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

MISCELLANEOUS CAUSE No. 004 OF 2020

IN THE MATTER OF AN ADVOCATE CLIENT BILL OF COSTS

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MULINDWA ALLAN

T/A MULINDWA ASSOCIATES & CO. ADVOCATES APPLICANT

VERSUS

BALIRUNO JOHN RESPONDENT

15

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

This application was brought by Notice of Motion under Order 50 Rules 1 & 3, and
20 Order 52 Rules 1 & 3 of the Civil Procedure Rules, SI 71-1; section 57 of the
Advocates Act, Cap 267; Regulation 14(e) and the 5th schedule of the Advocates
(Remuneration and Taxation of Costs) Regulations S.I 267-4, seeking orders that:

1. Leave be granted to the Applicant to file an Advocate /Client bill of costs.
2. The Advocate/client bill of costs be taxed.
- 25 3. The Respondents pay the taxed bill of costs.
4. Costs of this application be provided for.

Facts

This application is supported by the affidavit of Mulindwa Allan the Applicant,
deponed in paragraphs 1-12, and summarized as follows: -

30 That on the 14th day of July, 2016, the Respondent instructed the Applicant to
redeem his property comprised in Block 447 Plot 251, and that the Applicant

5 diligently undertook the instructions and filed Miscellaneous Application No. 586
of 2016 for the Respondent to be added as a party, and filed Originating
Summons No. 005 of 2016. That the Applicant filed Miscellaneous Application No.
262 of 2018, when the Respondent instructed him to appeal against the ruling in
Misc. Applic. No 586 of 2018, and for stay of execution vide Miscellaneous
10 Application No. 295 of 2018.

That the Respondent is indebted to the Firm and a bill of costs was served upon
the Respondent but he refused to receive the same as stated in the affidavit of
service. That it's over 30(thirty) days since the bill of costs was served on the
Respondent but that the same remains wholly unpaid. That it is in the interest of
15 justice that this application is granted.

The Respondent opposed this application in an affidavit in reply deponed in
paragraphs 1-16 and summarized as below:

That with the assistance of his Advocates M/s Nabukenya Associated Advocates,
he has read the Applicant's affidavit in support of the application and responds
20 as hereunder;

That he paid the Applicant instruction fees totaling to a sum of UGX 15,000,000
(Uganda Shillings Fifteen Million only), to file an application for the Respondent to
be added as a party to the Originating Summons No. 005 of 2016.

That since he was a friend to the Applicant even before the application, he did
25 not find it necessary to ask for a receipt for the payment made since their
relationship was already built. That there are times when he sent to the Applicant
money through his mobile money number 0774476230 or 0703480167, which the
Applicant called disbursements.

That he paid the monies for the Memorandum of Understanding amounting to
30 UGX 10,000,000 (Uganda Shillings Ten Million Only). That the application for the
Respondent to be added filed by the Applicant was dismissed by this Court and
that the Respondent never instructed the Applicant to file any appeals against
the Court Order dismissing the application or stay of execution and that indeed
no appeal has ever been filed.

35 That the Respondent is not indebted to the Applicant or the firm and that neither
the Bill of costs nor the accompanying letter were ever served on him. That it is just
and equitable that this application is dismissed.

5 The Applicant filed an affidavit in rejoinder deponed in paragraphs 1-12 wherein, he reiterated his earlier averments in the affidavit in support, and averred further that the Respondent has never paid the alleged sums to the firm.

10 That the Respondent duly instructed the firm to execute the work, and even deposed affidavits in support of the applications seeking for leave to appeal, and stay of execution and the same were filed.

That the Respondent was served with the bill of costs and the accompanying letter but he refused to acknowledge proof of service. A copy of the affidavit of service is attached and marked Annexure" A".

That the Respondent is indebted to the firm for the legal services rendered.

15 Representation

The Applicant was represented by Counsel Allan Mulindwa of Mulindwa Associates & Co. Advocates while the Respondent was represented by Ochieng Yafesi, Bukonya Gilbert and Alex Byaruhanga of M/s Nabukenya Associated Advocates.

20 Issues for determination

1. Whether the Applicant has raised sufficient grounds for leave to file an Advocate client bill of costs to be granted?
2. What remedies are available?

Decision

- 25 1. Whether the Applicant has raised sufficient grounds for leave to file an Advocate client bill of costs to be granted?

Section 57 of the Advocates Act, Cap 267 provides that:

"57. Action to recover Advocate's costs.

30 (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
35 court may, notwithstanding that one month has not expired from the delivery of

5 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
10 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 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."

15 In the instant case, the Applicant averred under paragraph 8, of the affidavit in support that the Respondent is indebted to the firm and that a bill of costs was served upon him but that he refused to receive the same as stated in the affidavit of service deposed by Kakande Bernard, filed in Court on 10th March, 2021.

I am fully persuaded by the definition of an Advocate/ Client bill of costs in the
20 case of **Ondoma Samuel t/a Alaka and Company Advocates Vs Kana Richard HCMA No. 16 of 2018**, cited by Counsel for the Applicant, that these are costs an advocate claims from his own client, and which the advocate is entitled to recover from a client for professional services rendered to, and disbursements made on behalf of the client. These costs are payable by the client whatever the
25 outcome of the matter for which the advocates' services were engaged and are not dependent upon any award of costs by the Court... These costs can arise either in contentious or non contentious matters."

I have considered the cases of **M/S Simon Tendo Kabenge Advocates Vs M/S Mineral Access Systems (U) Ltd HCMA No. 565 of 2011**, and **Kasajja Robert Vs Nasseriga & Anor HC Misc. Cause No. 4 of 2014**, cited by Counsel for the
30 Respondent, and find that the facts are distinguishable however, this Court will not delve into the distinction.

I have also looked at the evidence adduced by the parties in this case, and find
35 that there was no an agreement as to the terms of payment for the services to be rendered by the Applicant to the Respondent.

It is my considered view that in such circumstances, the law gives a taxing officer the jurisdiction to examine the nature and extent of the work carried out by the

5 Advocate, in order to determine whether the costs incurred are recoverable from the client. **(See the case of Byenkya Kihika & Co. Advocates Vs Gandesha Civil Misc. Appeal No. 019 of 2014[2015] UGHCCD 113**, cited by Counsel for the Applicant)

10 In the given circumstances of this case, the Applicant has attached a copy of the itemized Advocate/Client bill of costs, marked as Annexure 'B' to the affidavit in support of the motion.

This Court is also satisfied that the bill of costs was served upon the Respondent, however, no response or action has been taken by the Respondent. The claim by the Respondent under paragraphs 5, and 7 of the affidavit in reply, that he made
15 payments totaling to a sum of Ugx 25,000,000 to the Applicant is not supported by any evidence.

I therefore, find that the Applicant is entitled to remuneration for the professional services rendered to the Respondent. **(See Ondoma's case supra)**.

Accordingly, this issue is answered in the affirmative.

20 Issue No. 2: What remedies are available?

This Court having found issue (1) above, in the affirmative, further finds that this application has merit.

In the result, this application is allowed and Court makes orders that: -

1. Leave is granted to the Applicant to file an Advocate /Client bill of costs.
- 25 2. The Advocate/Client bill of costs be taxed.
3. The Applicant is granted costs of this application.

Dated, signed, and delivered electronically this 7th day of December, 2022.



30 SUSAN ABINYO
JUDGE
7/12/2022