uganda Limited V Edith Byanyima and Another** MA 0097 of 2011 wherein **Hon. Justice Masalu** held that it was mandatory to attach the order of the Registrar appealed from together with the certificate of taxation. He relied on the decision of **Okello J** in **Board of Governors and Headmaster Gulu S. S. V Plumson E. Odong** Civil Appeal No. M92 of 1990 in which he held;

“It is a requirement of the law that these documents (decree or order) must be filed together when an appeal is lodged. A decree or order from which an appeal is preferred must be extracted and filed together with the memo of appeal. Failure to do so renders the Appeal incompetent.”

From the foregoing there is no doubt that failure to extract a formal decree or order before filing the appeal is a defect going to the jurisdiction of the court and this cannot be waived, **Vincent Kafureka V Yowena Katorobo** C. A 2 of 1995.

In the present appeal, the Applicant/Appellant neither extracted the order nor the certificate of taxation. This rendered this appeal incompetent and the result is that it be and is hereby dismissed with costs.

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David K. Wangutusi
JUDGE

Date: 21 - 02 - 2014