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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
CIVIL APPEAL No. 21 OF 2013

(Arising From a Taxation Ruling In Civil Suit No.3/2013)

10 **BANK OF AFRICA UGANDA LTD:..... APPELLANT**

VERSUS

1. KAYONZA DISTRIBUTORS LTD

2. SEZI MITEGYEKO

3. JANET MITEGYEKO:..... RESPONDENTS

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BEFORE: HON. MR. JUSTICE B. KAINAMURA

RULING

The applicant brought this application for orders that the taxation ruling and orders on the bill of costs in High Court Suit (O.S) No. 3/2013 be set aside and costs of the appeal be provided for.

20 The grounds of the application are set out in the affidavit deposed by Rehema Nabunya and are briefly that; the Registrar/ Taxing officer taxed a party-to-party bill of costs in the absence of sufficient evidence in proof of payment of the claimed sums therein by the respondents, the Registrar/Taxing Officer entertained and taxed a bill of costs brought under the 6th schedule of the Advocates (Remuneration and Taxation of costs) Regulations S.I 267-4 for a non-contentious
25 matter, yet such bills are meant to be brought and taxed under the 5th Schedule thereof, the Registrar/ Taxing Officer entertained and taxed a bill of costs which purely contravenes Regulation 42 of the Advocates (Remuneration and Taxation of costs) Regulations S.I 267-4 and it is in the interest of justice that this appeal be heard and determined.

In reply Mr. Sezi Mitegyeko filed a reply in which he deposed that the appellant filed an
30 originating summons to foreclose the mortgage and in addition the applicant sought the determination of other issues including whether the defendants are liable to the plaintiff, the appellant having committed fatal errors in filing the said originating summons was allowed to

withdraw it with costs to the defendants, it is not true that the suit was dismissed on technicalities, the law was followed when taxing the bill of costs, the 1st and 3rd respondents were represented by the same advocate but he was instructed at different times by the parties, it was proper for the 1st and 3rd respondents to file different bills as the two are separate and their defenses and appellant's
5 claim against them are different and the appellant was not prejudiced by the presentation of separate bills of costs.

Appellant's Submissions

Counsel argued the application on two grounds. The first ground was that the Registrar/ Taxing officer erred in law when he entertained and taxed two bills of costs of two defendants represented
10 by the same advocate in the same matter. Counsel argued that the Registrar disregarded the points of law raised in light of ***Regulation 42 of the Advocates (Remuneration & Taxation of Costs) Regulations*** regarding filing of separate bill of costs and affidavit in reply by the 1st & 3rd respondents. Counsel contended that the Registrar in so doing erred and hence prayed that the 1st respondent's bill of costs be set aside.

15 With regard to the second ground Counsel for the appellant argued that the Registrar erred in law when he entertained and taxed costs of two advocates in a matter where one advocate was reasonable or proper. Counsel submitted that the cost of hiring the second advocate was not necessary and ought not to be visited upon the appellant.

Respondents' Submissions

20 Counsel for the respondent in response argued three grounds which he stated were raised by Counsel for the appellant. Counsel addressing the first ground that the Registrar erred in law and fact when he taxed a party- to- party bill of costs in the absence of the evidence in proof of payment of the claimed sums therein by the respondents, submitted that there was no need of producing evidence in proof and if the appellant alleges that there were no costs the burden shifts
25 to the appellant to prove so.

On the second ground which was; whether the Learned Registrar erred in law and fact when he entertained and taxed a bill of costs brought under the ***6th schedule of the Advocates (Remuneration & Taxation of Costs) S.I 267-4*** for non contentious matter yet such bills are meant

to be brought under the 5th schedule, Counsel, submitted that the appellant lost in a matter they filed in (OS) No. 3/2013 which was vehemently opposed by the respondents and costs were awarded to the respondents. Counsel contended that according to **Regulation 37 of the Advocates (Remuneration & Taxation of Costs) S.I 267-4**, the Learned Registrar rightly entertained the bill
5 of costs and prayed that this ground should fail.

Finally, on the ground whether the Learned Registrar erred in law and fact when he entertained and taxed a bill of costs which is purely in contravention of **Regulation 42 of Advocates (Remuneration & Taxation of Costs) S.I 267-4**, Counsel argued that the 1st & 3rd respondents are different persons at law and each of them gave instructions to Counsel at separate times and as
10 such, it was necessary to have separate pleadings since instructions were not given simultaneously. Counsel prayed that this appeal be dismissed with costs to the respondents.

RULING

I have read the pleadings and submissions of all parties. The applicant seeks to set aside the bill of costs awarded in (O.S) No.3/2013 and pray for costs. Counsel for the applicant argued the
15 application on three grounds that the taxing master taxed in absence of evidence, the taxing master taxed under the 6th schedule instead of the 5th schedule and also contravened regulation 42 by taxing for individuals separately what would have been jointly taxed.

Regarding the ground of taxing in absence of evidence, I agree with Counsel for the respondents that the burden of proof lay on the appellant who opposed the amounts raised while taxing. The
20 burden of proof lies on the party who substantially asserts the affirmative of the issue and the best tests for ascertaining on whom the burden of proof lies are to consider first which party would succeed if no evidence were given on either side (*see Taylor on Evidence, 12th Ed. (Vol.1 page 252)*). From the record it is clear that the appellant did not produce any evidence in opposition of what was claimed. Accordingly, the first ground of this appeal fails.

25 Secondly in regard to the ground that the taxing master taxed under the 6th schedule instead of the 5th schedule, Regulation 37 clearly provides that;

“A bill of costs incurred in contentious proceedings in the High Court and in the Magistrates Court shall, subject to any order pronounced by the Court in regard to any

particular case, be taxable according to the rates prescribed in the sixth schedule to these rules”

The facts as stated are that the appellant lost the case in Originating summons they filed in error in the High Court and had the case dismissed with costs to the respondent. I therefore accordingly
5 rule that the second ground fails.

Lastly, regarding the taxation of the respondents separately, **Regulation 42** of the taxation rules gives the taxing officer discretion to consider what is necessary and proper. If he or she is of the opinion that any part of the costs occasioned by the separate pleadings or other proceedings has been unnecessarily or improperly incurred that part of the costs shall be disallowed in cases where
10 there is more than two or more plaintiffs or defendants, and separate pleadings are delivered. I am of the opinion that the separation of pleadings would only later carry the effect of increased costs. Save for that reason, it is discretionary for the taxing master to decide how to handle a particular taxation.

For the above reasons therefore, the appeal is dismissed with costs.

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B. Kainamura

Judge

24.07.2017

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