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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALA

MISCELLANEOUS APPLICATION NO. 0033 OF 2021

(Arising from Miscellaneous Application No. 0047 of 2013)

(Arising from Miscellaneous Application No. 0074 2010)

10 **MARY MARTINS=====APPLICANT**

VERSUS

1. KAKURU MOSES

2. NDYABANAWE JOHNSON

3. KYAMPEIRE=====RSSPONDENTS

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BEFORE: HON. JUSTICE SAMUEL EMOKOR

RULING

The Applicant brings the Instant Application by Notice of Motion under **Section 98 Civil Procedure Act** and **Order 52 Civil Procedure Act** seeking the following orders:

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a) That the Applicant bill of costs and the Certificate of Taxation for both the 1st and 2nd Respondents be set aside.

b) That fresh Taxation be ordered for both bills in the presence of the Applicant and her Counsel.

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c) That the resultant execution of the said bills of costs be stayed until a fresh taxation is conducted in the presence of both the Applicant and her Counsel.

d) That the Applicant be awarded costs of taking out this Application.

The grounds upon which this Application is premised is that the Applicant was the Plaintiff in Civil Suit No. 0074 of 2010 which was withdrawn with costs

5 without the Applicants' knowledge and that the 1st, 2nd and 3rd Respondents filed
bills of costs against the Applicant and the same were taxed without the
Applicant's knowledge or her Counsel and that the Applicant was denied her right
to be heard during the taxation and only got to know about the same when she
was served with a Notice to Show Cause and therefore that it is only fair and just
10 that this Application is allowed.

The Application is supported by the affidavit of the Applicant.

The Respondents filed affidavits in reply to the Application.

Representation:

The Applicant in this matter was represented by Messrs Mutungi & Co. Advocates
15 while the Respondents were represented by Messrs Cumberland Advocates.

The Advocates proceeded by way of Written Submissions.

I do not find it necessary to reproduce verbatim the averments of the parties as
contained in their affidavits nor the Submissions of Counsel since they are all a
part of the Court record. It should suffice to note that I have studied the same in
20 great detail.

This Application as indicated above is brought under **Section 98 Civil Procedure
Act and Order 52 of the Civil Procedure Rules**. These Provisions clearly are not
the appropriate provisions under which the orders being sought may be brought.

Counsel for the Applicant in his Written Submissions however appears to amend
25 the same by citing that it is brought under **Order 52 of Civil Procedure Rules,
Section 62 of the Advocates Act, Section 33 of Judicature Act and Regulations**

5 **3** and **4** of the Advocates (Taxation of Costs) (Appeals and References) Regulations and **Section 98** of **Civil Procedure Act**.

The inability to cite the correct provisions of the law in an Application it is trite law is not fatal to the same.

I will therefore consider the Application as a whole in the result.

10 The Instant Application filed on 28/05/2021 seeks to set aside a taxation award in Civil Suit No.0074 of 2010 that was entered on the 08/06/2017. This is at least four years after the award.

Counsel for the Respondents take issue with this Application in this regard submitting in his written response that **Section 62(1)** of the **Advocates Act**
15 provides that any person affected by an order or decision of Taxing Officer made under the Act or any regulations made under that Act may Appeal within thirty days to the Judge of the High Court.

The Respondents in Paragraphs 12, 13, 14, 15 and 16 of their affidavits in reply contend that the Instant Application is brought in bad faith and barred by the law
20 of limitation having been brought five years after Taxation.

I will for emphasis reproduce the provisions of **Section 62(1)** of the **Advocates Act** that reads as follows:

*“Any person affected by an order or decision of a Taxation Officer made under this part of the Act or any regulations made under this part of this Act may Appeal
25 within thirty days to a Judge of the High Court who on that Appeal may make any order that Taxing Officer might have made”*

5 It is not in dispute that the Instant Application is four years late.

There is no proof on record that the Applicant sought an extension of time in which of file the Instant Appeal nor did she seek leave to file the same out of time.

I am therefore inclined to agree with the Respondents that the Instant Application/Appeal is barred by the Law of Limitation having been brought four
10 years after the award and the same is hereby struck out with costs to the Respondents.

Before me,

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Samuel Emokor
Judge
02/06/2023

02/06/2023

Ms. Nasiima Patience for the Applicant.

Applicant present.

20 2nd Respondent present.

Clerk: Vianney.

Court: Ruling delivered in open Court.

Before me,

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Samuel Emokor
Judge
02/06/2023