

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
IN THE MATTER OF THE ADVOCATES ACT, CAP 267**

AND

**IN THE MATTER OF THE ADVOCATES (TAXATION OF COSTS) (APPEALS &
REFERENCES) REGULATIONS S.I. 267 – 5**

TAXATION APPEAL NO 40 OF 2015

(ARISING OUT OF MISCELLANEOUS CAUSE NO 43 OF 2015)

FIDES LEGAL ADVOCATES}.....APPELLANT

VERSUS

KAMPALA CAPITAL CITY AUTHORITY}.....RESPONDENT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Appellant commenced this appeal under section 62 (1) of the Advocates Act Cap. 267 and Rule 3 of the Advocates (Taxation of Costs) (Appeals and References) Regulations S.I 267-5 for orders that leave be granted to tax the Advocate –Client Bill of costs and that the decision of the learned Registrar in Miscellaneous Cause Number 43 of 2015 is set aside. The Appellant also prays for costs/reference of the appeal to be provided for. The grounds of the appeal are:

1. The learned Registrar erred in law when he failed to exercise his jurisdiction to refer Misc. Application No. 43 of 2015 to a judge for a final disposal of issues he had found as contentious in his ruling.
2. The learned Registrar erred in law when he unilaterally dismissed Misc. Application No. 43 of 2015 without determining the contentious issues raised therein.
3. It is in the interest of justice that the appellant is granted leave to tax its Advocate-Client Bill of Costs.

The Respondent’s Counsel filed an affidavit in reply to the effect that the learned Registrar reached his decision dismissing the Appellant’s application with costs having found that various

items of fees claimed in the appellant's bill of costs arose out of different and distinct transactions bearing different backgrounds which can only be recovered in a civil suit. Secondly, he contends that the remuneration agreement upon which Miscellaneous Application No. 43 of 2015 and this appeal are founded is illegal considering that failure to comply with the provisions of the PPDA Act and Regulations as well as not having been cleared by the Attorney General is irregular and an incurable defect for not having been drawn in accordance with the provisions of the Advocates Act. Thirdly, he contends that the appellant is wrongfully trying to seek refuge in the Advocates (Remuneration and Taxation of Costs) Rules whereas the remuneration for its services are clearly spelt out in an illegal remuneration agreement signed with the Respondent contrary to the provisions of the Advocates Act thus the appeal lacks merit and has no chance of success and should be disallowed in the interest of justice as the appellant has been dilatory in prosecuting its appeal.

The appellant in the rejoinder affidavit of Faisal Mukasa reiterated the appeal ground that the learned Registrar erroneously denied the Appellant its statutory right to tax the Advocate Client Bill of Costs thereby occasioning a miscarriage of justice.

The Appellant is represented by Anthony Wabwire of Messrs Fides Legal Advocates while the Respondent is represented by Counsel Elijah Irankunda.

The Appellant's Counsel filed written submissions and in resolution of the ground that the learned Registrar erred in law when he failed to exercise his jurisdiction to refer Misc. Application No. 43 of 2015 to a judge for a final disposal of issues he had found as contentious in his ruling. In resolution of this ground Counsel submitted that under Section 62(2) of the Advocates Act which empowers the Registrar to seek a judge's opinion, direction or final determination on matters, where in the course of the taxation proceedings, it appears to him that such matter is proper for the decision of a High Court judge. He relied on **Byenkya Kihika & Co. Advocates vs. Saroj Gandesha HCMA No. 019 of 2014** where the Court held that an Advocate's right to file an Advocate-Client bill of costs for taxation is granted by the express provisions of the Advocates Act and can only be excluded by express provisions of the same Act. He submitted that the learned Registrar ought to have invoked his jurisdiction under Section 62(2) of the Advocates Act by referring the established pertinent issues to a judge for an ultimate and reasoned decision before unduly barring the appellant from exercising its statutory rights and thus prayed that this ground be resolved in the appellant's favour.

Secondly, the learned Registrar erred in law when he unilaterally dismissed Misc. Application No. 43 of 2015 without determining the contentious issues arising therein. The Appellant's Counsel submitted that there were pertinent issues which required investigation by court before determining the application which issues were raised by the Respondent as preliminary points of law that the appellant's services were illegally procured and that the retainer agreement between the Appellant and Respondent was in contravention of the provisions of the Advocates Act

which the Appellant replied on in a supplementary affidavit. Counsel relied on the case of **National Union of Clerical, Commercial and Technical Employees vs. National Insurance Corporation, SCCA No. 7 of 1993**, for the proposition that where a preliminary objection has not been ruled on, the court cannot proceed to hear the merits of the case before ruling on the preliminary objection.

He further submitted that the learned Registrar erred in law by failing to address and determine the preliminary points raised by the respondent and which are disclosed both in evidence and submissions by the Applicant before deciding to dismiss the Appellant's application for taxation. In the premises he prayed that the ruling of the lower court is set aside and this court decide the points of law on merit.

Whether it is in the interest of justice that the appellant is granted leave to tax its Advocate-Client Bill of Costs? The Appellant's Counsel submitted that it is pertinent that the Respondent's preliminary points and contentions in this matter relating to the procurement of the appellant's services and validity of the retainer agreement in controversy be addressed. The issue is whether the procurement of the Appellant for provision of legal services was irregular. He relied on the supplementary affidavit affirmed by the senior partner of the Appellant and submitted that the procurement process was initiated, carried out and concluded by the Respondent and the services were performed by the Appellant and accepted by the Respondent who now seeks to evade its responsibility of settling the Appellant's fees on account of some alleged impropriety on the part of the Respondent's own officials which conduct is unjustifiable.

In support of this argument counsel relied on the case of **Finishing Touches Limited vs. Attorney General of Uganda, HCCS No. 144 of 2010** where this court held that the choice of a procurement method shall be determined by the contracts committee. The PPDA Authority was established to ensure the application of fair, competitive, transparent, and non-discriminatory and value for money procurement and disposal standards and practices. The public duty placed on government officers to comply with the PPDA was directory and the plaintiff performed the services to the satisfaction of the defendants. Secondly there was no allegation or proof of corruption or impropriety on the part of the procuring and disposing entity and it would be unjust for the plaintiff not to be remunerated when the alleged acts of non-compliance were acts of the defendant's servants. He prayed that this court holds that the agreement in question was properly procured and Appellant is entitled to claim under it.

On the issue of whether the retainer agreement contravened the provisions of the Advocates Act, Counsel for the Appellant submitted that the Retainer Agreement between the Appellant and the Respondent is not the Remuneration Agreement envisaged under the provisions of the Advocates Act and thus the Respondent's deposition and contention to the effect that the same was not drawn in accordance with the Advocates Act is not well grounded. Counsel relied on Halsbury's laws of England 3rd Edition Vol. 36 paragraph 84 to define retainer as the 'act of authorizing or

employing a solicitor to act on behalf of a client constitutes the solicitor's retainer by that client...'

He submitted that the agreement in issue is not a remuneration agreement under the Advocates Act so as to disentitle the appellant from having its advocate-client bill of costs taxed.

Furthermore the Appellant's counsel submitted that the Respondent's preliminary objections are not tenable at law under the doctrine of reasonable/legitimate expectation. He submitted that the Respondent's departure from its promises to pay is inimical to public policy, an abuse of power and threatens to irreparably damage the Appellant and is a grave injustice. He prayed that court be pleased to grant the appellant leave to tax its advocate-client bill of costs.

In reply the Respondent raised two preliminary points of law to the effect that the remuneration agreement upon which the application is founded is illegal for failure to comply with provisions of the Public Procurement and Disposal of Public Assets Act and the Regulations made there under as well as not having been cleared by the Attorney General. Secondly, it is irregular and incurably defective for not being drawn in accordance with the provisions of the Advocates Act Cap. 267.

On whether the learned Registrar erred in law when he failed to exercise his jurisdiction to refer Misc. Application No. 43 of 2015 to a judge for a final disposal of issues he had found as contentious in his ruling, Counsel for the Respondent cited section 62 (2) of the Advocates Act which provide that it is not mandatory for the Registrar to seek a Judge's opinion, direction or final determination on matters where in the course of the taxation proceedings, it appears to him that such matter is proper for the decision of a High court judge and submitted that to the contrary the parties may by consent refer the said contentious issues to the judge.

Counsel for the Respondent submitted that there was no error in law on the part of the Registrar in dismissing the application because he found various items of fees claimed in the appellant's bill of costs arising out of different and distinct transactions bearing different backgrounds which can only be recovered in a civil suit which fact is not disputed by the appellant both in its pleadings and submissions on court record. The case of **Byenkya Kihika & Co. Advocates vs. Saroj Gandesha HCMA No. 019 of 2014**, is distinguishable from the appellant's case because unlike in the appellant's case, the application in that case was properly before court with no various items of fees claimed in the bill of costs arising out of different and distinct transactions bearing different backgrounds which can only be recovered in a civil suit.

On whether the learned Registrar erred in law when he unilaterally dismissed Misc. Application No. 43 of 2015 without determining the contentious issues raised therein, the Respondent's Counsel submitted that the appellant is misleading the court by submitting that the Registrar should have referred the contentious issues to a judge while at the same time arguing that the

Registrar ought to have determined the issues at hand. The appellant is aware that the Registrar had no such jurisdiction and proceedings of a court without jurisdiction are a nullity.

Counsel further submitted that the Registrar considered the submissions of parties, their respective pleadings and precedents and law on court record and the appellant has not demonstrated how failure of the Registrar to determine the Respondent's preliminary points of law prejudiced its case. In any case if there was any failure to determine the preliminary objections to the appellant's application, the respondent would be the right party to be prejudiced and not the appellant. He submitted that the cases cited are not applicable in the circumstances of the appellant's case and prayed that this ground of appeal be resolved in favour of the Respondent.

On whether it is in the interest of justice that the appellant is granted leave to tax its Advocate-Client Bill of Costs, the Respondent's counsel agreed that it is pertinent to first address the preliminary points and contentions in this matter relating to the procurement of the appellant's services and the validity of the retainer agreement in controversy. These preliminary points are: whether the procurement of the appellant for provision of legal services was irregular and illegal? He contended that there was failure to adhere to procurement laws. The contract between the appellant and the respondent was governed by the Public Procurement and Disposal of Public Assets Act, 2003 which under Section 3 defines a contract to mean specifically to be an agreement made pursuant to a bid award decision of the contracts committee or appropriate other authority. He relied on Regulation 17(1) of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations S.I No. 39 of 2006 which lays out the role of the contracts committee with regard to procurement and disposal process. Counsel further relied on article 119(5) of the 1995 Constitution of the Republic of Uganda which requires a contract with a procurement and disposal entity to be cleared by the Attorney General and relied on the case of Attorney General and Nyombi Peter vs. Uganda Law Society, Miscellaneous Cause No. 321 of 2013 where it was held that for the proposition that failure to procure legal services in accordance to the PPDA Act rendered the instructions irregular and illegal. He contended that failure to adhere to the provisions of the Local Governments (Public Procurement and Disposal of Public Assets) Regulations SI No. 39 of 2006 and the Constitution in the transaction in issue was a gross violation of the law and the Respondent cannot be held liable to pay for services arising from the said illegal transaction. As such he contended that the parties having engaged in an illegal transaction, no professional legal fees were payable under the same.

Counsel further submitted that the remuneration agreement before this court was not notarized as required by law which makes it illegal, null, void and unenforceable. He contended that this is reinforced by the case of Kituuma Magala & Co. Advocates vs. Celtel (U) Ltd Civil Appeal No. 9 of 2010 where court held that where it was held that such an agreement was illegal and

unenforceable. In the premises he submitted that the appellant's appeal lacks merit and prayed that it is dismissed and in the alternative if granted, the court should rule on the respondent's preliminary points relating to the procurement of the appellant's services and the validity of the retainer agreement in controversy.

In rejoinder, Counsel for the Appellant clarified that the Appellant instituted Misc. Cause No. 43 of 2015 not merely to enforce a retainer agreement between itself and the Respondent but also in exercise of its inherent and statutory right to tax its Advocate-Client bill of costs as enshrined in Section 57 of the Advocates Act Cap. 267. Counsel also made reference to the case of *Byenkya Kihika & Co. Advocates vs. AROJ Gandesha HCMA No. 019 of 2014* where court observed the right of an advocate to tax a bill of costs can only be excluded by express provisions of the Advocates Act. Yet the Registrar made no reference to any statutory provisions of the Advocates Act precluding him from taxing the Advocate-Client bill of costs as presented. There were preliminary issues relating to the Appellant's retainer agreement which the Appellant demonstrated was not a remuneration agreement so as to bar it from taxing its Advocate-Client bill of costs. In the premises failure to invoke Section 62(2) of the Advocates Act was a grave injustice in as far as it condemned the Applicant without being heard on the merits of the case.

In rejoinder to the ground where the learned Registrar erred in law when he unilaterally dismissed Misc. Application No. 43 of 2015 without determining the contentious issues raised therein, Counsel for the Appellant cited the case of *Liberty Construction Limited vs. R.C Munyani & Co. Advocates HCMA No. 08 of 2011* where this court held that taxation cannot proceed without determining a preliminary issue. The proper exercise of jurisdiction/discretion did not lie in dismissing the application from taxation but to refer the matter where he had no jurisdiction in accordance with the clear provisions of Section 62(2) of the Advocates Act. He prayed that court finds that by seeming to consider the parties' evidence and submissions on the preliminary points of law and deciding to dismiss the Appellant's bill of costs without a reasoned finding on those pertinent issues, the Registrar acted injudiciously and occasioned grave injustice on the Appellant.

In rejoinder to the interest of justice to grant leave to tax the advocate client bill of costs the Appellant reiterated that the justices of this case require a reasoned disposal of the Appellant's case on its merits. He further submitted that the authority of *Kituuma Magala & Co. Advocates vs. Celtel (U) Ltd Civil Appeal No. 9 of 2010* as relied on by the respondent on the validity of the retainer agreement does not support the respondent in this matter. The agreement in question clearly provides for remuneration in accordance with the Advocates Remuneration and Taxation of Costs Regulations and the Appellant by filing an Advocate-Client bill of costs in Misc. Cause No. 43 of 2015 has lawfully elected to invoke the Advocates Remuneration and Taxation of Costs Regulations for remuneration of its services which right should be upheld and the Appellant is granted leave to tax its Advocate-Client bill of costs.

Ruling

I have carefully considered the written submissions of counsel as well as the pleadings and affidavits for and against the appeal. The ruling appealed from was delivered on 11th November, 2015 and comprises of three paragraphs which I can reproduce immediately hereafter and is as follows:

"I have carefully read and scrutinised the written submissions filed by both parties and also analysed all the documents filed in support of each side. What comes out clearly is the fact that the various items of fees claimed arise out of different and distinct transactions bearing different backgrounds. The claims do not arise out of a single transaction. The best way forward for the claimant/applicant in my view is to file an action (civil suit) to recover these various claims.

Further looking at the submissions, many pertinent issues are raised which would require investigation and ultimate decision by court. These issues can only be adequately sorted out through a protracted trial.

In view of the foregoing observations and finding, I decline to grant leave to tax this bill of costs and consequently dismiss the application as bad in law.

Costs to the Respondents."

This ruling delivered in three paragraphs raises a few grounds of decision. The first ground of decision is that the Bill of costs involved distinct transactions with different backgrounds and the best way forward for the claimant was to file a civil suit to recover the various claims. Secondly, a number of issues were raised by the parties which required investigation and should be sorted out through trial. Lastly he declined to grant leave to tax the bill of costs and dismissed the application for being bad in law.

The gist of the decision of the court is that leave to tax the advocate/client Bill of costs was declined for the above written reasons. The registrar is faulted in ground one for failure to exercise jurisdiction vested in him by law to refer the matter to a judge for final determination of the issues referred to as contentious.

On the second ground the learned registrar is faulted for unilaterally dismissing the application without determining any of the said contentious issues and thereby occasioning a miscarriage of justice.

On the third ground the appellant contends that it is in the interest of justice that it is granted leave to tax the advocate/client Bill of costs.

The ruling of the learned registrar/taxing master arises from miscellaneous cause number 43 of 2015 where the applicant/appellant sought leave for taxation of its advocate/client Bill of costs. The respondent is the client of the appellant. The applicant had filed for leave under section 57 of the Advocates Act, section 98 of the Civil Procedure Act and rule 10 of the Advocates (Remuneration and Taxation of costs) Rules for leave to tax an advocate/client Bill of costs and for costs of the application to be provided for. The grounds of the application were that the advocate/applicant was duly instructed by the respondent to provide legal services on various legal matters which instructions the advocate/applicant duly executed. Secondly the client/respondent refused or neglected or ignored to pay the advocate/applicants legal costs/fees despite several reminders to pay. Thirdly, the advocate/applicant made all diligent efforts to demand for the outstanding legal fees/costs by serving several demand notices and holding various meetings with the respondent but to no avail. Lastly the applicant had contended that it was in the interest of justice that he is granted leave to have the advocate/client Bill of costs taxed.

The appellant relied on a letter dated 15th of March, 2015 where the appellant was appointed by the Kampala Capital City Authority which was then known as Kampala City Council as the respondent's external advocates on a retainer as well as on a case-by-case basis. The appellant accepted to be retained as an external advocate, and in contentious and non contentious matters. On 27th April, 2010 the appellant and the respondent formalised the appointment by having a formal contract signed. The contract was for a term of five years effective from 18th March, 2010 and ending on 18th March, 2015. The Bill of costs therefore covered various legal assignments/instructions inclusive of drafting court papers, making court appearances, drafting agreements, drafting legislation, attending meetings on behalf of the respondent, providing legal advice on contentious and non-contentious matters, perusals, and some others. With the exception of payment for the retainer fee from March 2010 to March 2011, the respondent did not settle any other legal costs or retainer due and owing. Following demands and meetings and other action taken by the applicant, the appellant decided to seek leave to tax an advocate client/ Bill of costs.

I have also considered the affidavit in reply and the contents of the appellant's application relating to the provision of services and retainers were admitted. The respondent's contention is that as a statutory body and a successor to the defunct Kampala City Council, the agreement dated 27th of April, 2010 between the applicant and Kampala City Council did not have the approval by the Contracts Committee and was not done in accordance with the Public Procurement and Disposal of Public Assets Act and Regulations. Accordingly the contention was that the appointment of the applicant/appellant as an advocate for KCC was done outside the procurement laws. In the premises the respondent maintained that it had no obligation whatsoever to pay for any legal services previously provided by the applicant without following the procurement laws and processes. It also contended that the agreement dated 27th of April

2010 between the applicant and Kampala City Council was not drawn in accordance with the provisions of the Advocates Act and was unenforceable. Following the above contentions, the respondent maintained that the application for leave to tax an advocate/client Bill of costs was not maintainable because it was founded on an illegality.

The contention in the lower court and in this appeal by the respondent has not changed. It is to the effect that the basis of the bills of costs is an illegal agreement for the provision of legal services executed between its predecessor in title namely Kampala City Council and the appellant. I have carefully considered the provisions of law under which the appellant moved the court. These are section 57 of the Advocates Act Cap 267 as well as rule 10 of the Advocates (Remuneration and Taxation of Costs) Rules 267 – 4.

Section 57 has been variously interpreted by the Courts and its purpose is well articulated. Section 57 of the Advocates Act provides as follows:

“57. Action to recover advocate’s costs.

(1) Subject to this Act, no suit shall be brought to recover any costs due to an advocate until one month after a bill of costs has been delivered in accordance with the requirements of this section; except that if there is probable cause for believing that the party chargeable with the costs is about to quit Uganda, or to become a bankrupt, or to compound with his or her creditors, or to do any other act which would tend to prevent or delay the advocate obtaining payment, the court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence a suit to recover his or her costs and may order those costs to be taxed.

(2) The requirements referred to in subsection (1) are as follows—

(a) the bill must be signed by the advocate, or if the costs are due to a firm, one partner of that firm, either in his or her own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and

(b) the bill must be delivered to the party to be charged with it, either personally or by being sent to him or her by registered post to, or left for him or her at, his or her place of business, dwelling house, or last known place of abode, and where a bill is proved to have been delivered in compliance with these requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill (which shall be presumed until the contrary is shown) to be a bona fide bill complying with this Act.”

The authorities provide that the provision deals with recovery of costs by an advocate. I had occasion to review the authorities in HCMC Nos. **No 25/27 and 28 of 2011 (arising from HCCS No. 1455 of 1998) J.B. Byamugisha T/A Byamugisha & Company Advocates vs.**

National Social Security Fund. With reference to the case of **Kibuuka Musoke and Company Advocates vs. the Liquidator of African Textile Mills Ltd Civil Appeal No. 06 of 2006.** An application had been filed before the Registrar 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 applies to proceedings for recovery of costs. He further held that 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 in the matter. Secondly, 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. He held that the proper procedure for a 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. Moreover the provision does not deal with recovery of costs but only with the taxation of costs the result of which may become the basis of a suit for recovery of costs.

In that suit Hon Justice Kiryabwire Judge of the High Court as he then was cited with approval the Kenyan decision in **Sharma versus Uhuru Highway Development Ltd [2001] 2 EA 530.** In that case the Court of Appeal of Kenya considered similar provisions. These are Regulation 13 of the Advocates (Remuneration) Order which is in pari materia with the Regulation 10 of the Ugandan Advocates (Remuneration and Taxation of Cost) Rules and section 48 (1) and (2) of the Advocates Act. Gicheru J.A. held that section 48 of the Act relates to the bringing of a suit for recovery of costs by an Advocate against his client while rule 13 of the Advocates (Remuneration) Order deals with taxation of a bill of costs between Advocate/Client. There was no contradiction between the Kenyan section 48 and rule 13 (supra).

In **J.B. Byamugisha T/A Byamugisha & Company Advocates vs. National Social Security Fund** I further considered sections 57 and 58 of the Advocates Act cap 267 and dealt with the question of when costs are due to an Advocate. I held that section 58 deals with taxation of bills on the application of the party chargeable or the Advocate and that provisions of section 58 are 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 a bill of costs is made in accordance with the requirements of section 57 of the Advocates Act. Section 58 ensures that the bill is taxed. 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. In other words the taxation of a bill is to ascertain what could be due while recovery would be of a bill which has been ascertained.

Under section 57, the court has discretionary power whether to order the Advocates bill presented to the person chargeable to be taxed after an action for recovery of costs has been

commenced. In **J.B. Byamugisha T/A Byamugisha & Company Advocates vs. National Social Security Fund** (Supra) this is what I said:

“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 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".

From the above authorities I have come to the only conclusion that the application was for recovery of costs and the registrar had no jurisdiction to entertain a dispute between advocate and client as to whether costs or fees were due. Secondly it is alleged that the bill is illegal or arises from an illegal contract. The learned Registrar reached a correct decision not to entertain the bill and refer the parties to a suit with the only question remaining of whether he ought to have referred the parties to the judge for trial of the suit. Section 62 of the Advocates Act provides as follows:

“62. Appeals and references.

(1) Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.

(2) 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.

(3) With the consent of both parties the taxing officer may refer any matter in dispute arising out of the taxation of a bill of costs for the opinion of a judge of the High Court.”

Section 62 (2) deals with reference pursuant to a matter arising from taxation. In the premises the registrar decided that there was contention as to whether fees were due as between the advocate and his client and the matter would best be handled in a suit. I entirely agree that the issue of whether the contract is enforceable is best tried in a suit. Finally I do not see any grounds for departure from the judgment of Hon. Justice Kiryabwire in the case of **Kibuuka Musoke and Company Advocates vs. the Liquidator of African Textile Mills Ltd Civil Appeal No. 06 of 2006** that the action for recovery of costs should be brought by way of an ordinary plaint. The

appellant ought to have filed a suit for recovery of costs and not applied for determination of whether an order be made for taxation of costs.

In the final result the learned registrar reached the right conclusion and the moreover the appellant is not barred from pursuing the costs by way of a suit. The matter of recovery of costs was contentious and the learned registrar had no jurisdiction to entertain it. The appeal according has no merit on all the three grounds and stands dismissed with costs. The dismissal does not bar the appellant from filing an action for recovery of costs.

Judgment delivered in open court on the 13th of January 2017

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Counsel Anthony Wabwire for the Appellant

Counsel Ritah Mutuwa for the Respondent

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

13 January 2017