



- e) That the lawyer who represented the Respondent is not an advocate of the High Court and is not entitled to costs or professional fees;
- f) The Applicant was condemned unheard contrary to constitutional right of fair hearing and the law on taxation of bills of costs;
- g) The Applicant will be highly prejudiced if made to pay costs to a person who is not entitled to costs under the law

The Respondent did not file an affidavit in reply.

This Court instructed both Parties to file written submissions but only the Appellant complied.

Counsel for the Appellant submitted that the impugned bill of costs was filed by law firms that were not on record as Counsel for the Respondent. In citing Rule 1 (3) of the 3rd schedule to the Advocates Remuneration and Taxation of Costs Regulations, Counsel submitted that the two law firms had no locus to file the bill of costs since they were never on the record. Counsel further submitted citing *Sections 64 and 69 of the Advocates Act* and the decision *in Musoke Mike and Mubiru Vincent vs kalumba james Revision Cause No. 09 of 2019*, that the Respondent was represented by a one Nicholas Masawi who is not on the roll of Advocates and as such is not entitled to an award of costs. It is also counsel's submission that the impugned bill of costs was never served on the Respondent, there was no pre-taxation hearing, and the hearing proceeded ex parte which are illegalities and the awarded bill of costs that ought to be quashed. It is also Counsel's submission that the amounts awarded were unjustified, excessive, the two law firms were not entitled to costs and this court should be pleased to set aside the taxation decision and grant this appeal.

**Determination of the appeal:**

The law on taxation appeals is established under **Section 62 (1) of the Advocates Act** which provides that;

*“Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made.”*

It is trite that save in exceptional cases, a judge should not interfere with the assessment of what the taxing officer considers to be a reasonable fee. Questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge (**Bank of Uganda v. Banco Arabe Espanol, S.C. Civil Application No. 23 of 1999 and Thomas James Arthur v. Nyeri Electricity Undertaking, [1961] EA 492**).

The questions raised in the instant matter are not restricted to the award but most importantly the procedure through which the award was arrived at.

Counsel for the Appellant raised three grounds which I will break down and determine under separate headings as follows;

1. Whether the law firms representing the Respondent at the taxation hearing had locus to file the bill of costs
2. Whether an unqualified person masquerading as an advocate was entitled to costs
3. What is the effect of non-service of bill of costs and failure to hold a pre-taxation hearing
4. Whether the award was unjustified, or excessive

***Whether the law firms representing the Respondent at the taxation hearing had locus to file the bill of costs***

Regulation 2(1) of the Advocates (Professional Conduct) Regulations 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..”***

Just as a litigant need to show locus to institute and prosecute a matter in court, an advocate need to prove that they have locus to represent a litigant in court. Locus for a litigant is proved by their interest and rights to bring a specific matter whereas for the advocate, it is proved by having due instructions from the litigant to represent them in the matter.

Counsel for the Appellant argues that the two law firms T. Odeke & Co. Advocates and Quest Advocates had no locus to present the impugned bill of costs as the matter was filed by M/s Nyanzi and Nyanzi Advocates and there is no evidence of change of advocates on the record.

Indeed, I have carefully perused the record and confirmed Counsel's assertion that there is no notice of change of advocates and no notice of acceptance of instructions by either Quest Advocates or T. Odeke & Co. Advocates. However, there is a letter on record filed on the 21st March 2019, by T. Odeke & Co. Advocates in which they state that they have instructions to act for the Defendant in the matter. It is prudent for an advocate who has received instructions to file a notice of instructions and if the instructions are changing from one advocate to another, a notice of change of instruction should be filed. This informs court of the representation by the advocate, formerly gives the advocate locus to be put on the record, and it should also be served on the other Party to formerly notify for purposes of further correspondences.

I am in agreement with Counsel for the Appellant that the law firm Quest Advocates had no instructions to file and present the impugned bill of costs as there is no formal evidence of receipt of instructions communicated to court justifying having them on the record. In that regard, Quest Advocates is and was not entitled to costs arising from Civil Suit No. 281 of 2017.

On the other hand, the letter on the record dated 21st March 2019 though unqualified as a notice of instructions, shows that the law firm T. Odeke and Co. Advocates had instructions to act for the Defendant/Respondent. I find that this was sufficient evidence to give the law

firm T. Odeke & Co. Advocates locus to file and present a bill of costs following the determination of the suit.

**Whether an unqualified person masquerading as an advocate is entitled to costs**

Counsel for the Appellant has adduced a correspondence from the Chief Registrar dated the 3rd day of May 2019 confirming that a one Masawi Nicholas wakubona is not on the roll of Advocates. Entitlement to practice law in the High Court of Uganda and all subordinate courts thereto is guaranteed by having one's name entered on the roll of Advocates upon fulfilling the prerequisite conditions/requirements.

In the instant case, by letter dated 20th March 2019, T. Odeke & Co. Advocates informed the trial Court that a one Masawi Nicholas Wakubona had personal conduct of Civil Suit No. 281 of 2017 and from the record of proceedings, indeed the said gentleman represented the Respondent on various court appearances and was even put on record.

Sections 64 (1) and 65 make it an offence of an unqualified person to hold themselves out as an advocate. The consequence of holding out as an advocate which is an offence, is that there shall be no costs recoverable in that specific suit where such an offence is committed. *(See section 69 of the Advocates Act Cap 267)*

In the instant case, a law firm (T. Odeke & Co. Advocates) that had no formal instructions allowed and endorsed an unqualified person to hold himself out as an advocate of the court which was an offence. This was a breach of the duty owed to court by all advocates and for the reason of that offence, the unqualified person (a one Masawi Nicholas Wakubona) was not entitled to costs of the suit, together with the firm that endorsed him.

***What is the effect of non-service of bill of costs and failure to hold a pre-taxation hearing***

I have carefully perused the record and observed that the taxation hearing notice was issued by the trial court on the 14th day of May 2019. Although there is evidence of the notice for the hearing, there is no evidence of proof of service.

The rules as to service of summons under Order 5 of the Civil Procedure Rules apply to hearing notices. (see *Edison Kanyabware vrs. Pastori Tumwebaze SCCA 6/2004*) before proceeding with the taxation hearing, the taxing master should have required the Respondent to duly effect service on the Appellant and file proof of service.

The *Advocates (Remuneration and Taxation of Costs) Regulations as amended* require for both Parties to be duly notified of the taxation hearing and further provided that both Parties are entitled to attend the taxation hearing and be heard. The Regulations also provide that a pre-taxation hearing should be held by both Parties to identify items that they both agree on before taxation. (*See Sections 9, 10(2) and 13A of the Advocates (Remuneration and Taxation of Costs) Regulations as amended*)

In the instant case, there is no evidence or proof of service of the taxation hearing notice, and no record of the pre-taxation meeting. These are both irregularities which denied the Appellant his right to be heard as guaranteed by the Constitution of the Republic of Uganda and also deemed the bill of costs, the taxation hearing, and the award irregular. This was an error which renders the taxation award illegal.

I should make it clear that non-service of court process and failure to hold a pre-taxation hearing is a fatal irregularity that affects the award and renders it a nullity. The rules are clear and should be followed to ensure that justice is achieved on either side, both parties should be given a right to be heard. The pre-taxation hearing is not a negotiation event that Parties should dodge and leave the assessment to the taxing master. It is a mandatory procedure with the sole purpose of meeting the Parties' interests and the ends of justice. Both parties should therefore adhere to it and the taxing master should ensure that it is duly conducted before the taxation hearing.

***Whether the award was unjustified and/ or excessive***

It is a well-established guiding principle, re-stated in *Auditor General vs. Ocip Moses and O'rs Taxation Reference No. 089 of 2014*, that in all taxation appeals, the Judge ought not to interfere with the assessment of what the taxing master considered to be a reasonable

fee unless the award is considered manifestly excessive, exorbitant and without any legal or factual justification.

According to the Defendant's Bill of Costs filed in the trial Court on the 14th day of May 2019, there are two firms (Quest Advocates and T. Odeke & Co. Advocates) stated therein claiming/seeking costs of defending the suit. As already stated, there is no proof of acceptance of instructions on the record nor is there any proof of change of advocates from the advocates that filed the written statement of defence. I have already resolved that Quest Advocates had no locus to file and present a bill of costs and was therefore not entitled to costs.

T. Odeke & Co. Advocates endorsed and allowed an unqualified person to hold out as an advocate which was offensive and for that reason, they were also not entitled to costs as already stated above. For that sole reason, the award was unjustified. It is an established principle law that costs follow the event (*Section 17 Civil Procedure Act*) Costs however have to be legal and justified and in the instant case, the bill of costs was filed by Advocates who although had instructions, endorsed the same to be presented by an unqualified person. The proceedings were already nullified by this offensive act and so was the taxation hearing. The bill of costs was therefore unjustified and should have been expunged from the record. It is therefore immaterial as to whether the award was excessive as the proceedings were a nullity since they were presented by an unqualified person.

In the final result, this appeal succeeds and the taxation decision of H/W Mutala Peter, Magistrate Grade One or taxing officer in Civil Suit No. 281 of 2017 is hereby set aside. It is hereby declared that neither the Respondent nor her advocates are entitled to an award of costs. The application is therefore allowed and the prayers of the Applicant are hereby with costs.

I so order.

Before I take leave of this matter, I would like to emphasize that although an innocent litigant might be protected when pleadings are filed by an unqualified person or penalized

advocate, representation on the other hand if done by unqualified persons will nullify the proceedings and there will be no justified award of costs arising therefrom. Litigants and judicial officers should ensure that representation/litigation is only done by qualified persons/enrolled advocates to avoid wasting court's time and litigant's financial resources.

Dated at Masaka this 29<sup>th</sup> day of April, 2021

**Victoria Nakintu Nkwanga Katamba**

**Judge**