

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0030 OF 2009

PETER JOGO TABU & CO. ADVOCATES **APPLICANT**

VERSUS

WACO FRED **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

Some time during the year 2002, the respondent engaged the applicant firm of advocates to handle certain criminal litigation on his behalf. Their relationship as client and advocate subsisted for some time. A dispute subsequently arose between them regarding fees payable by the respondent to the applicant for that service leading to the applicant filing this application seeking an order granting leave for the firm's advocate / client Bill of Costs against the applicant to be taxed. The application is made under the provisions do s 57 of *The Advocates Act* and O 52 rr 1 and 3 of *The Civil Procedure Rules*. In his affidavit supporting the application and the one in rejoinder, Mr. Peter Jogo Tabu avers that the respondent paid fees only for a bail application but did not pay any fees for the rest of the legal representation and has to-date not paid, even though he served a copy of the advocate / client Bill of Costs on the applicant on 12th May 2009.

In his affidavit in reply, the respondent is opposed to the grant of the order sought for. Although he admits having instructed the applicant to represent him in a criminal appeal, he contends that he paid the fees due in full but was never issued with receipts or acknowledgements. He further contends that the applicant is only attempting to extort money from him. He denied ever having been served with the advocate / client Bill of Costs as alleged by the applicant. He prayed that the application be dismissed.

Submitting in support of the application, Mr. Peter Jogo Tabu argued that the advocate / client Bill of Costs was served on the respondent under a cover letter dated 6th June 2009. The Bill of

Costs represents fees due from the respondent to the applicant in respect of legal representation offered in Nebbi Chief Magistrate's Court Criminal case No. 0060 of 2002 where the respondent was charged with two counts of abuse of office and making false claims. Having been convicted on the latter count, he re-instructed the firm to represent him on appeal to the High Court and on 6th July 2005 his conviction was quashed and sentence set aside by the High Court. The respondent did not pay any fees for the criminal defence during the trial and for prosecuting the appeal. He refuted the claim that the respondent had made un-receipted payments and stated instead that the respondent had borrowed money from the firm during the period they offered him legal representation.

In response, counsel for the respondent Mr. Samuel Ondoma argued that the applicant had not proved that he duly served the advocate / client Bill of Costs on the respondent as is required by s 57 (2) (b) of *The Advocates Act*. There is no proof either that the respondent received the cover letter. The applicant was paid for the services he offered but retained the receipts for a purported intended civil suit subsequent to the criminal proceedings which he never filed. He prayed that the application is dismissed with costs.

Advocate / client costs are the costs that an advocate claims from his own client and which the advocate is entitled to recover from a client, for professional services rendered to and disbursements made on behalf of the client. These costs are payable by the client whatever the outcome of the matter for which the advocates' services were engaged and are not dependent upon any award of costs by the court. In the wide sense, they include all the costs that the advocate is entitled to recover against the client on taxation of the bill of costs. The term is also used in a narrower sense as applying to those charges and expenses as between advocate and client that a client is obliged to pay his or her advocate which are not recoverable party and party costs, or costs which ordinarily the client cannot recover from the other party. These costs can arise either in contentious or non-contentious matters.

In contentious matters, the better practice envisaged by s 50 of *The Advocates Act* is for the advocate and the client to agree at the time instructions are given or within a reasonable time thereafter as to the fees and disbursements the client shall have to meet in the course of the

advocate's prosecution of the client's instructions. Such an agreement enables the client to negotiate a reasonable fee with the advocate; it creates an opportunity for the client to obtain an estimate or range of estimates of the total legal costs likely to be incurred, details of the intervals (if any) at which the client will be billed, any surcharges (if any) that the law practice charges on overdue fees, an estimate of the range of costs that may be recovered from another party if the client is successful in litigation and the range of costs the client may be ordered to pay to another party if the client is unsuccessful, the client's right to receive progress reports, the avenues open to the client in the event of a dispute in relation to legal costs and details of the person whom the client may contact to discuss issues of the legal costs.

Such agreements are required to be in writing, signed by the client, and to contain a certificate signed by a notary public to the effect that the person bound by the agreement had explained to him or her, the nature of the agreement and appeared to understand the agreement. A copy of the certificate is required to be sent to the secretary of the Law Council by prepaid registered post. Agreements of this nature are not enforceable if any of those requirements is not satisfied (see s 50 (2) of *The Advocates Act*). However, a valid agreement of this nature is neither subject to taxation nor to the requirements of signing and delivery of an advocate's bill of costs (see s 54 of *The Advocates Act*). In such cases, a Taxing Officer has no authority to examine the nature and extent of the work done by the advocate in order to determine whether the costs incurred had been reasonably incurred. A valid agreement takes the issue of costs payable by a client to the advocate, out of the jurisdiction of a Taxing Officer.

In the instant case, there does not appear to have been any written agreement between the applicant and the respondent as to the amount payable as fees and disbursements in the prosecution of the respondent's instructions. Given that no written agreement is in existence, this is a case where the Taxing Officer would have full authority to examine the nature and extent of the work done by the advocate in order to determine whether the costs incurred were reasonably incurred and therefore are recoverable from the client.

However, in absence of an agreement for fees, if a dispute arises between an advocate and a client regarding the amount of fees payable such that the costs have to be taxed, the client is

provided with a special protection under the taxation process. In such a case, no suit can be commenced to recover any costs due to the advocate until one month after a bill of costs has been delivered in accordance with the requirements of section 57 of *The Advocates Act*. The requirements are;

- (a) the bill must be signed by the advocate, or if the costs are due to a firm, one partner of that firm, either in his or her own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and
- (b) the bill must be delivered to the party to be charged with it, either personally or by being sent to him or her by registered post to, or left for him or her at, his or her place of business, dwelling house, or last known place of abode.

Although an advocate / client bill of costs can be in the form of a lump sum bill (a bill that describes the legal services to which it relates and specifies the total amount of costs), s 58 (2) of *The Advocates Act* requires it to be an itemized bill (a bill that specifies in detail how the legal costs are made up) once if it is to be settled by after taxation. *In Re An Advocate; In Re A Taxation of Costs [1955] 2 QB 252*. Denning L.J. confirmed this distinction in the following terms:

There is a great difference for advocates between “contentious business” and “non-contentious business.” A bill for contentious business must be made out item by item, with a separate charge against each item; but a bill for non-contentious business can be charged by a lump sum. The difference in the method of charging leads to a difference in the amount, which the advocate receives. Non-contentious business is, I believe, more remunerative than contentious business.

Being based on instructions given in a contentious matter, the applicant in the instant case rightly opted to prepare an itemized bill of costs. However, the combined effect of sections 57 and 58 of *The Advocates Act*, in respect of a Bill of Costs for advocate and client charges duly delivered would appear to be that: (1) the advocate cannot lawfully sue until after expiry of one month after delivery of the bill of costs; (2) the client has a period of one month after being served with it, within which to demand and obtain taxation of the bill of costs by a Taxing Officer. If demand for taxation of the bill of costs is not made by the client within that period, then on the application either of the advocate or of client, the court may upon such terms, if any, as it thinks fit, not being terms as to the costs of the taxation, order that the bill shall be taxed.

The special protection given to the client as outlined above is firstly meant to protect the client in an Advocate and Client relationship by creating ample opportunity for the advocate to communicate at a meaningful level with the client at an early stage of the taxation process. It prevents the possibility of acrimony that could otherwise arise from a dispute over fees rushed to court adjudication. Secondly, the other rationale behind this provision can be found in the distinction between the principles underlying the award of party and party costs on the one hand and advocate / client costs on the other. The principle underlying the award of party and party costs was explained in *Tobin and Twomey v. Kerry Foods Ltd.*, [1999] 1 I.L.R.M. 428 at 432 by Kelly J. that; “it is clear that the basis of party and party costs is one of indemnity.” Similarly in *Gundry v Sainsbury* [1910] 1 KB 645 Cozens-Hardy, M.R. had regard to the nature of party and party costs and held as follows:

What are party and party costs? They are not a complete indemnity, but they are only given in the character of an indemnity. I cannot do better than read the opinion expressed by Bramwell J. in *Harold v Smith*.”...Costs as between party and party are given by law as an indemnity to the person entitled to them; they are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them. Therefore, if the extent of the demagnification can be found out, the extent to which the costs ought to be allowed is also ascertained.”

This distinction in treatment between the two types of legal costs was set out as follows in *Dyotte v. Reid* (1876) 10 I.L.T.R. 110, thus;

Costs as between party and party are not the same as advocate and client costs. In costs between party and party one does not get a full indemnity for costs incurred against the other. The principles to be considered in relation to party and party costs is that you are bound in the conduct of your case to have regard to the fact that your adversary may in the end have to pay your costs.

The effect of this premise is that a party is entitled to have all costs reasonably incurred in the defence of his or her rights not as a complete indemnity, but only in the character of an indemnity. Parties are bound in the conduct of their respective cases to have regard to the fact that the adversary may in the end have to pay the costs. The successful party cannot be allowed to indulge in a “luxury of payment.” For that reason, in a party and party taxation of costs, any charges merely for conducting litigation more conveniently will be called “luxuries” and must be paid by the party incurring them. The costs chargeable under taxation as between party and party

are limited to all that which was necessary to enable the adverse party to conduct the litigation, and no more.

On the other hand, in a client / advocate bill of costs, the basic premise is that the advocate is entitled to be paid all costs claimed for, other than such costs as may be unreasonable. On a taxation as between advocate and own client, there is an almost irrefutable presumption that all costs incurred with the express or implied approval of the client evidenced by writing are presumed to have been reasonably incurred, and where the amount thereof has been so expressly or impliedly approved by the client, to have been reasonable in amount. For that reason, whereas any charges merely for conducting litigation more conveniently will be called “luxuries” in a party and party bill of costs and must be paid by the party incurring them, in a client / advocate bill of costs such “luxuries” are charged to a client, except where they were not incurred with the express or implied approval of the client.

It would appear therefore that in the thirty days given to a client are to enable the client, among other reasons, to sieve out which items in the bill of costs presented to him or her were incurred with his or her express or implied approval, or not. For contentious business, the bill of costs will furnish a detailed statement of all the legal costs to the client. It will contain; a summary of the legal services provided; the amount of fees payable in respect thereof and details of the nature and quantum of all charges and disbursements incurred by the advocate in fulfillment of the instructions given by the client. This information enables the client determine the basis on which legal costs were charged and within the thirty day period, negotiate a costs settlement with the advocate, or obtain independent advise thereon. Failure of this, the client may then seek the bill to be taxed by a Taxing Officer whereupon such a Taxing Officer must consider: whether or not it was reasonable to carry out the work to which the legal costs relate, whether or not the work was carried out in a reasonable manner and the fairness and the reasonableness of the amount of costs charged.

It is therefore of extreme importance that a client is not deprived of the opportunity to determine whether the bill of costs represents costs that were incurred with his or her express or implied approval, and to negotiate a costs settlement with the advocate, or seek an independent opinion

before the bill is presented to be taxed by a Taxing Officer through action commenced by the advocate. That appears to be the purpose of section 57 (b) of *The Advocates Act*. The question in the instant application is whether the respondent was accorded that opportunity by service of the bill of costs upon him, and if not, whether the application should therefore fail.

In paragraph 6 of the affidavit in support of the application the applicant deposes having served the respondent on 10th June 2009 with both a covering letter and the bill of costs photocopies of which are attached to the affidavit and marked as annexure “B” and “C” respectively. This fact is denied by the respondent in paragraph 5 of his affidavit in reply. In *Jovelyn Bamgahare v Attorney General S.C. C.A. No 28 of 1993*, it was decided that he who asserts must affirm. The onus is on a party to prove a positive assertion and not a negative assertion. It therefore means that, the burden of proof lies upon him who asserts the affirmative of an issue, and not upon him who denies, since from the nature of things he who denies a fact can hardly produce any proof. The burden on this issue lay on the respondent to adduce such evidence as would satisfy court that the respondent was indeed served with the bill of costs on 10th June 2009.

The applicant had the burden of proving service the bill of costs, beyond a mere assertion. Where service is properly effected, the return of service should ordinarily have annexed to it the original process or document served accompanied by an affidavit of service stating the time when and the manner in which the document was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the document (analogy drawn from Order 5 r 16 of *The Civil Procedure Rules*). Paragraph 6 of the affidavit in support of the application, apart from the statement that the respondent was served on 10th June 2009, does not disclose the time when and the manner in which the bill of costs and covering letter was served, and the name and address of the person who witnessed the delivery or tender of the two documents. None of the documents bears the signature of the respondent. I therefore find that the applicant has not discharged the burden and there is no proof that the respondent was served with the bill of costs on 10th June 2009.

In *Margaret Kampayani and others v Joseph Zagyenda (Advocate), H.C. Misc. Cause No. 1035 of 2004*, where it was found that the affidavit of service did not explain in detail the exact

process of how service was effected on the applicant, as to what was tendered to her, what it was she was requested to sign, and to retain, service was found not to have been proved. Effective proper personal service, it was held, requires showing the Respondent the original and then to deliver to and leave with the Respondent an original of the court process and all attachments thereto. In light of the fact that court had proceeded to tax the advocate's bill of costs despite this anomaly, the court held as follows;

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.

In that case, taxation of the said bill which proceeded without proof that the respondent had been served at least one month before the proceedings for its taxation were commenced by the advocate was set aside. The applicants were as well not served with the notice of taxation and the bill was taxed ex-parte against them.

Although s 57 of *The Advocates Act* is mandatory, I am unable to read into that provision the rule that non-compliance will always result in rejection of the advocate / client bill of costs. In my view, each case will be determined on its facts. The facts in the instant application are distinguishable from those of *Margaret Kampayani and others v Joseph Zagyenda (Advocate)* case. In that case, the bill of costs went through taxation up to execution without proof that the respondents had at any stage been notified of the bill of costs.

In the instant case, the application was filed on 23rd October 2009 and was fixed for hearing on 10th November 2009. There is no indication on the record as to what happened on that date. The first time the applicant appeared on record was on 22nd January 2014, on which day he sought an adjournment to serve the respondent with the notice of motion. It was adjourned to 28th March 2014 on which date the respondent was represented in court by Counsel Samuel Ondoma who sought an adjournment on ground that the respondent had not been served with the notice of motion. However, the record indicates that the respondent had filed an affidavit in reply on 7th April 2014. Nevertheless, the court directed that the respondent be served in person with the notice of motion and the application was adjourned to 16th April 2014. On that date the trial Judge was indisposed and the application was thereafter adjourned on several occasions for similar reasons until 29th September 2016 when the application was finally heard.

In the circumstances, the respondent has had knowledge of the content of the advocate's bill of costs as far back as April 2014 by virtue of the fact that it was attached to the notice of motion served upon him and in respect of which he filed an affidavit in reply on 7th April 2014, except that there is no proof that he had been duly served with the same at least a month before the motion was filed. The question then is whether despite knowledge of the content of the bill of costs which he has had for over two years before the application has now come up to be decided, that notice should be trumped by the lack of proof that the same was served on him at least a month before the motion was filed.

In my view, the answer to the question lies in examining the purpose of section 57 of *The Advocates Act*, and deciding whether that purpose has been achieved through other means and whether non-compliance has occasioned or is likely to cause any substantial injustice or prejudice to the applicant. I have chosen this line of analysis because I consider s 57 of *The Advocates Act* to be in the nature of a procedural rather than a jurisdictional provision. It is characterized as such because the court has jurisdiction to tax the bill of costs but the intention appears to be that the jurisdiction to tax should not be invoked until the client has been afforded an opportunity to determine whether the bill of costs represents costs that were incurred with his or her express or implied approval, and to negotiate a costs settlement with the advocate. If that is the purpose of the provision, then the purpose was achieved more than two years ago. When

the bill is directed to the Taxing Officer for taxation, more than two years will have elapsed since that purpose was achieved.

Although section 57 of *The Advocates Act* creates a regulatory procedural requirement which imposes obligations on advocates as to recovery of legal costs with particular emphasis to costs in contentious matters, this does not entitle a client to avoid being held liable to discharge advocate's fees and costs. These provisions were meant to protect the client in an Advocate and Client relationship and could not have been intended in the absence of the required service of the bill of costs to have the consequences that an advocate such as the applicant in these proceedings would be deprived of his entitlement to recover taxed costs as against the respondent pursuant to an order of a Taxing Officer.

This view is buttressed by a comparable decision in the Irish High Court case of *A & L Goodbody Advocates v Colthurst and another [2003] IEHC 74* (judgment of Mr. Justice Peart, High Court, 5th November 2003) where it was held that failure by an advocate to send the appropriate letter in compliance with Section 68 of the *Advocates (Amendment) Act, 1994* did not deprive the advocate or a party of his entitlement to recover his costs. In that case, the Irish High Court considered the impact of non-compliance with s 68 of the Irish *Advocates (Amendment) Act, 1994* which provided as follows; -

s 68.—

- (1) On the taking of instructions to provide legal services to a client, or as soon as is practicable thereafter, an advocate shall provide the client with particulars in writing of—
 - (a) the actual charges, or
 - (b) where the provision of particulars of the actual charges is not in the circumstances possible or practicable, an estimate (as near as may be) of the charges, or
 - (c) where the provision of particulars of the actual charges or an estimate of such charges is not in the circumstances possible or practicable, the basis on which the charges are to be made, by that advocate or his firm for the provision of such legal services and, where those legal services involve contentious business, with particulars in writing of the circumstances in which the client may be required to pay costs to any other party or parties and the circumstances, if any, in which the client's liability to meet the

charges which will be made by the advocate of that client for those services will not be fully discharged by the amount, if any, of the costs recovered in the contentious business from any other party or parties (or any insurers of such party or parties).

- (2) A advocate shall not act for a client in connection with any contentious business (not being in connection with proceedings seeking only to recover a debt or liquidated demand) on the basis that all or any part of the charges to the client are to be calculated as a specified percentage or proportion of any damages or other moneys that may be or may become payable to the client, and any charges made in contravention of this subsection shall be unenforceable in any action taken against that client to recover such charges.
- (3) A advocate shall not deduct or appropriate any amount in respect of all or any part of his charges from the amount of any damages or other moneys that become payable to a client of that advocate arising out of any contentious business carried out on behalf of that client by that advocate.
- (4) Subsection (3) of this section shall not operate to prevent a advocate from agreeing with a client at any time that an amount on account of charges shall be paid to him out of any damages or other moneys that may be or may become payable to that client arising out of any contentious business carried out on behalf of that client by that advocate or his firm.
- (5) Any agreement under subsection (4) of this section shall not be enforceable against a client of a advocate unless such agreement is in writing and includes an estimate (as near as may be) of what the advocate reasonably believes might be recoverable from any other party or parties (or any insurers of such party or parties) in respect of that advocate's charges in the event of that client recovering any damages or other moneys arising out of such contentious business.
- (6) Notwithstanding any other legal provision to that effect a advocate shall show on a bill of costs to be furnished to the client, as soon as practicable after the conclusion of any contentious business carried out by him on behalf of that client—
 - (a) a summary of the legal services provided to the client in connection with such contentious business,
 - (b) the total amount of damages or other moneys recovered by the client arising out of such contentious business, and
 - (c) details of all or any part of the charges which have been recovered by that advocate on behalf of that client from any other party or parties (or any insurers of such party or parties), and that bill of costs shall show separately the amounts in respect of fees, outlays,

- disbursements and expenses incurred or arising in connection with the provision of such legal services.
- (7) Nothing in this section shall prevent any person from exercising any existing right in law to require an advocate to submit a bill of costs for taxation, whether on a party and party basis or on an advocate and own client basis, or shall limit the rights of any person or the Society under section 9 of this Act.
- (8) Where a advocate has issued a bill of costs to a client in respect of the provision of legal services and the client disputes the amount (or any part thereof) of that bill of costs, the advocate shall—
- (a) take all appropriate steps to resolve the matter by agreement with the client, and
 - (b) inform the client in writing of—
 - (i) the client's right to require the advocate to submit the bill of costs or any part thereof to a Taxing Master of the High Court for taxation on a advocate and own client basis, and
 - (ii) the client's right to make a complaint to the Society under section 9 of this Act that he has been issued with a bill of costs that he claims to be excessive.
- (9) In this section “charges” includes fees, outlays, disbursements and expenses.
- (10) The provisions of this section shall apply notwithstanding the provisions of the *Advocates and Advocates (Ireland) Act, 1849* and the *Advocates and Advocates Act, 1870*.

In another case interpreting and applying the same provision, *Luke Boyne v Dublin Bus / Bus Átha Cliath and James McGrath, (2006) IEHC 209*, the Defendants submitted as a preliminary objection that the Plaintiff was not entitled to recover any costs from the Defendants on a Party and Party Taxation in circumstances where the Plaintiff was not under a legal liability himself to discharge the corresponding part of his own Bill of Costs, being the amount therein sought to be recovered on Taxation. The central thrust of the Submissions made on behalf of the Defendants was to the effect that there has been no compliance with Section 68 (1) (c) of the *Advocates (Amendment) Act, 1994*, because on taking the instructions of the Plaintiff, the Plaintiff's Advocates did not then, or as soon as practicable thereafter, provide the Plaintiff with particulars in writing of the basis upon which charges were to be made as required by Section 68(1) (c). The Defendants submitted that the letter of the 12th of August 1999, on which the Plaintiff sought to rely was simply too general to satisfy the statutory requirements. The Defendants submitted that

it provided no detail of the actual charges and no estimate of those charges and furthermore it could not, on the basis of the Defendant's submissions "plausibly be contended that it sets out the basis upon which charges will be made". The Defendant finally submitted that the letter simply contained a list of generalities which left the reader in a state of complete ignorance as to how the charges would actually be calculated and gave no guidance. that the subsequent production of the Bill of Costs was not sufficient compliance for the purpose of Section 68 (5) on the grounds that the estimate which was given at the time the agreement was made in 1999 and that the period which had elapsed from the date of delivery of the Bill of Costs over two years later was inconsistent with the Section 68 (5). The Trial Judge held:

In these circumstances I proposed to follow the Judgment of Peart J. in *A & L Goodbody Advocates v Colthurst* and adopt the principle as set out *Garbutt v Edwards* in the Court of Appeal and I reject the Defendant's submissions to the effect that the failure by a Advocate to send the appropriate letter in compliance with Section 68 of the Act of 1994 deprives the Plaintiff of his entitlement to recover his costs from the Defendant on a party and party Taxation pursuant to the final Order of the Trial Judge herein. In any event I take the view that the letter of the 12th August 1999 and its content does provide the Plaintiff with particulars in writing of the basis upon which the Advocates charges will be made in compliance with Section 68 (1) (c). The references in the letter and its basic content relating to the relevant circumstances in which the Taxing Master shall have regard to in exercising his discretion in relation to any item of costs. The Plaintiff's instructions to his Advocates were given in or around mid July 1999 and in my view the letter of the 12th August 1999 does not breach the direction that details as to the basis of the charges should be provided to the client as soon as practicable after taking instructions. Insofar as the Defendants have made the alternative argument that the Plaintiff has no liability to pay that part of his Advocates bill which equate to the party and party costs because there is no compliance with Section 68 (5) of the Act of 1994 I reject this contention.....No reasons were advanced to this Court as to why strict compliance with the provisions of Section 68 would have made any difference to the amount of costs of the paying party would be required to pay against a background where the paying party is entitled to have its costs taxed by the Taxing Master in default of agreement and is entitled to review of such Taxation by this Court

Similarly in the instant application, neither section 57 nor 58 of *The Advocates Act* makes reference to the wiping out of liability in circumstances where a suit for recovery of costs is commenced without compliance thereto. In absence of any express statutory provision to this

effect it would not be appropriate for this Court to read into the Act such a far reaching provision. I cannot see any reasons as to why lack of strict compliance with the provisions of section 57 of *The Advocates Act* would make any difference to the client's obligation to pay or the amount of costs the client would eventually be required to pay against the background of section 58 of *The Advocates Act* where the client is entitled to have his or her costs eventually taxed by the Taxing Officer, in default of agreement, and is entitled to appeal such taxation.

Demanding strict compliance with section 57 of *The Advocates Act* while turning a blind eye to its purpose and whether or not that purpose was achieved through other means would practically be giving undue regard to the technicality of a procedural provision. The Supreme Court in the case of *Byaruhanga and Company Advocates v Uganda Development Bank, S.C.C.A No. 2 of 2007, (unreported)* left it to the discretion of the judge to decide whether in the circumstances of a particular case and the dictates of justice, a strict application of procedural laws, should be avoided. Considering the circumstances of this case as a whole, insisting on strict compliance with section 57 (2) (b) of *The Advocates Act* is likely to occasion an injustice to the applicant yet the respondent has had more than two years' notice of the contents of the advocate / client bill of costs the applicant seeks to be taxed. Further still, the respondent will before the Taxing Master, have a fair opportunity to challenge his liability to pay the costs outlined in the bill of costs and if dissatisfied with the outcome, to appeal the decision. I am unable therefore to find any substantial prejudice the respondent is likely to suffer if the applicant is not held to strict compliance with this procedural provision.

On the other hand, what is prohibited by section 58 of *The Advocates Act* is commencement of a "suit" based on the bill of costs before compliance with section 57 of *The Advocates Act*. Apparently, the suit so envisaged does not include an application for leave for the bill of costs to be taxed. This is because section 58 (5) of *The Advocates Act* provides as follows;

- (5) If notice is not given by the party chargeable with the bill as provided in subsection (1) within the period specified in that subsection, then, on the application either of the advocate or of the party chargeable with the bill, the court may, upon such terms, if any, as it thinks fit, not being terms as to the costs of the taxation, order—

- (a) that the bill shall be taxed;
- (b) that until the taxation is completed, no suit shall be commenced on the bill, and any suit already commenced be stayed... (emphasis added)

Although section 1 (n) of *The Advocates Act* defines “suit” as having the same meaning as in the *Civil Procedure Act*, section 58 (5) of *The Advocates Act* suggests a distinction between “taxing the bill of costs” and “commencing a suit on the bill of costs.” Therefore, when section 57 (1) of *The Advocates Act* bars bringing a suit to recover any costs due to an advocate until one month after a bill of costs has been delivered in accordance with the requirements of that section, it is a reference to “commencing a suit on the bill of costs” rather than seeking a taxation of the bill of costs.

A similar conclusion was reached in *Kibuuka Musoke and Company v The Liquidator of African Textile Mill Limited*, H.C. Civil Appeal No. 06 of 2006 where it was held that nowhere does section 57 of *The Advocates Act*, which deals with action for the recovery of costs, forbid the taxation of costs before any action for the recovery of costs can be instituted. This is more particularly so in light of the fact that Regulation 10 of *The Advocates (Remuneration and Taxation of Costs) Regulations*, S.I. 267- 4, which provides for taxation of costs as between advocate and client on application of either party, provides that the taxing officer may tax costs as between advocate and client without any order for the purpose, upon the application of the advocate or client.

This being an application for taxation of an advocate / client bill of costs and not a suit for recovery of costs, failure to attain strict compliance with the provisions of s 57 of *The Advocates Act* does not bar the court from making orders for the taxation of costs, the result of which could be the basis, at a later stage, of a suit for the recovery of costs. I do not see any injustice that is likely to be caused to the respondent by such an order in the circumstances of this case.

The respondent has averred in his affidavit in reply that he paid in full all the fees due from him to the applicant and the applicant has refuted this in his affidavit in rejoinder. This is not an issue for this court to decide on an application of this nature. That will be a matter to be addressed and

decided by the Taxing Officer whose duty it is to determine; the nature and extent of the work done by the applicant, whether or not it was reasonable to carry out the work to which the legal costs relate, whether or not the work was carried out in a reasonable manner and the fairness and the reasonableness of the amount of costs charged, whether the costs were incurred with the express or implied approval of the respondent, whether the applicant is entitled to recover any costs as against the respondent as itemized in the bill of costs or at all, whether the costs claimed or any part thereof were paid by the respondent, whether the costs incurred were reasonably incurred, and so on.

In the final result, this application is allowed with orders that the Taxing Officer proceeds to tax the applicant's advocate / client bill of costs dated 13th August 2009 on such a date as shall be convenient to the Taxing Officer and the parties.

Because of the unduly long time it has taken the applicant to cause this application to be heard and finally disposed of, especially the unexplained delay between October 2009 and January 2014 (a period of five years), there shall be no order as to the costs of this application.

Dated at Arua this 13th day of October 2016.

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Stephen Mubiru,
Judge