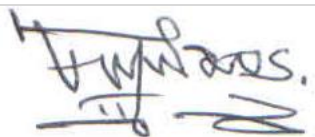


2. That the bill of costs in Taxation Application No. 008 of 2021 be fixed for hearing afresh interparty.
3. That no order should be made as to costs.

The application is supported by the affidavit of Fahim Matovu an advocate under M/s Katende, Sempebwa & Co. Advocates stating:

1. That on the 27th of October 2021, the Applicants and the Respondent conducted a pre-taxation meeting in respect of the bill of costs in Taxation Application No. 008 of 2021. That both parties pre-taxed the bill with the exception of the item on instruction fees and VAT. That the total agreed sum for the agreed item was UGX 2,200,000/=.
2. That both parties agreed that the disagreed items would be taxed before the Deputy Registrar on the 1st of December 2021 as the date fixed by the Deputy Registrar. That since the Deputy Registrar was indisposed the taxation was adjourned to other dates. That on the 5th of July 2022, the Applicants' lawyers were served with a hearing notice requiring them to appear for taxation in respect of the disagreed items.
3. That upon receipt of the said hearing notices, the Applicants established that the notice had been endorsed by court on 16th June 2022 but served in the evening before the scheduled date and the said notice was received in protest. That on the said date, the Applicants' Counsel asked for another date and the letter was sent through mail and the Applicants followed up on the same with the registry.



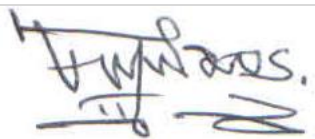
4. That in a surprising turn of events, the Applicants were on the 20th day of September 2022 served with a Notice to Show Cause why execution should not issue arising from the award in Taxation Application No. 008 of 2021. That the Applicants searched in the court record and found that the Respondents had obtained a taxation ex-parte.
5. That upon receipt of the Taxation Bill, the Applicants noticed that the Registrar conducted the said taxation without due regard to the pre-taxation meeting between the parties. That the Applicants at all material times were interested in participating in the taxation.
6. That it is in the interests of justice that this application is granted and the bill of costs taxed interparty.

The Respondent filed an affidavit in reply opposing the application on the grounds:

1. That the applicants had been served with the taxation hearing notice prior to the ruling that was delivered on 6th July 2022. The respondent attached an affidavit of service sworn by LUBEGA RONALD showing that the taxation hearing notice was served upon the lawyers of the 1st applicant on 25th October 2021.
2. That this application was filed out of time on 26th September when the ruling was delivered on 6th July 2022.

Issues:

- (1) Whether the Applicant was given a right to a fair hearing.

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(2) Whether or not the decision of the Taxing Officer dated 6th July 2022 should be set aside.

(3) Remedies available to the parties

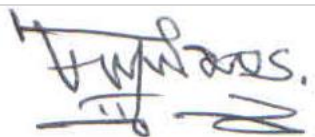
Consideration by Court:

5 I will consider all the issues together. Under Section 62 (1) of the Advocates Act, any person affected by an order or decision of a taxing officer may appeal to a judge of the High Court within 30 days. In addition, Order 50 rule 8 of the Civil Procedure Rules gives an automatic right of appeal to any person aggrieved by the decision of the Registrar.

10 The Applicants’ main complaint in the appeal is that they were not given a right to be heard. That when the taxation was fixed for hearing, their lawyer was served late and wrote to court seeking an adjournment on ground that service was done late. The Applicants also contended that the decision of the taxing master did not take into account the pre-taxation hearing where parties
15 had agreed on most of the items and only a few were due for consideration by the taxing officer and they were not involved.

In **Nicholas Roussos versus Gulam Hussein Habib Virani and Nasmudin Habib Virani, Court of Appeal Civil Appeal No.6 of 1995** the court stated thus:

20 *“...that court should interfere where there has been an error in principle but should not do so in question’s solely of quantum as that is an area where the taxing officer is more experienced and therefore*

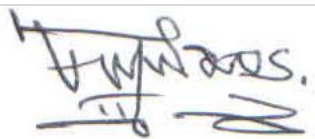


more apt to the job. The court will intervene only in exceptional cases...”

In this case, the Applicants contend that they were denied the right to be heard. It is my view that this is an area where the High Court can interfere
5 with the decision of the Taxing Officer.

In Misc. Cause No. 02 of 2012, Agnes Lyazi (Administrator of the Estate of the late Lyazi) Vs. Lydia Sempa & Anor, the Hon Lady Justice Catherine Bamugemereire observed thus:

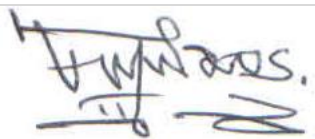
*It should be noted that the right to a fair hearing is a fundamental
10 right. Furthermore, it is a rule of natural justice that a party should not be condemned unheard. While the rules for taxation hearings do not make service mandatory they do not by any means deny a party who appears before a taxing officer the right to be heard. The right of hearing is so fundamental that no derogation is permitted from it. In
15 the case of Carolyn Turyatamba and 4 others versus Attorney General and Another Constitutional Petition Number 15 of 2006 the Constitutional Court considered the right to be heard and held that the right of hearing is provided for under article 28 (1) of the Constitution. The article provides that in the determination of civil rights and
20 obligations a person is entitled to a fair, speedy and public hearing before an independent adjudicating body established by law. The right is so fundamental that no derogation is permitted from it under article 44 of the Constitution. The concept of "fair hearing" involves the right*

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to present evidence, cross examine and to have findings supported by evidence”

It is my view that the right to fair hearing must be respected in all judicial and quasi-judicial proceedings including consideration of a bill of costs.

5 In this case the record shows that the case first came up for taxation on the 7th of October 2021 and the parties were absent and Counsel Wahida Enock for the Respondent was present. Court ordered for fresh service and the case was adjourned to 27th October 2021. On the said date, both parties were absent and Counsel Wahinda for the Respondent was present and Counsel Matovu
10 appeared for Applicant. Counsel Wahinda informed court that they had conducted a pre-taxation hearing and agreed on items 2,5,6,13,16,17,18,20,22,23,24 and 25 and needed to cross check with the court record in Misc. Application No. 26 of 2019 where the bill arose from to confirm Counsel for the Respondent’s attendance in relation to the items in
15 the bill. The taxing master adjourned the matter to 1st December 2021. Nothing happened on that date and the case was later fixed for 16th December 2021 for taxation. On that day both parties and the lawyers were absent and the matter was rescheduled to the 15th of February 2022 for mention. It appears nothing happened on 15th February 2022 and the matter was later
20 fixed for hearing on 6th June 2022. On 5th June 222, both parties were absent and the matter was rescheduled to 6th July 2022. On 6th July 2022, Counsel Wahinda appeared for the Respondent and all the other parties were absent.

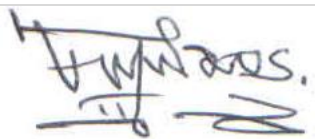
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Counsel Wahinda asked court to tax the item which did not require the certified copy of the record.

Whereas a hearing notice for 6th July 2022 had earlier been issued, the Registrar did not record a decision whether he was to tax the bill ex-parte and the reasons thereof. He also appears to have omitted to satisfy himself as to whether the Applicants were served. However, there is on record a certificate of taxation dated 6th July 2022 where the Registrar considered the bill and allowed it at a sum of UGX 4,510.000/=.

By the issuance of a hearing notice, it was the intention of the Registrar, that the applicants be given a chance to exercise their right to be heard in the taxation hearing. The respondent asserts that the taxation hearing notice was served upon the lawyers of the 1st applicant on 25th October 2021 and acknowledged, but a copy of the acknowledged notice has not been availed. On the other hand, it is the evidence of the Applicants that the taxation hearing notice for 6th July 2022 was served upon the Applicants' Counsel on 5th July 2022 at 1:30pm and the same was received in protest by the law firm of the Respondent's Counsel who wrote to court to that effect indicating inability to attend and communicating that Counsel had other cases scheduled for the same day.

I believe that service was effective but not sufficient to give the Applicants ample time to appear and be heard. The Applicants were served in Kampala in the afternoon and a hearing was to take place the following day at 9:00am in Fort-portal. The right to a fair hearing includes giving parties time to

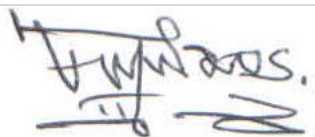
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prepare and present their case. In this case the time between service and hearing was too short to afford the Applicants time to appear for the taxation. I therefore find that the Applicants were denied a right to be heard when court was considering the bill in Misc. Application No. 0026 of 2019.

5 The Respondent argues that this application should not be entertained because it was filed out of time. It was contended that this application was filed on 26th September when the ruling was delivered on 6th July 2022. I note that the Applicants only learnt about the ruling that was delivered on 6th July 2022, on 20th September 2022 when they were served with a Notice to Show
10 Cause why execution should not issue arising from the award in Taxation Application No. 008 of 2021. They later filed this application on 26th September. There is no evidence that the said ruling had been served upon the applicants soon after it was delivered. In the interests of substantive justice I am therefore inclined entertain the matter because the application
15 was promptly filed soon after the applicants learnt about the ruling.

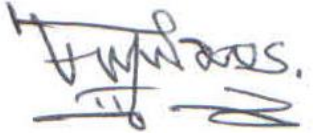
In the result, this application is allowed with the following orders:

- (a) **That a fresh taxation be conducted between the Applicants and the Respondent inter-party.**
- (b) **That the decision of the Assistant Registrar dated 6th July 2022 and the certificate of taxation are hereby set aside.**
20
- (c) **That since Misc. Application No. 96 of 2022 sought to stay execution of the order of the Assistant Registrar dated 6th July 2022, the same is overtaken by events and it stands dismissed.**

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(d) That each party shall bear own costs.

It is so ordered.

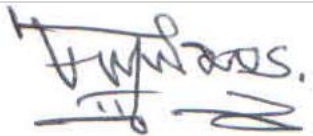
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Vincent Wagona

5 **High Court Judge**

FORT-PORTAL

17.02.2023

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