

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT JINJA**

**CIVIL APPEAL NO. 08 OF 2011**

**Arising from Misc. Application no. 36 of 2010**

**Arising from Jinja Chief Magistrate's Court Civil suit no. 67 of 2010**

**INTERID (U) LTD ::: APPELLANT**

**VERSUS**

**ST. NICHOLAS PREPARATORY SCHOOL ::::::::::::::::::::::: RESPONDENT**

**BEFORE: THE HON. LADY JUSTICE FLAVIA SENOGA ANGLIN**

**JUDGMENT**

By this Appeal made under Section 62 of the Advocates Act, and rules 3 Taxation of costs (Appeals and Reference) Rules, the Appellant sought this Court's orders that the order of the trial Magistrate Grade I overruling the objection to the Bill of costs be set aside and be substituted with an order dismissing the Bill of costs for contravening the Law and the Taxation Rules.

It was further pointed that the costs of the appeal be provided for.

Before I proceed to determine the merits of this Appeal, I find it necessary to set out the background thereof as gathered from the submissions of counsel.

The Bill of costs out of which this Appeal arises was filed by the Appellant/Defendant after the Respondent/Plaintiff withdrew the suit against the Defendant.

A copy of the Bill of costs was served on the Respondent/Plaintiff's Counsel together with a Taxation notice for the 30/09/10.

When the bill was called for taxation, counsel for the Respondent/Plaintiff raised a preliminary objection to the effect that the Bill of costs did not comply with the mandatory provisions of **Rule 48 (2)** of the Advocates (Remuneration and Taxation of costs Regulations).

The Rule requires everyone to be accompanied by a copy or other true copy of the Bill for each name endorsed on it of any Advocate or other person entitled to receive the notice.

Submitting that the word "**shall**" was mandatory, Counsel objected to the bill citing a number of cases in support.

Counsel for the Plaintiff in reply relied upon Article **126 (2) (e)** of the Constitution and distinguished some of the cases relied upon to make the objection.

She went through the procedural requirements of the Rule and submitted that they were adhered to and the Plaintiff/Respondent's duly served with a copy. Counsel argued that if the Plaintiff/Respondent's Advocate did not endorse on the Bill, that was a procedural anomaly that did not go to the root of the matter.

A number of cases were cited in support to the effect that rules of procedure were meant to be handmaidens of justice but not to defeat it and that mere irregularity in relation to the rules of procedure would not result in vitiation of proceedings.

Finally that failure to indicate that the Bill was copied, when the bill was served and received did not cause any injustice to either Plaintiff/Respondent or his Counsel.

The trial Magistrate overruled the objection. She did not agree that failure to comply with the Rule was a mere technicality but distinguished the cases relied upon by Counsel for the Plaintiff/Respondent on the ground that they concerned time limits.

The Magistrate also agreed that the word “**shall**” was mandatory but was of the view that non compliance in this case did not cause an injustice since service was effected upon the Advocate concerned. She distinguished the case of **Kyomuhendo (supra)** on the ground that both the endorsement and service were lacking in that case.

Dissatisfied with the Ruling of the Magistrate, Counsel appealed to this Court seeking to set aside the order of the Magistrate overruling his objection and substituting it with an order dismissing the Bill of costs.

The grounds for the appeal as set out in the Chamber Summons and supported by the affidavit of Counsel are that:

- (1) ***The trial Magistrate misdirected herself on the gist of the objection.***
- (2) ***The trial Magistrate misdirected herself when she distinguished the case relied upon by the Respondent in a manner that was untenable at Law.***
- (3) ***The trial Magistrate misdirected herself when she seemed to suggest that the violation of the rules should be more than one rule.***
- (4) ***The trial Magistrate misdirected herself when she relied on Article 126 (2) (c) per se without considering the decision of the Supreme Court in the case of Kasirye Byaruhanga.***

Submitting on Ground one Counsel for the Appellant stated that Rule 48 (1) and (2) of the Advocates (Remuneration and Taxation of Costs) Regulations is couched in mandatory terms. The rule uses the word “**shall**”.

He cited a number of authorities of the Supreme Court which set out the duties of a litigant who wishes to rely on the provisions of Article **126 (2) (e)**.

He concluded stating that in the case of **Kyomuhendo vs. Kisubo & Anor. Misc. Application No. 331/2007** following the decisions of the Supreme Court, the High Court dismissed the Bill of costs that did not comply with Rule 46 and 48 of the Advocates Remuneration Regulations.

By overruling the objection, Counsel argued, the Magistrate arrived at the wrong decision.

Further that the way the Magistrate distinguished the case of **Horizon Coaches** was wrong and untenable at Law.

Counsel contended that his appearance to oppose the taxation of the Bill did not imply submission to proceed with such default in the pleadings. He appeared to oppose the failure of the Application to comply with mandatory provisions of the Law.

That to hold that violating the Rule is not enough was to arrive at an erroneous decision when the requirement is mandatory and when she admitted that failure to comply with Rule 48 (2) was not a mere technicality.

Adding that this appeal was filed in time considering the time taken to obtain the proceedings, Counsel prayed Court to allow the Appeal, set aside the order the Magistrate and dismiss the Bill of costs for failure to comply with Taxation Rules.

In her reply, Counsel for the Respondent stated that the appeal was untenable because it was filed out of time without leave of Court and was also misconceived and should be struck out with costs.

In respect of the grounds of the appeal, Counsel submitted that the Magistrate did not misdirect herself in any way. She acknowledged that the word “**shall**” is mandatory but decided not to dismiss the Bill of costs simply because it was lacking the name of the opposite Counsel. The Advocate for whom the Bill was intended was served and indeed he appeared in Court. Counsel for the Respondent contended that, the objection was raised in bad faith.

Further that the distinction made by the trial Magistrate between the cases helped her reach a just decision in the matter.

Counsel prayed for the dismissal of the appeal with costs.

In rejoinder Counsel for the Appellant argued that the appeal was filed in time and that although Section 79 C.P.A was not cited, it was applicable to the matter and that did not make the appeal out of time. He relied upon the Supreme Court case of **G.M. (U) Ltd Vs. A.K. Detergents (U) Ltd Civil Application No. 23/94** which is to the effect that such omission does not cause prejudice or embarrassment to the other side and does not affect the case.

Having gone through the submissions of all Counsel in this matter and the Ruling of the trial Magistrate that overruled the objection, I am constrained, to believe Counsel for the Respondent that the objections and the appeal were both made in bad faith.

While the Magistrate may have made erroneous distinctions in the cases cited, she acknowledged that the word “**shall**” is mandatory. However, she gave reasons to the effect that since Counsel for the Appellant was served with the Bill and indeed appeared when it was called for taxation, failure to cite his Firms name on the Bill did not prejudice him in anyway.

And I agree with the decision of the Magistrate in that regard. No injustice was occasioned to the Appellant as service was effected on his Counsel and both parties were going to be heard on the matter and indeed were heard.

I find that both the objection and the appeal were made with the intention of delaying the taxation of the Bill and probably preventing the Respondent from recovering the costs that were awarded to the school.

The appeal is accordingly disallowed and it is directed that taxation of the Bill goes ahead.

I am fortified in my holding by the principle of decided cases to the effect that **“Rules of procedure were meant to be handmaidens of justice and not to defeat it.”**

Where a right party is served as was the case with the Bill of costs, lack of endorsement would not and did not cause any injustice.

Costs of the Appeal awarded to the Respondent. I did not find it necessary to go into the other grounds raised by the Appeal.

**Flavia Senoga Anglin**  
**JUDGE**  
**17/02/12**