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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Cause No. 0002 of 2023

(Arising from Civil Suit No. 63 of 2019 and Civil Appeal No. 57 of 2019)

10 Omongole & Co. Advocates Applicant

Versus

Ecetu Vincent Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

15

Ruling

1. Preliminary:

This is an application by way of notice of motion under section 57, 58 & 60 of the Advocates and Order 52 rule 1 & 3 CPR for orders that the applicant's advocate/client Bill of costs be taxed and costs of the application be provided for.

20 The grounds of this application as stated in the application and further detailed in the affidavit in support deposed by Omunrangi Lillian are briefly that the respondent instructed the applicant to institute Civil Appeal No. 57 of 2019 and Civil Suit 63 of 2019 in this Honourable which the applicant complied with. That the CA no. 57/2019 was delivered in favour of the respondent and this reinstated
25 CS no. 0008/2011 at Kaberamaido Magistrates Court.

That the applicant undertook all measures to represent the respondent in Civil Suit no. 63/2019 including making applications for temporary injunction and

5 interim order vide MA no. 74 of 2020 and MA. No. 75 of 2020 of which judgment
in both applications were delivered in the respondent's favour. That on the 7th
September 2022 this Honourable court directed that CS No. 63 of 2019 and Cs
no. 0008/2011 be consolidated of which the applicant complied with the same
and the consolidated suit was filed. That in respect CA No. 57/2019 the
10 respondent agreed to pay Ugx. 4,000,000/= of which he only paid Ugx.
3,000,000/= leaving a balance of Ugx. 1,000,000.

In respect of CS No. 63/2019 the respondent agreed to pay Ugx. 16,000,000/= of
which the respondent has not made any payments in regards to the same. That
the applicant dully undertook all measures to carry out the respondent's
15 instructions thus incurring costs on legal fees, photocopying, transport to attend
court, drafting and filing. The applicant has sent the appropriate bill and fee notes
to the respondents for payment but the respondent has neglected and or refused
to pay.

The respondent executed powers of attorney granting his daughter Angella
20 Amudo authority to defend and depone an affidavit in reply in this matter and
sign and execute all such documents for and on his behalf arising from the powers
granted.

In her affidavit in reply she stated that the respondent is not indebted to the
applicant as he paid the fee agreed upon and much more, that this application is
25 in bad faith and amounts to unjust enrichment. That the sum agreed upon for CA.
no 57/2019 was 3,000,000 not 4,000,000 which sum was fully paid. That there
was no agreement with the applicant to pay Ugx. 16,000,000/= for CS No.
63/2019 and none has been availed by the applicant. That on the 16th October
2019 she personally had a discussion with Omongole Richard and he told her that

5 for CS 63 of 2019 they would pay an additional Ugx. 2,000,000/= to make a total of Ugx. 5,000,000/= which was gradually paid.

That she paid a sum of Ugx. 23,278,800/= to the applicant which is over and above the claimed amount of Ugx. 17,000,000/=. That the judgement in CA no. 57/2019 was received by the respondent in person after the applicant failed to
10 turn up, which was one of the many times the respondent paid facilitation for the respondents to appear in court or do work but they failed to do so. That the applicant only pursued MA 74/2020 as MA 75/2020 was overtaken by events, of which the applicant never extracted and served the order for a temporary injunction. That regarding the consolidated plaint this court gave directions on
15 the timeline to be followed by the parties whereby the applicant was to file the consolidated plaint by 15th September 2022 however by 3rd October they had not done so which forced her to ask Omongole for the documents which she filed herself on the 4th October 2022 which date was meant for mention yet the respondent had facilitated the applicant for the process.

20 That the respondent duly paid legal fees, transport facilitation, court filing fees, facilitation for printing, extracting record of proceedings, photocopying and binding to the Applicant including fees when there were no court sessions.

That despite this the applicant after receiving these sums of money failed to appear in court on several occasions, cut out communication completely, refused
25 to print and photocopy documents, refused to file and serve documents which forced the respondent to do it.

That contrary to the applicant's claim, upon receipt of the applicant's fee note dated 10th February 2023 she responded with a detailed breakdown of fees so far paid and asked the applicant to provide detailed breakdown and scale of cost

5 of proceedings he relied on to arrive at the impugned Ugx. 17,000,000/= but he did not.

That in the interest of justice this application should be dismissed as it amounts to unjust enrichment.

In rejoinder the applicant stated that they duly undertook all measures to carry
10 out the respondent's instructions thus incurring costs on legal fees, photocopying, transport to attending court, drafting and filing of all documents in the respective suits but only to be shocked with a notice of change of Advocates from the respondent's new lawyers hence this application. That instruction fees are different from costs incurred which is the Ugx. 17,000,000 /=
15 being demanded.

2. Submissions:

Only the applicant filed their submissions. The applicant raised and submitted on one issue that is whether the Advocate/client bill of costs should be taxed.

Counsel submitted that under section 57 of the Advocates Act the required
20 number of days, which are 30 have passed to have the bill of costs served on the respondent. Counsel prayed that this court be pleased to order the Advocate/client bill of costs be taxed in accordance with section 58(5) of the same Act.

Counsel further submitted relying on *Lumweno & Co. Advocates vs Trans Africa*
25 *Assurance Co. Ltd CA no. 95 of 2004*, that the moment an advocate is instructed to sue/defend a suit, he or she becomes entitled to instruction fees and the entitlement grows as the matter proceeds.

Counsel further stated that in the instant matter the applicant is entitled to recover from the respondent for the professional services rendered and

5 disbursements made on behalf of the client and prayed this court finds the same in affirmative.

That furthermore, the applicants have complied with the relevant provisions of the Advocates Act in sections 57, 58 and 60, and this entitles them to present an advocate/client bill of costs for taxation before the registrar. She stated that the
10 applicant served a fee note together with the itemized bill of costs to the respondent and his new lawyers.

Counsel additionally submitted that an advocates right to file an advocate/client bill of costs for taxation is granted by the express provisions of the Advocates Act and can only be excluded by the express provisions of the same Act. *(See: Byenkya*
15 *Kihika & Co. Advocates v Gandesha (Civil Misc. Appeal No. 019 OF 2014) [2015] UGHCCD 113)*

That in reference to the present case the applicants have complied with the provisions of the law and there are no pertinent issues which require investigations by this honourable court. Counsel further submitted that is trite
20 law for costs to be payable by the client whatever the outcome of the matter for which the Advocate's services were engaged and are not dependable upon any award of costs by the court. As such the applicant is entitled to costs for legal services tendered to the respondent.

Counsel finally prayed that the respondent's allegations as stated in her entire
25 affidavit be found untenable at law and under the doctrine of legitimate expectation. That this court be pleased to grant an order to have the advocate/client bill of costs taxed and the costs of the application provided for.



5 3. Determination:

This application is seeking court orders that the advocate/client bill between the parties be taxed by the registrar.

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
10 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.

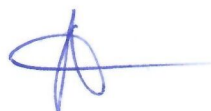
In the wide sense, they include all the costs that the advocate is entitled to
15 recover against the client on taxation of the bill of costs.

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.

20 These costs can arise either in contentious or non-contentious matters. *See Ondoma Samuel vs Kana Richard (Miscellaneous Civil Application 16 of 2018) [2018] UGHCCD 19.*

Section 57 of the Advocates Act provides for action to recover advocate's costs. It states thus;

25 (1) Subject to this Act, no suit shall be brought 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 this section; except that if there is probable cause for believing that the party chargeable with the costs is about to quit Uganda, or to become a bankrupt, or to compound with his or



5 her creditors, or to do any other act which would tend to prevent or delay the advocate obtaining payment, the court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence a suit to recover his or her costs and may order those costs to be taxed.

10 (2) The requirements referred to in subsection (1) are as follows—

(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

15 (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, and where a bill is proved to have been delivered in compliance with these requirements, it shall not be necessary in the first
20 instance for the advocate to prove the contents of the bill (which shall be presumed until the contrary is shown) to be a bona fide bill complying with this Act.

The applicant in this instance stated under paragraph 10 of the affidavit in support that they sent an appropriate bill and fee notes to the respondent.

25 Copies of the same were annexed and marked 'G'.

Annexure 'G' to the application is a fee note/ debit note prepared by the respondent dated 10th February 2023 addressed to the respondent itemizing the sums chargeable, the total being Ugx. 17,000,000/=.



5 A debit note, sometimes referred to as a debit memo, is a document sent by a seller to a buyer informing them of their current financial responsibilities. In simple terms, this debit note will assist you in reducing the buyer's outstanding trade obligations. These notes are often used in business-to-business transactions, such as when one firm gives another goods and services before
10 submitting an official invoice. The debit note might act as a reminder for money that is now due or offer information about an open invoice. (see: <https://www.hashmicro.com/blog/debit-note/>).

Section 57(2)(b) of the Advocates Act as seen above require a bill signed by the advocate to be served on the client. A bill per the Advocates Act is a bill of costs
15 whose contents are well defined in **Regulation 47** of the **Advocates (Remuneration and Taxation of Costs) Regulations** which states thus;

(1) Bills of costs for taxation shall be prepared in five columns in the following manner—

(a) the first column shall be for the numbers of the items;

20 (b) the second column shall be for the date on which the service charged for was rendered;

(c) the third column shall indicate the particulars of the service charged, categorized under separate sub headings such as instruction fees, drawing documents, attendances, Value Added Tax where applicable, and
25 disbursements; (d) the fourth column shall indicate the professional fees claimed; and

(e) the fifth column shall have the deductions by the taxing officer.

(2) Disbursements shall be shown separately at the foot of the bill.

5 There is clearly a difference between a debit note and a bill of costs and one cannot be substituted for the other. If this was a case where the applicant had created a client account in which sums were deposited and withdrawn, then the exception under Rule 10 of the Advocates Rules in the 1st schedule of the Advocates Act which provides that a written intimation of the amount of an
10 advocate's costs incurred and a notification to a client that money held for him or her will be applied as mentioned in rule 6(a)(iv) of these Rules may be delivered to a client in the same manner as a bill of costs is required to be delivered under section 57(2) of the Act, would be applicable.

Rule 6(a)(iv) provides that money properly required for or towards payment of
15 the advocate's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held for him or her will be applied towards or in satisfaction of the costs.

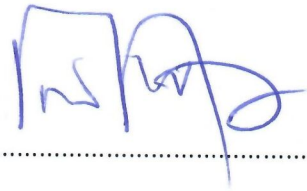
Ideally in the absence of an agreement as to remuneration for contentious
20 business as provided under section 50 of the Advocates Act, one is entitled to file an application for taxation of advocate/client bill of costs.

Where there is no written agreement as to fees payable the taxing master then assumes full authority to determine the rightful costs incurred depending on work done by the advocate, however, the requirements under section 57 (2)
25 must be met in totality before the same can be ordered.

In the instant case no bill of costs within the meaning of Regulation 47 of the *Advocates (Remuneration and Taxation of Costs) Regulations* or letter accompanying the bill has been served on the respondent and as such the requirements of section 57(2) of the Advocates Act have not been met.

5 Consequently, this application is seen to not comply with the provisions of **Regulation 47 of the Advocates (Remuneration and Taxation of Costs) Regulations** and neither has a letter accompanying a bill been served on the respondent and as such the requirements of section 57(2) of the Advocates Act have not been met and thus would be dismissed with each party to bear their own costs.

10 I so order.

A handwritten signature in blue ink, appearing to be 'J Adonyo', written over a dotted horizontal line.

Adonyo, J

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13th July 2023