

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

MISCELLANEOUS CAUSE NO. 0077 OF 2023

M/S ODOKEL OPOLOT & CO. ADVOCATES ::::::::::::::::::::::::::: APPLICANT

VERSUS

SHUMUK INVESTMENTS LTD ::::::::::::::::::::::::::::::::::: RESPONDENT

(Before: Hon. Lady Justice Patricia Mutesi)

RULING

Background

This application is brought by notice of motion under **Article 40** of the **Constitution of the Republic of Uganda, 1995 (as amended)**, **Sections 57, 58 and 60** of the **Advocates Act Cap 267**, **Section 33** of the **Judicature Act Cap 13**, **Section 98** of the **Civil Procedure Act Cap 71**, **Rules 38, 48 and 57** of the **Advocates (Remuneration and Taxation of Costs) Regulations S.I. 267 – 4** and **Order 52 rules 1 & 3** of the **Civil Procedure Rules S.I. 71-1**. The applicant is seeking an order that the applicant's bill of costs be taxed and an order that costs of this application be provided for.

The grounds of this application are that:

1. The respondent instructed the applicant to represent and defend her in Civil Suit No. 300 of 2009, Civil Appeal No. 24 of 2009 and other incidental applications arising thereon.
2. The applicant duly represented the respondent and the respondent refused to pay legal fees.
3. The respondent has adamantly refused to settle the applicant's bill of costs despite being served with the same.
4. It is in the interest of justice that this application be granted.

The application is supported by the affidavit of Mr. Deogratius Odokel Opolot, an advocate practicing law in the applicant. Briefly, he stated that sometime back, the respondent instructed him to represent it in Civil Suit No. 300 of 2009, Civil Appeal No. 24 of 2009 and other incidental applications arising therefrom. Mr. Odokel represented the respondent but the respondent refused to pay the firm's legal fees. He confirmed that the respondent was served with the bill of costs on 13th September 2022 but that the same was ignored and the 30 days within which the payment should have been made have since elapsed. He invited the Court to allow the application.

The respondent opposed the application through an affidavit in reply sworn by Mukesh Shukla, its managing director. He stated that the respondent is not indebted to the applicant as alleged and that the applicant has never issued any invoice to the respondent which remains unpaid to date. He also averred that the applicant did not serve the demand notice and bill of costs upon an authorized agent of the respondent prior to filing the present application.

Issue arising

1. Whether the applicant's bill of costs should be taxed.

Representation and hearing

At the hearing of this application, the applicant was represented by M/S Odokel Opolot & Co. Advocates while the respondent was represented by M/S Bwango Araali & Co. Advocates. I have carefully reviewed the materials on record, the submissions of the parties and the laws and authorities cited.

Determination of the issue

In **Ondoma Samuel t/a M/S Alaka & Co. Advocates v Kana Richard, HCMA No. 0016 of 2018**, it was held that in the absence of an agreement for fees, if a dispute arises between an advocate and a client regarding the amount of fees payable such that the costs have to be taxed, no suit can be commenced to recover any such costs due to the advocate until after the lapse of one

month from the date of delivery of the advocate's bill of costs to the client in accordance with the requirements of **Section 57** of the **Advocates Act**. The requirements are that 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 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.

Having reviewed the evidence adduced, I am satisfied that the applicant has fulfilled the above requirements. First, the bill of costs is attached to affidavit in support of the application as annexure D. It is signed by Mr. Deogratius Odokel Opolot, the managing partner of the applicant. Mr. Odokel had personal conduct of the respondent's case in Civil Suit No. 300 of 2009, Civil Appeal No. 24 of 2009 and other matters arising therefrom. Second, there is a demand letter for the payment of the sum claimed in the bill of costs also written and signed by Mr. Odokel. This letter is attached to the affidavit in support of the application as annexure C.

I have noted that the demand letter indicates that it was served on, and received by, "Shumuk Group" on 13th September 2022. The applicant filed an affidavit of service sworn by Mr. Wabwire Emma, a certified court process server employed by the applicant, clarifying on the manner in which this letter and the bill of costs were served on the respondent. In that affidavit, Mr. Wabwire recounted that on 13th September 2022, he travelled to the respondent's offices at Shumuk Building in Kampala. He met a secretary called Nalubega Catherine who took him to the respondent's managing director, Mr. Mukesh Shukla. Mr. Wabwire adds that he handed over the demand letter and the bill of costs to Mr. Mukesh who refused to personally sign on the documents and acknowledge receipt thereof. Mr. Wabwire further clarified

that Mr. Mukesh ordered his secretary called Shadrack to receive and stamp the documents using the “general stamp” for Shumuk Group which is a brand name for the group of companies of which the respondent is part.

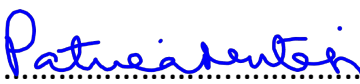
I am alive to **Order 29 rule 2** of the **Civil Procedure Rules S.I. 71-1** which requires service on corporations to be made on the secretary, a director or any other principal officer of the corporation, or that such service be made by post to the registered postal address of the corporation. However, it is also trite law that the desired and intended result of service is to make the person served aware of the contents of the documents served (see **Geoffrey Gatete & Anor v William Kyobe, SCCA No. 7 of 2005**). In this case, Mr. Wabwire’s account of the service confirms that the demand letter and the bill of costs were delivered to Mr. Mukesh, the respondent’s managing director, who refused to formally acknowledge receipt on the documents but instead ordered his secretary to receive them using a general stamp. In those circumstances, I am convinced that although Mr. Mukesh did not personally acknowledge receipt of the demand letter and the bill of costs, he became aware of the same on 13th September 2022 when the same were handed to him and he ordered his secretary to receive them with the general stamp.

The advocate-client relationship between the applicant and the respondent is uncontested. Although there was no written agreement for the provision of legal services, several of the respondent’s pleadings in Civil Suit No. 300 of 2009, Civil Appeal No. 24 of 2009 and other matters arising therefrom were drawn and filed by the applicant. However, the respondent has neither asserted nor proved that it paid any legal fees to the applicant. In the premises, I find that the applicant provided legal services to the respondent which are yet to be paid for.

Consequently, I make the following orders:

- i. This application is allowed

- ii. Leave is hereby granted the registrar to tax the applicant's bill of costs in Civil Suit No. 300 of 2009, Civil Appeal No. 24 of 2009 and in other matters arising therefrom.
- iii. Costs of this application are awarded to the applicant.


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Patricia Mutesi

JUDGE

(27/11/2023)