

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT RUKUNGIRI TAXATION APPEAL  
NO. 01 OF 2023**

**(ARISING FROM TAXATION APPLICATION NO. 13 OF 2023)**

**(ARISING FROM MISC. APPLICATION NO 006 OF 2022)**

**(FORMERLY MISC. APPLICATION NO 101 OF 2019)**

**(ITSELF ARISING FROM CIVIL APPEAL NO 6 OF 1994)**

**1. MUHEKI WINFRED**

**2. TINDIMWEBWA JESICAH ..... APPLICANTS**

**(As Administrators of the estate of late Zikamushungirwa Balaam)**

**VERSUS**

**FRED NGABIRANO**

**(Administrator of the Estate of the Late Esra Kururagire) ..... RESPONDENTS**

**BEFORE: HON. JUSTICE TOM CHEMUTAI**

**RULING**

This is an application brought by Chamber Summons by the Applicants, under Section 62 (1) of the Advocates Act, Rules 2, 4 and 9 of the Advocates (Taxation of Costs) (Appeal and References) Rules and Section 98 of the Civil Procedure Act, for orders that:

- 1. That Taxation Ruling in Taxation Application No.13 of 2023 be set aside.**

**2. That the Bill of Costs be referred to the Taxing Master and be taxed inter-parties in accordance with the provisions of the law and as the justice of the matter requires.**

**3. That costs of this Application/ Appeal be provided for.**

This application is supported by the affidavit of the 1<sup>st</sup> Applicant, dated 23<sup>rd</sup> November, 2023. The 1<sup>st</sup> Applicant in affidavit in support averred that;

That the Taxation Ruling in Taxation Application No. 13 of 2023/ arising from Misc. Application No.006 of 2022 was delivered on the 26<sup>th</sup> day of October 2023, in an exparte taxation.

That the mandatory pre-taxation meeting was not held between the lawyers.

That the Applicants' lawyers on the 25<sup>th</sup> October, 2023 at 2:30 Pm, were served with copies of the Taxation Hearing Notice.

That the taxation was coming up for hearing on 26<sup>th</sup> October 2023 at 9.00 am. That the Applicants' lawyers received the said Notice in "protest" and "Without Prejudice" as Counsel would be unavailable.

That the Applicants' Counsel was to appear before Ssekana J. in H.C.C.S No. 163 of 2021 on the same.

The learned Deputy Registrar proceeded with the hearing of the taxation application exparte and awarded Ug.shs 5,000,000/= (Uganda Shillings Five Million)

The Respondent filed his affidavit in reply, dated 20<sup>th</sup> December, 2023. He opposed this application and further contended that;

That the Applicants' appeal is devoid of merit, frivolous, vexatious, delaying tactic and total abuse of the Court process.

That the Applicant's lawyers were duly served with taxation notices and the allegations of the lawyer appearing in another High Court was just an afterthought to delay the taxation process.

That there was an affidavit of service on which the Learned Registrar based to tax the Bill of Costs.

That the Learned Registrar exercised her taxing discretion judiciously and rightly awarded the 5,000,000/= (Uganda Shillings Five Million) to the Respondent.

### **Representation**

During the hearing of this application, the Applicants were represented by M/S Mugisha & Co. Advocates, and the Respondent was represented by M/S Ahimbisibwe & Agaba & Co. Advocates.

Both parties filed their written submissions and authorities thereto.

### **Applicant's submissions**

Counsel for the Applicants submitted that the **Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations**, provide that both parties must be duly notified of the taxation hearing and that both parties are entitled to attend the taxation hearing to be heard. He added that Regulation 13A of the **Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations**, make it mandatory to hold a pre-taxation meeting before any Taxation of Costs can be made.

Counsel submitted that the taxing Officer did not record the results of the pre-taxation hearing. He added that there was no pre-taxation hearing held, which was contrary to the requirements of Regulation 13A hence the award had no legal or factual justification.

Counsel submitted that the Respondent did not properly serve the Applicant with taxation hearing notices. Counsel contended that under paragraph 5 of the affidavit in support of this appeal, the 1<sup>st</sup> Applicant stated that they didn't know of this application until the 25<sup>th</sup> day of October 2023 at 2:30 pm. That the hearing took place on 26<sup>th</sup> October, 2023.

### **Respondent's submissions**

Counsel for the Respondent raised two preliminary objections. Counsel contended that the instant appeal/application was filed out of time as per Section 79 (1)(6) of the Civil Procedure Act. He added that the application was filed in this Court on 24<sup>th</sup> November, 2023 and a certificate of taxation was issued by this Court on 25<sup>th</sup> October, 2023. He submitted that the application was filed after 7 days within which to appeal the decision/ order of the Registrar had lapsed.

On the second objection, Counsel contended that the grounds contained in the application and its affidavit in support were general and contrary to the provisions of Regulation 3(1) of the Advocates (Taxation of costs) (Appeals and References) Regulations.

On the application, Counsel submitted that the Bill of Costs together with taxation hearing notices were served to the Applicants' advocates (M/ s

Mugisha & Co. Advocates) on 25<sup>th</sup> October 2023. He added that the same were received, stamped, and signed by the Applicant's lawyers.

Counsel argued that the Applicants' lawyers and the Applicants did not attend Court to seek an adjournment and he added that the learned Registrar was justified to proceed and tax the Bill of Costs exparte.

Counsel further contended that the Applicants and their lawyers did not take any step to hold a pre-taxation meeting with the Respondent's Counsel.

Counsel submitted that the Applicants were accorded a fair hearing as required by law but the appellants neglected the same.

### **The merits of the application.**

Before delving into the merits of the application/appeal, I will deal with two preliminary objections raised by the Counsel for the Respondent. Counsel argued that the appeal/application was filed out of time as per Section 79 (1)(6) of the Civil Procedure Act. He further argued that the grounds contained in the application and its affidavit in support were general and contrary to the provisions of Regulation 3(1) of the Advocates (Taxation of costs) (Appeals and References) Regulations.

The above objections by the Counsel for the Respondent were challenged by the Counsel for the Applicant in his submissions in rejoinder.

The Application was brought under Section 62 (1) of the Advocates Act and Advocates (Taxation of Costs) (Appeal and References) Rules.

Section 62 (1) of the Advocates Act provides that;

### **“Appeals and references**

**(1) Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.”**

It is trite law that appeal is a creature of statute. In the case of **Baku Raphael Obudra and Obiga Kania versus the Attorney General, Supreme Court Constitution Appeal No.1 of 2005**. B.J Odoki, CJ (as he then was), noted as follows; -

**“It is trite law that there is no such a thing as an inherent appellate jurisdiction. Appellate jurisdiction must be specifically created by law. It cannot be inferred or implied.”**

In the instant appeal, it arises from Section 62(1) of the Advocates Act, not Section 79 (1)(6) of the Civil Procedure Act alleged by the Counsel of the Respondent.

I have perused the application and the affidavit in support and they do not contravene the provisions of Advocates (Taxation of costs) (Appeals and References) Regulations.

I, therefore, find no merit in the Respondent’s preliminary objection.

The Applicants contended that they were not substantively served with the taxation hearing notices and that there was no pre-taxation conference held before exparte taxation of application No.13 of 2023.

The averments of the Applicants were opposed by the Respondent, who contended that the Applicants were served with the taxation the hearing notice and failed to attend Court.

The taxation hearing notice for taxation application no.13 of 2023, was issued out by the Assistant Registrar on 12<sup>th</sup> October, 2023. The Process server from Respondent's firm went to Applicant's law firm on 25<sup>th</sup> October, 2023 at 2.30 pm. The matter was to be heard on 26<sup>th</sup> October, 2023 at 2;00 Pm. Counsel for Applicants received the service with protest. He stated that he had a matter at the High Court of Uganda in Civil Suit No.163 of 2021, before Justice Ssekana. Moreover, the High Court at Rukungiri is about 400 KM away from Kampala.

The said Process server's affidavit of service was on the Court record and it was brought to the attention of the taxing master/ Assistant Registrar and she proceeded and taxed the Bill of costs exparte. Serving the Applicant's lawyers with the taxation hearing notices on the day before the taxation and more so afternoon was not fair to the Applicants and their lawyer. It was an ambush to the Applicants and their lawyer. It was irregular for the taxing master to allow the application to proceed exparte yet service had been received with protest. The Counsel in personal conduct of the Applicants' matter was appearing in the High Court in Kampala.

It would have been prudent for the taxing master to adjourn the application to allow the parties to properly prepare for the hearing and participation in the taxation. The proper service of the hearing notices goes to the root of the right to fair hearing as provided in the Constitution of the Republic of Uganda as amended under Article 28(1).

Article 28 (1) provides: -

**“In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy, and public hearing before an independent and impartial court or tribunal established by law”**

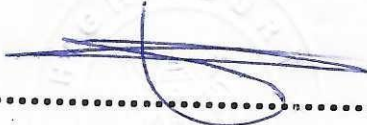
Therefore, I find that there was a miscarriage of justice occasioned to the Applicants. It was irregular for the taxing master to proceed with the exparte taxation of application No.13 of 2023.

Accordingly, I find merit in the application and make the following orders.

- 1. The exparte taxation proceedings in Taxation Application No.13 of 2023 and award of 5,000,000/= (Five Million only) therein are set aside.**
- 2. Taxation Application No.13 is to be reheard inter-parties.**
- 3. Costs of the Application are awarded to the Applicants.**

It is so ordered.

Dated at Rukungiri this 17<sup>th</sup> day of March 2023.

  
.....  
**TOM CHEMUTA!**  
**JUDGE**