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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Cause No. 0047 of 2023

*(Arising from Miscellaneous Application No. 0154 of 2022)*

*(Arising from Civil Appeal No. 10 of 2020)*

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Obores & Co. Advocates ..... Applicant

Versus

15 Onyait Gabriel ..... Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

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1. Preliminary.

This is an application by way of notice of motion under section 57, 58 & 60 of the Advocates, Order 52 rule 1 & 3 Civil Procedure Rules and Section 98 of Civil Procedure Act for orders that the applicant's advocate/client Bill of costs be taxed and costs of the application be provided for.

The grounds of this application as stated in the application and further detailed in the affidavit in support deposed by Obores David are briefly that the respondent on the 16<sup>th</sup> of November 2021 instructed the applicant to represent him in Civil Appeal No. 0010 of 2020 and also instructed him on in MA No. 0154 of 2022 against Okiror Patrick arising from Civil Suit No. 14 of 2014 of Katakwi Magistrates Court.



5 The applicant duly undertook all measures to carry out the respondent's instructions thus incurring costs on legal fees, photocopying, transport to attend court, drafting and filing.

That the applicant has severally requested the respondent to pay the advocate costs but the respondent has declined or refused to do so. When  
10 the applicant was insistent on being paid his costs the respondent changed instructions to another law firm.

The respondent did not make a reply despite being served as proved by affidavit of service dated 15<sup>th</sup> June 2023

2. Submissions:

15 Only the applicant filed his submissions and the same have been considered.

3. Determination:

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

20 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  
25 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  
30 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

5 which ordinarily the client cannot recover from the other party. 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  
10 costs. It states thus;

(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  
15 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 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  
20 those costs to be taxed.

(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  
25 refers to the bill; and

(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  
30 compliance with these requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill (which shall be

5 presumed until the contrary is shown) to be a bona fide bill complying with this Act.

The applicant in this instance stated under paragraph 8 of the affidavit in support state that they have since requested the respondent to pay the Advocates costs for both the appeal and the miscellaneous application that,  
10 however, the respondent has declined or refused to do so severally. Copies of fees and the bill of costs were attached to the application as annexure 'E'.

Annexure 'E' to the application is a letter from the applicant to the respondent dated 22<sup>nd</sup> March 2023, demanding that advocates fees as per  
15 the attached bill of costs be paid.

The advocate's bill of costs attached to the letter is an itemized bill of costs as required by Regulation 47 of the Advocates (Remuneration and Taxation of Costs) Regulations which provides that;

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

(a) the first column shall be for the numbers of the items;  
(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,  
25 categorized under separate sub headings such as instruction fees, drawing documents, attendances, Value Added Tax where applicable, and disbursements;

(d) the fourth column shall indicate the professional fees claimed; and  
(e) the fifth column shall have the deductions by the taxing officer.

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

5 In this instance the applicant prepared a bill of costs, filed the same in court under Taxation Application No. 19 of 2023 which is pending determination of this application.

A taxation hearing notice was taken out and served on the respondent. However, I find that there is no proof that the letter dated 22<sup>nd</sup> March 2023  
10 and attached bill of costs were served on the respondent as required by Section 57(2)(b) of the Advocates Act.

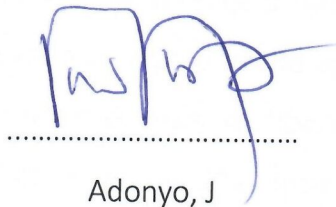
Furthermore, it is a requirement under section 57(1) that applications of this nature are filed one month after the bill has been delivered in accordance with the requirements of subsection 2 appears not to have  
15 been met.

The application was filed on the 28<sup>th</sup> of March 2023 yet the letter addressed to the respondent is dated 22<sup>nd</sup> March 2023 which means that the application was filed only six (6) days after the letter was served, if indeed it was ever served.

20 Consequently, I am unable to find that the requirements of section 57(1) Section 57(2)(b) of the Advocates Act have been met by this application and as such it is dismissed with no order as to costs.

The applicant may file another application if he so wishes in compliance with the provisions of Section 57 of the Advocates Act.

25 I so order.

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

Adonyo, J  
24<sup>th</sup> August 2023