

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC CAUSE 188 OF 2008**

M/S KIBEEDI & CO. ADVOCATES ::::::::::::::: APPLICANT

VERSUS

PAN AFRIC COMMODITIES LTD ::::::::::::::: RESPONDENT

BEFORE HER WORSHIP ELIZABETH KABANDA

RULING

The application seeks orders that;

- (a) The Court be pleased to tax the applicants advocate – client Bill of costs.
- (b) Costs of the application be granted to the applicant.

When the application came up for hearing on December 15th, 2008, Mr. Lule for the respondent raised a preliminary point of objection. The objection is that there is no Bill of costs to tax as it has already been cleared as shown in document ‘MMM5’. Secondly there was a prevalence of forgery of document ‘MMM5’ and this aspect ousted the jurisdiction of this Court. That this was so because forgery of ‘MMM5’ is a substantive matter upon pleadings and evidence given and cross examination is required as is the case in matters of fraud.

The gist of the objection is in the affidavit of Mohammed Mohammed Hamid dated 11th December 2008, clauses 1(ii) and (iv). These specify in the most material part as follows:-

‘1(ii)there was an agreed amount of fees for the entire services entered by the applicant to the respondent and the agreed sum of fees acknowledged by Mr. Muzamiru Kibeedi

(iv) in the event that the payment voucher is disputed as a forgery, the correct procedure is to have the entire matter fully litigated and that litigation can only be by way of a suit.....’

It appears to me then that there are two preliminary objections namely;

1. Whether there is a Bill of Costs to tax.
2. If so, whether the Court has jurisdiction to conduct taxation in Misc. application No. 188 of 2008

The central aspect for determination of the said two issues surrounding the objection is a payment voucher ‘MMM5’ which is attached to the affidavit in reply sworn by Mohammed Mohammed Hamid. He is the executive chairman of the respondent.

‘MMM5’ specifies that it is,

‘Full and final settlement legal fees for the case against Pan Afric Commodities against Barclays Bank’.

No further details are stated in its section for particulars.

Mr. Lule (SC) submitted that the applicant was paid shs 3.500.000/- in full and final settlement. His further submissions was that ‘MMM5’ is a forgery and so the Court has no jurisdiction to entertain the bill of costs because fraud has to be investigated by a suit. He relied on a number of cases:

1. **General Parts (U) Ltd and Another versus NPART SCCA No. 9 of 2005.**
2. **Re: Taxation Re: An Advocate [1965] EA 705, and**
3. **Fredrick Zabwe Vs Orient Bank SCCA No. 4 of 2006.**

Senior Counsel Lule further submitted that it was incumbent on the applicant to dispute the validity of voucher 'MMM5' by suit. If the suit were to succeed then the Bill of Costs can be taxed . He further further submitted that that the applicant says that the payment 'MMM5' related to other matters. These matters should also be investigated by examination. That fraud has to be investigated by another judicial authority.

On the other hand Mr. Muzamiru Kibeedi, the representative of the applicant submitted that the respondent had failed to adduce credible evidence to show that payment in 'MMM5' related to items of the Bill of costs in contention: **Sebuliba Vs Cooperative Bank Lts [1982] HCB 129 cited.** (Item No. I), Mr. Kibeedi further submitted that, this Court has full powers to investigate all matters incidental to the applicant's Bill of costs including fraud, otherwise the Law in section 80 of the Advocates Act, Cap 267 should have expressly barred the Court. That besides, fraud was not an issue in the matter at hand because document 'MMM5' referred not to the Bill of costs before the Court but to fees in the case of Pan Afric Commodities –V- Barclays Bank and the two are not related. He contended that the respondent had failed to put before Court evidence that he had paid the Bill of costs in Item I [page 124-125] of the annexures to Kibeedi's affidavit]. That Bill of costs and annexure AF2 [page 123 of the application] specify in the material part as follows:-

'being the Advocate's fees for legal services rendered to the client in respect of the negotiations and conclusion of the loan facility agreement signed in December 2006 between Barclays Bank PCL through its Mauritius International Bank Division, and Pan Afric Commodities Ltd, and of Debenture Deed dated December 2006....'

I have carefully analysed document 'MMM5' and item I of the annexed proposed Bill of costs for the Applicant. I have also considered paragraphs 5, 6, 7 and 8 of the affidavit in rejoinder by Muzamiru Kibeedi. It is my considered view that voucher 'MMM5' does not relate to payment claimed in Item I of document AF2 to the application- the proposed Bill of costs. The Court will have to determine whether it indeed relates to payments

numerated in Muzamiru Kibeedi's affidavit in rejoinder paragraphs 5-8. The substantive aspects relating to the said paragraphs 5 to 8 of the affidavit in rejoinder cannot be determined in the present preliminary objection.

I should add though that whereas counsel for the respondent contends that it was incumbent on the applicant to dispute the validity of the payment voucher by suit, I disagree with that submission. It was the respondent who raised forgery and fraud of document 'MMM5' both in the affidavit in reply of Mohammed Mohammed Hamid during the preliminary objection. It was their duty to prove that forgery and /or fraud of 'MMM5'. They failed to do so. Sebuliba case cited by the applicant's representative is good authority on this aspect.

I come to the conclusion that there is indeed a Bill of costs to be considered before this Court. Having concluded that document 'MMM5' relates to a different matter than the claim in Misc. Application No. 188/2008, I see no need to proceed to determine whether this Court's jurisdiction is ousted by any forgery or fraud in document 'MMM5'.

The foregoing notwithstanding, Sections 57 and 58 (5) of the Advocate's Act merely set out requirements precedent to the taxation of an Advocate – Client Bill of costs. A suit can only be instituted under circumstances enumerated in Section 57(1) of the Advocate's Act which provides that;

'Subject to this Act, no suit shall be brought to recover any costs due to an advocate until one month after the Bill of costs has been delivered in accordance with the requirements of the Section: except that if there is probable cause for believing that a party chargeable with the costs is about to quit Uganda or become 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 to court may or that the advocate be at liberty to commence a suit to recover his or her costs or order those costs to be taxed'.

These requirements which relate to from of the Bill of costs and procedure for its presentation, do not relate to forgery. Accordingly, presentation of a suit regarding an Advocate – Client Bill of costs is subject to the Advocates Act, restricted to requirements and conditions in Section 57 of the Act.

In the final analysis, objections raised by the respondent are hereby overruled. Costs abide the outcome of Misc. Application No. 188 of 2008.

E. K. Kabanda

DY REGISTRAR

21/01/09: 3.00pm

Mr. G.S Lule SC. and Moses Kimuli appear for the respondent.

The respondent's Managing Director is present.

M/S Namuddu Katende for Applicant

Clerk – Mr. Ochen

Court: Matter is coming for Ruling. Ruling read in the presence of all the above.

Court: Can the substantive matter be fixed?

Mr. Lule: It can be frozen because we intend to appeal.

M/S Namuddu: I pray a date be fixed so that there is no laxity.

Mr. Lule: That we are going to appeal is decided. It is a question of procedure.

Court: Adjourned 18/2/09 at 3.00pm.

E.K. Kabanda

DY REGISTRAR