

1. Margaret Kampayani
2. Patience Busingye
3. Patrick Bonabana
4. Emmanuel Rwenduru
5. Tracey Kirungi

:: APPLICANTS

JOSEPH ZAGYENDA (ADVOCATE) :.....RESPONDENT

RULING

On 14th August 2004, the Respondent filed in this Court Miscellaneous Application Number 155 of 2004 for an order that the bill of costs of an advocate to a former client be taxed. The bill of costs attached to the application has the Respondent, as applicant, and “Margaret Kampayani & 5 others” as Respondents. The Notice of Motion of the Application has, however, only “Margaret Kampayani” as Respondent.

The bill was taxed ex-parte by His Worship Namundi G. on 1st September, 2004 and allowed at shs.5,453,500/=.

After the taxation the Respondent commenced execution proceedings to have the taxed amount paid.

The applicants are challenging the bill and its being taxed, on several grounds. These are contained in the affidavit of Margaret Kampayani filed in support of the application.

It is contended that since the bill is titled Joseph Zagyaenda – (Applicant) Vs. Margaret Kampayani & 5 others (Respondent's), then all Respondents ought to have been served with the bill and the Notice of Motion in Miscellaneous Application Number 155 of 2004.

There is merit in this contention. The Respondent has the onus to clearly show whether the bill is against one Respondent or six Respondents. In case it is against one Respondent, the identity of that Respondent should be clearly shown.

At the time of Taxation, it was not clear, whether the bill was only against one Respondent as the Notice of Motion showed, or whether it was against six Respondents as the Bill attached to the Notice of Motion indicated.

If the Bill is against more than one Respondent, then the rest of the Respondents to it ought to have been served. The Respondent to this application admits this to have been due to an error. Such error however caused confusion to the applicants as to who was liable for the bill.

The Learned Deputy Registrar proceeded to tax the bill without ascertaining the correct position. This was not right.

Margaret Kampayani, the first Applicant, asserts in her affidavit that she was never served with the bill of costs and the notice of Motion for the hearing date of 1st September 2004, when the bill was taxed in her absence.

The Respondent submits that she was served; and reliance for this is put on the affidavit of Tumwijekye Denis of 31st August 2004.

The affidavit of service is to the effect that on 20th August, the Respondent called the applicant to his (Respondent's) Chambers whereupon service was effected upon her. But she declined to sign the Court process saying that she was going to settle the debt.

The affidavit does not explain in detail the exact process of how service was effected on the applicant as to what was tendered to her, what was she requested to sign; and to retain. Effective proper personal service is to show the Respondent the original and then to deliver to and leave with the Respondent a correct copy of the Notice of Motion and all attachments thereto. To that extent the affidavit of service is defective.

The Court ought not to have proceeded to tax the bill ex-parte on the basis of this faulty affidavit of service.

Section 57 of the Advocates Act makes it mandatory that the advocate must deliver a bill of costs to the person against whom costs are to be recovered; and at least one month must expire from the date of delivery before the advocate takes steps by way of a suit to recover the costs.

The applicant asserts that she has never been served with the bill of costs before the court proceedings were commenced. The onus is on the Respondent to show to the satisfaction of Court that the applicant was so served. The letter dated 10th June 2004 cannot be said to be a bill of costs; and at any rate there is no evidence that the applicant received the same. This onus has not been discharged by the Respondent.

For the reasons given, this application is allowed. The advocate client bill of costs dated 30th July 2004 is struck off the record, the taxation of the said bill is set aside and proceedings for execution following the taxation of the bill and any orders made by way of execution against the first applicant are hereby quashed.

The applicants are to have the costs of this application.

Remmy K. Kasule

Ag. Judge

28th April 2006