

VERSUS

1. REV. FR. FRANCIS LUBEGA
2. REV. FR. BONNY KALYESUBULA
3. REV. FR. THOMAS SSEMPALA
4. BONNY NAMUGERA
5. MUSA KAYONGO ..... RESPONDENTS

*Before; Hon. Lady Justice Victoria Nakintu Nkwanga Katamba*

**RULING**

This application was brought under Sections 96 & 98 of the Civil Procedure Act, Section 62(1) of the Advocates Act, and Orders 51 Rule 6 & Order 52 Rules 1 & 2 of the Civil Procedure Rules for orders that;

1. Leave be granted to file a Taxation Reference out of time;
2. Costs be provided in the causes;

The grounds of the application as contained in the affidavit of Zonobia Nanfuka the Applicant are briefly that;

- a) The Applicant instituted Civil Suit No. 125 of 2017 against the Respondent which gave rise to Misc. Application No. 100 of 2017 which was dismissed with costs to the Respondents;
- b) The Respondents filed a bill of costs which was taxed ex parte and allowed at Ugx. 27,778,970/=;

- c) The Applicant was not served with the taxation hearing notice nor the taxation ruling notice;
- d) The Applicant was further deprived of the privilege to appeal against the bill in time by the Respondents' conduct;
- e) The Applicant brought this application seeking court's permission to have Taxation Reference filed in this court against the taxed bill of costs;
- f)

In reply, the 1<sup>st</sup> Applicant Fr. Francis Lubega opposed the application and stated that the bill was taxed inter partes and the Applicant's Counsel chose to run away from the taxation proceedings on 24/05/2019. The Respondents have never deprived the Applicant of the privilege to appeal against the taxed bill of costs and the law governing taxation was followed to arrive at the taxed amount.

Counsel for the Applicant submitted that she cannot be blamed for the flopped pre taxation conferences for reasons attributable to the Respondent's counsel. Counsel argued that the Applicant and her counsel were never aware of the taxation proceedings and that the award is manifestly excessive, irregular and an abuse of court process.

Counsel for the Respondents argued that the Applicant was duly served through her counsel and the Applicant was fully aware of the taxation process. Further that the Applicant is guilty of dilatory conduct having filed this application eight months after the taxation and has no adduced sufficient cause for such delay.

### **Determination of the application;**

The Applicant seeks for leave to file a taxation appeal out of time. According to ***Section 62 (1) of The Advocates Act***, any person affected by an order or decision of a taxing officer made under the Act or any regulations made under that Act, may appeal within thirty days to a judge of the High Court. In the instant case, the award of the Taxing Master that is subject of this application was made on the 31.05.2019 and this application was filed on the

20<sup>th</sup> day of February 2020. This is evidently outside the thirty days prescribed time for lodging an appeal as per Section 62 cited herein.

In applications of such nature where a party seeks to do a certain act outside the time prescribed under the law, the applicant has to adduce evidence of sufficient cause for the delay in taking the necessary step to justify the grant of the application for leave to proceed out of time. The Applicant is further required to show that there is a time stipulated under the law within which that act should have been done and then show that they were prevented by sufficient cause from doing that act within the stipulated time.

***Black's Law Dictionary 8th Edition at Page 231 defines "sufficient cause" to be analogous to "good cause" or "just cause", which simply means "legally sufficient reason."*** Sufficient cause is often the burden placed on a litigant by court rules or order to show why a request should be granted or action or inaction excused.

In the cases of: ***Mugo v Wanjiri [1970] EA 481 at page 483. Njagi v Munyiri [1975]EA 179 at page 180 and Rosette Kizito v Administrator General and Others [Supreme Court Civil Application No. 9/86*** reported in Kampala Law Report Volume 5 of 1993 at page 4] it was held that sufficient reason must relate to the inability or failure to take the particular step in time.

In the instant case, the Applicant claims that she was never made aware of the taxation hearing since she was never served with the bill of costs nor the taxation hearing notice.

I have carefully perused the record of the lower court and I did not find on file any taxation hearing notice served onto the Applicant. I have also not had the benefit of perusing the bill of costs as there is no copy on the record and as such cannot confirm receipt by the Applicant's counsel. What is on record are part of the taxation hearings which commenced on the 22<sup>nd</sup> March 2019 at which counsel for the Respondents informed court that the matter was for taxation of the bill of costs for MA 100 of 2017 which was dismissed and scheduling of the main suit. The Applicant's counsel was on the said date indisposed and one Advocate Dayila held brief and indicated that he was not aware of the taxation. Court

directed that Mr. Sserwanga the Applicants lawyer and Mr. Kazibwe the Respondents' lawyer meet up and agree on costs. On 24.05.2019, the Applicant's lawyer appeared and stated that he was never aware of the taxation hearing and court was stood over for 30 minute to enable him go over the bill of costs. When court resumed, counsel for the Respondents informed court that the Applicant's counsel had left court premises and prayed for the taxation to proceed exparte which prayer was granted. To that end, it is apparent that taxation proceeded exparte as against the Applicant.

Counsel for the Respondent argued that there is no rule as to when taxation should be considered. The law indeed is that costs follow the event and in this case Miscellaneous Application No. 100 of 2017 was already heard and there was no error in holding the taxation prior to hearing the main suit. However, in the instant case Counsel for the Applicant expressed to court formally that he was not aware of the taxation hearing and I have already stated that there is no taxation hearing notice on the record. Taxation proceeded exparte as against the Applicant which I find to have been unfair considering that the main suit was yet to commence and the bill would have been taxed following determination of the main cause since the Applicant was indisposed.

The Applicant has to further adduce sufficient evidence that the grant of the application will not prejudice the Respondent. No prejudice is suffered by a party if it can be compensated by costs (*see Mohan Kiwanuka v. Aisha Chand S. C. Civil Appeal No. 14 of 2002*). I have already noted that the main suit has not been determined and therefore any prejudice occasioned to the Respondent through this application, can be compensated by costs if any.

Furthermore, the Applicant has to prove that she is not guilty of any unexplained, dilatory conduct resulting in an inordinate delay in lodging the appeal. In the instant case, the application was filed eight months following the taxation award. Counsel submitted that the Applicant was aware of the taxation hearing and the taxation award and she appeared in court in June 2019 and prayed for the award to be reduced. I have perused the record and failed to find any affidavit of service or the part of the record reflecting Counsel's

submissions. I maintain that there is no evidence of proper service onto the Applicant and since the taxation proceeded *ex parte*, she was not given a fair hearing.

The applicant is further required to prove that there is a *prima facie* arguable ***appeal*** (*see Mohan Kiwanuka v. Aisha Chand S. C. Civil Appeal No. 14 of 2002*). Counsel for the Applicant submitted that the taxation award is manifestly excessive and irregular. The taxation award sought to be challenged arose from an application for a temporary injunction. The main suit is for trespass with the Applicant (Plaintiff) seeking compensation of about Ugx. 12,000,000/=. The Respondent's bill of costs was taxed and allowed at Ugx. 27,778,970/=. For an application for temporary injunction, I believe that the Applicant has an arguable appeal and the taxation award raises a substantial claim warranting this court's consideration.


I therefore find that the Applicant has adduced sufficient cause for the grant of this application. The application is hereby allowed. The Applicant shall file the taxation appeal within 07 days from the grant of this order failure of which, this application will be dismissed.

Costs will be in the cause.

I so order.

Dated at Masaka this 3rd day of December, 2021.

Signed;



**Victoria Nakintu Nkwanga Katamba**

**Judge**