

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV- MA- 0143 OF 2016  
(ARISING FROM MISC. APPLICATION NO. 70 OF 2015)  
(ALL ARISING FROM HCCS NO. 0001 OF 2012)**

<b>1. OKODOI GEORGE</b>	:::~::~:	<b>APPELLANTS</b>
<b>2. OBWARET VINCENT</b>		
	<b>VERSUS</b>	
<b>OKELLO OPAIRE SAM</b>	:::~::~:	<b>RESPONDENT</b>

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This is an application by Chamber Summons under sections 62(1) of the Advocates Act (as amended) Regulation 3(1) of Advocates (Taxation of costs) Appeals and (References) Regulations (S1 - 267-51) for orders that;

- (a) The learned Registrar's order taxing the Respondent's bill of costs filed by M/s Sanywa, Wabwire & Co. Advocates of Shs 12,337,000/= be quashed for being manifestly high and excessive for allowing to tax a bill of costs filed by a law firm not on record.
- (b) That court orders that the Respondent files a fresh bill of costs through the law firm on record being M/S Waluku , Mooli and Co. Advocates and taxes the same.
- (c) Costs of the appeal be provided for.

The grounds are supported by the affidavit in support by **Okodoi George**.

The respondent filed an affidavit in reply by **Okello Opaire Sam** which controverts the averments by appellants.

The appellants' counsel in his submissions in Chief raised a Preliminary Objection regarding the efficacy of this affidavit in reply, but abandoned it in his submissions in rejoinder. The Preliminary Objection is therefore overruled.

In his submissions both in chief and rejoinder appellant argued that the award of 12,337,000 was manifestly high and excessive and ought to be taxed down.

He contended that the bill was prepared by a firm not on record and hence the firm of M/s Sanywa, Wabwire & Co. Advocates are precluded from claiming, instruction fees.

The appellant relied on the case of ***Ebrahim A. Kassim and 2 Others Vs. Habre International Ltd SC Civil Ref. 16 of 1999*** where the Supreme Court held:

*“ With regard to the complaint that the present Advocate was awarded costs for work done in the High Court by other Advocates the position of change of Advocates is clearly stated under par. 16 of the 3<sup>rd</sup> schedule . It provides that (1) if there has been a change of Advocates the Bill of costs of the first Advocate may be annexed to that of the current Advocate and the total shown as disbursement. (2) The bill shall be taxed in the ordinary way, the current Advocate being heard on it, but the taxing officer may require the first Advocate to attend. The position is self explanatory and does not need much comment.”*

The appellant argues that the bill was drawn by a firm of “ Sanya Wabwire” who had no instructions in the matter since there was no “ notice of change of Advocates”

Respondent though argued that the cases of ***Ebrahim Kassim V Habre*** (Supra) is distinguishable. They referred to ***Haji Hortjana Mtylanga V. Sharif Osman*** referred to in ***Ebrahim Kassim V Habre*** Court . Respondent argues that while in ***Haji Hortjana*** case ( Supra) the Advocate's costs were lumped together with costs due to a former Advocate who had represented the client , in this case the Respondent was previously being represented by

**Counsel Wabwire Dennis** who was trading under the law firm of Waluku, Mooli & Co. Advocates who later opened up his own chambers.

Counsel argues that the failure to file a Notice of Change of Advocates is a mere rule of practice and its omission is not fatal to the process, rule 2(1) of Advocates (professional conduct) Regulations notwithstanding.

In determining the contention above, I will refer to the provision of Regulation 2(1) of the Advocates (Professional Conduct) Regulations. This provision provides that “ *no Advocate shall act for any person unless he or she has received instructions from that person or his or her duly authorized agent..*”

What is the practical meaning of that provision? In my opinion the onus is on the Advocate so instructed to take steps to make it known to all concerned that he/she has been duly instructed. The prudent Advocate, in practice takes out a notice of instruction informing the court and opposite counsel of such instructions.

Where, there is a change in the instructions again a prudent Advocates files a “Notice of change of Advocates.” All this is aimed at avoiding a scenario like the current one- where instructions end up being challenged. It is admitted that the instructions to represent the Respondents in the suit from which this application arises were given to Waluku, Mooli & Co. Advocates.

See paragraph 5 of **Okello Opaire’s** affidavit in reply, and paragraph 4 of **Okodoi George’s** affidavit. The legal question therefore which arises for determination is whether counsel can be allowed the costs in a case he handled while practicing with a different law firm on a Bill of costs drawn by another law firm to which he has shifted.

The law was discussed by the Supreme Court in the case of **Kabale**

***Housing Estates Tenants Association V. Kabale Municipal Local Council CA. 15 of 2013***, where it was noted that:

*“a suit brought without instructions is incompetent.”*

The Court referred to the case of **Danish Mercantile Co. Ltd V. Beamont & Anor. (1951) Ch. CA 680** where **Jenkins L.J** at page 687 stated the position as follows :

*“ I think that the true position is simply that a solicitor who starts proceedings in the name of a company without verifying whether he has proper authority so to do , or under an erroneous assumption of authority does so at his own peril , and that so long as the matter rests there, the action is not properly constituted.*

*In that sense it is a nullity and can be stayed at anytime, provided that the aggrieved party does not unduly delay his application , but it is open at any time to the purported plaintiff to ratify the act of the Solicitor who started the action to adopt the proceedings to approve all that has been done...”*

The import of the law above is that instructions ran with the action itself, they cannot be assumed. The instructions to file the matter from which this application arises having been issued to the firm of Waluku, Mooli & Co, where a one **Wabwire** was a practicing partner who handled the matters contained in Annex ‘C’ and from which the application before court is derived, are deemed to have remained with the said firm until the court is notified accordingly. Counsel who had personal conduct of the matter, shifted in 2015 to his own law firm and argues that he is entitled to the instruction fees since he conducted the case. That would be correct if the current practice in legal practice in Uganda in Uganda is that *“clients are taken on as person to holder”* that is that each Advocate operates independently of their law firm. The situation however in Uganda Legal Practice is that law firms are instructed to represent clients, and it is in the names of such law firms that individual lawyers appear (on their behalf ) to pursue the matters in court.

That position was persuasively considered and laid down in the case of **Uganda V. Patricia Ojangole Criminal case NO. 1/ 2014** by **Hon. J. Gidudu** that:-

*“Besides, instructions to a partnership of lawyers goes to the firm and not to individual Advocates. An individual partner cannot practice law in a partnership firm independent of the other parties.*

*This would be contrary to the partnership Act...”*

It is my finding therefore that the firm of M/s Sanya ,Wabwire & Co. Advocates which drafted the Bill of costs , was without instructions because the firm which is on record is that of M/s Waluku , Mooli& Co. Advocates. Even **Counsel Wabwire** is the one who handled the matter, he did so as a partner/ associate of M/s Waluku , Mooli & Co. Advocates. By the time he constituted his own firm in September 2015, the matters which are the subject of taxation were long done and handled by him while practicing under M/s Waluku , Mooli & Co. The instructions were never withdrawn, and hence the rightful firm to file and apply for costs is the firm of Mooli & Co. Advocates. From the holding in the ***Uganda V. P. Ojangole*** (supra) case above which I agree with, the instructions go to the firm not the individual.

I hold that the firm of M/s Sanya Wabwire & Co. had no locus to file the bill of costs, and the learned Registrar taxed the same in error. I accordingly agree with the prayer by the applicant in his pleadings and submissions that the Respondent’s Bill of costs should never have been taxed; it should have been expunged from the record because it was foreign to the proceedings. This finding conclusively extinguishes all that applicant’s application seeks from court under ground 1(a) of the Chamber Summons.

Under ground 1(b) , the applicant prays that court orders that Respondent files a fresh bill of costs through the law firm on record of M/s Waluku , Mooli & Co. Advocates. This ground is allowed.

The rest of the arguments in the submissions were not pleaded. Parties are bound by their pleadings.

I do make no findings on them as they were not pleaded.

This application is accordingly allowed. The bill of costs is expunged from the record, the Registrar’s award is quashed, and the Respondent should through Waluku, Mooli & Co.( who handled the matter) file a proper bill of costs to be taxed by the Registrar. Costs of the application granted to the appellant. I so order.

**Henry I. Kawesa**

**JUDGE**

**06.05.2017**