

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0016 OF 2018
(Arising from High Court Civil Suit No. 1 of 2007)

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ONDOMA SAMMUEL t/a Alaka and }
Company Advocates } **APPLICANT**

VERSUS

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KANA RICHARD RESPONDENT

Before: Hon Justice Stephen Mubiru.

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RULING

This is an application under sections 57 and 58 of *The Advocates Act* and Order 52 rules 1 and 3 of *The Civil procedure rules* seeking and order authorising taxation of an advocate / client bill of costs, on grounds that the applicant, an advocate in private legal practice, rendered legal services to the respondent for which the respondent has either failed, neglected or refused to pay. In the affidavit supporting the application, the applicant avers that he was instructed by the respondent to represent him in the year 2011 in a suit against Yumbe District Local Government. The suit was on 3rd July, 2013 decided in favour of the respondent. The applicant initiated and concluded the process of recovery of the decretal amount by way of garnishee proceedings during June, 2014. Difference arose between the applicant and the respondent as to the amount due to the applicant out of those proceeds. After considering the respondent's complaint, the Law Council directed the applicant to present an advocate-client bills of costs for taxation by the Taxing Officer. The applicant proceeded to serve an advocate / client bill of costs upon the respondent on 16th September 2014 but despite several reminders thereafter, the respondent has to-date failed, neglected or refused to settle the bill or cause taxation thereof, hence this application.

The respondent having not filed an affidavit in reply and he having failed to turn up at the hearing of the application despite existence of a return of service on court record proving that he had been effectively served, court allowed the applicant to proceed ex-parte and he submitted

that he served the advocate client bill of costs on 14th November, 2017 and the affidavit of service is dated 21st November, 2017. The respondent has not taken any steps. It is now over 30 days required by section 57 of *The Advocates Act*. He prayed that under section 58 (5) of the Act, the court be pleased to order that the advocate client bill of costs be taxed.

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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
5 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.

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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
15 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
20 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;

- 25 (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
30 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.

The applicant in the instant case has attached a copy of the bill of costs that was served on the respondent. The applicant has satisfied court that he furnished the respondent with an itemised

bill of costs as required by s 58 (2) of *The Advocates Act*. Regulation10 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.

In a case such as this where the client has not made a demand for taxation of the bill of costs within the stipulated thirty days after service, then the law authorises the court on the application of the advocate, 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 application is therefore allowed with costs to the applicant.

Dated at Arua this 15th day of March, 2018.

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Stephen Mubiru,
Judge
15th March, 2018.

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