

THE REPUBLIC OF UGANDA
IN THE MATTER OF THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPL. NO.201 OF 2022
(ARISING FROM TAXATION APPLICATION NO.49 OF 2021)
(ARISING FROM CIVIL SUIT NO. 092 OF 2010)
ADMINISTRATOR GENERAL ::::::::::::::::::::::::::::::::::: APPELLANT
VERSUS

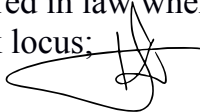
- 1. JOVIA KYOMUGISHA**
- 2. KAMUGISHA GEOFFREY**
- 3. ALICE MIREMBE**
- 4. HARRIET KIRUNGI**
- 5. DENIS TUMWESIGYE ::::::::::::::::::::::::::::::::::: RESPONDENTS**

Before: Lady Justice Ketrah Kitariisibwa Katunguka.

Judgment

Introduction:

- 1.** The Administrator General (hereinafter referred to as ‘the appellant’) filed this application by way of chamber summons against the respondents (Jovia Kyomugisha, Kamugisha Geoffrey, Alice Mirembe, Harriet Kirungi and Denis Tumwesigye) seeking orders that; the ruling of the learned Deputy Registrar in Taxation Application No.49 of 2021 be set aside; the bill of costs presented by Messers. Tuhimbise and Co, Advocates be expunged from record and costs of the appeal be provide for.
- 2.** The grounds as contained in the chamber summons are that;
 - 1)** The learned Deputy Registrar erred in law when she ignored the authorities of Balwantrai D. Bhatt v. Ajeet Singh & Anor and Haji Hartjna Mtjlangwa v. Shariff Osman from Superior Courts of Record thus reaching an erroneous decision;
 - 2)** The learned Deputy Registrar erred in law when she delved into the constitutional right to a fair hearing that includes legal presentation when the same was not in issue;
 - 3)** The learned Deputy Registrar erred in law when she allowed the taxation of a bill of costs presented by advocates who lack locus;



3. The application is supported by an affidavit deposed by Muyomba Simon Peter (a Senior State Attorney in the Ministry of Justice and Constitutional Affairs attached to the Directorate of the Administrator). It is the appellant's case that this court decreed costs against the appellant in Civil Suit no.092 of 2010; during the entire proceedings to judgment, the respondents were represented by M/s Mwesigwa Associated Advocates; on 10/6/2021 the appellant was served with a bill of costs by M/s Tuhimbise & Co. Advocates representing the respondents; during taxation hearing before the deputy registrar, the appellant raised a preliminary objection as to the locus of the respondents' counsel to file a bill of costs in respect of HCCS No.092 of 2010 for want of participation in the entire trial proceedings up to judgement; on 21/12/2021, the Deputy Registrar delivered the ruling dismissing the appellant's preliminary objection; in reaching her decision, the Deputy Registrar ignored the relevant authorities cited by counsel for the appellant without addressing the real issue in controversy.
4. In response, the 5th respondent (Denis Tumwesigye) swore an affidavit in reply on behalf of other respondents and raises preliminary objections to the effect that; the affidavit in support is sworn by Muyomba Simon Peter, a State Attorney who is neither a party to the Appeal nor authorized agent or appointed agent to swear the affidavit on behalf of the Appellant (the Administrator General); secondly that the Appeal (Chamber Summons) is incompetent and bad in law for offending provisions of Regulation 10(1) of the Advocates (Taxation of Costs) (Appeal and References) Regulations SI-267-5, Order 5 rule 1(2) and Order 49 rule 2 of the Civil Procedure Rules SI-71-1 on service of summons.

Background:

5. The respondents herein being represented by M/s Mwesigwa Associated Advocates filed HCCS No.092 of 2010 against the Administrator General and Another and judgment was delivered in their favour ; court ordered that costs of the suit be jointly met by the defendants; subsequently, the 2nd defendant appealed against the costs up to the Supreme Court but the costs granted to the plaintiffs were confirmed; while at the supreme court, the 2nd -7th respondents instructed M/s Tuhimbise & Co. Advocates to take over conduct of the suit in HCCS No.092 of 2010; respectively a notice of change of advocates was filed on 2/6/2021 and served upon the appellant herein on 10/6/2021;
6. M/s Tuhimbise & Co. Advocates filed a bill of costs in Taxation Application No.049 of 2021 arising out of costs granted to the 2nd -7th plaintiffs in HCCS No.092 of 2010; during the course of hearing the taxation of the bill of costs before the Deputy Registrar of this court; counsel for the appellant herein raised a preliminary objection to the effect that M/s Tuhimbise & Co. Advocates which only represented the respondents at the appellate



level has no locus to file a bill of costs arising out of HCCS No.092 of 2010 as M/s Tuhimbise & Co. Advocates never represented the plaintiffs in HCCS No.092 of 2010; the Deputy Registrar delivered the ruling dismissing the preliminary objection ordering that; the bill of costs in Taxation Application No.49 of 2021 be taxed inter parte; being dissatisfied with the ruling delivered on 21/12/2021, the appellant has filed this Chamber Summons appealing against the decision of the Deputy Registrar in Taxation No.49 of 2021.

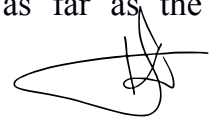
Representation:

7. The Appellant is represented by Kuloba Henry Wekesa of M/s The Administrator General's Directorate; whereas the Respondents are represented by counsel Henry Tukurikayo of M/s Tuhimbise & Co. Advocates.

Before I delve into the merits of the application, I shall consider the preliminary points of law raised by the respondents. Both counsel filed submissions which I have considered

Decision on the preliminary objections:

- a) **That the affidavit in support is sworn by Muyomba Simon Peter, a State Attorney who is neither a party to the Appeal nor authorized agent or appointed agent to swear the affidavit on behalf of the Appellant (the Administrator General).**
8. In his affidavit in reply, the 5th defendant raises an objection as to the validity of the affidavit in support of the chamber summons for being sworn by a person without authority and prays that it be struck off; counsel for the respondents submits that the affidavit sworn by Muyomba Simon Peter is not only sworn in a representative character, nor in the capacity of an advocate having conduct and swearing to non-contentious matters but it is on behalf of the appellant; counsel states that whereas Muyomba is a state attorney to the office of the appellant, he is not an agent and can only swear an affidavit on non-contentious matters as counsel; there is a requirement to show that he is an appointed agent of the appellant in accordance with section 2(4) of the Administrator General's Act to swear an affidavit on behalf of the appellant.
9. It is argued for the appellant that; the appellant did not institute the instant appeal as an administrator of an estate but as a corporation sole against whom a bill of costs was filled; and with capacity to sue and be sued; Muyomba deposed an affidavit as a Senior State Attorney in the Ministry of Justice attached to the Directorate of the Administrator General; his designation in the Administrator General's Directorate is an Assistant Administrator General; according to section 1(a) of the Administrator General's Act, the Administrator General includes an Assistant Administrator; therefore as far as the



application is concerned, Muyomba Simon Peter is an Administrator General and not counsel for the Appellant.


Determination:

- 10.** Section 2(2) of the Administrator General's Act Cap.157 establishes the office of the Administrator General as a corporation sole with legal capacity to sue or be sued; the subsection further provides that; "...it shall be necessary to state and to prove the Administrator General's authority and title in the specific estate to which the proceedings may relate, but not his or her general authority or appointment."
- 11.** Under section 1(a) of the Administrator General's Act Cap.157; an Administrator General includes a deputy and an assistant Administrator General; Section 2(3) provides that; The Administrator General or a deputy or an assistant Administrator General or an agent shall be entitled to appear in court, either in person or by counsel, in any proceedings to which the Administrator General is a party.
- 12.** I have perused the affidavit in support of the chamber summons; Muyomba Simon Peter deposed as a Senior State Attorney in the Ministry of Justice and Constitutional Affairs attached to the Directorate of the Administrator General; as per the affidavit in rejoinder under paragraph 4, Muyomba states that in the Directorate, he serves as an Assistant Administrator General; his position as an Assistant Administrator General is proved by the letters dated 9/9/2021 and 19/4/2022, marked as 'A' and 'B' of the Appellant's affidavit in reply; where he signed as an Assistant Administrator General.
- 13.** Therefore, this matter having been instituted by the Administrator General as a directorate challenging a bill of costs filled against the directorate; Muyomba Simon Peter as an Assistant Administrator General has the authority to swear an affidavit in his capacity as an Administrator General. I also note that; Regulation 9 of the Advocates (Professional Conduct) Regulations S.I 267-2 is not applicable in this matter due to the fact that the Muyomba Simon Peter is not appearing in this matter as an advocate.

Therefore, I find no merit in this preliminary objection.

b) That the Chamber Summons was served out of time.

- 14.** According to the affidavit in reply, it is contended that the Chamber Summons in Miscellaneous Appl. No.201 of 2022 which was signed and endorsed by the Registrar on 15th day of March 2022; and served on counsel for the respondents on 6th day of July 2022; which is 104 days from the date of endorsement; and 14 days out of time without leave of this court as required under Regulation 10(1) of the Advocates (Taxation of

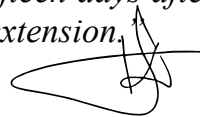


Costs) (Appeal and Reference) Regulations SI-267-5; Order 5 rule 2 and Order 49 rule 2 of the Civil Procedure Rules.

- 15.** Counsel for the Respondents argues that; the chamber summons ought to have been served within 21 days from the 15/3/2022; that is on or by the 5/4/2022 as required by the provisions of Order 5 rule 2 and Order 49 rule 2 of the Civil Procedure Rules on service of summons; that instead the summons was served on the respondent's counsel on 6/7/2022 which is 104 days out of time without leave of court; counsel avers that Chamber Summons is valid only when it has been signed by the Judge or such officer and sealed by court as a mandated under Order 5 rule 1(5) of the Civil Procedure Rules; citing the case of HJK Trading Company LTD Vs. Ahmed Zziwa HCMA No.1452 of 2019; counsel contends that the computation of time for service of summons on opposite party begins to run from when the summons are signed and sealed by a judicial officer.;
- 16.** On the contrary, counsel for the appellant submitted that it is the duty of court issuing chamber summons to ensure that the summons is not only signed and sealed but also given a date for it to be valid and complete; that a date is a fundamental feature of a chamber summons without which the summons are incomplete and incapable of service under the Civil Procedure Rules; in the instant case, chamber summons was signed and sealed by the registrar on 15/3/2022; however, the registrar deferred the fixing of a hearing date to the trial judge; and the file was transferred to the trial Judge; that by a letter dated 19/4/2022, counsel for the appellant wrote to the trial judge requesting for a date to be fixed; on 5/7/2022, the trial judge finally fixed the hearing date on the chamber summons to be 24/8/2022; the appellant's counsel duly served the respondent's counsel on 6/7/2022; therefore, that the time started running from 5/7/2022 when the Judge fixed a date on the already signed and sealed chamber summons.

Court's determination:

- 17.** Regulation 10(1) of the Advocates (Taxation of Costs) (Appeals and References) Regulations SI-267-5; stipulates that; Any notice or other document relating to an appeal or reference shall be served in accordance with Order V of the Civil Procedure Rules relating to the service of summons;
- 18.** Generally, service of summons is governed by Order 5(2) of the Civil Procedure Rules; providing that; *"Service of summons issued under subrule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension."*



19. The nature of a court summons document is prepared by the suing party, issued by court and served upon the opposite party informing that party that they are being sued or are required to appear in court and partake in a legal proceeding. As envisaged under order 5 rule 1 (b) of the Civil Procedure Rules; that when a suit has been duly instituted, summons may be issued to the defendant ordering him or her to appear and answer the claim on a day to be specified in the summons.

20. The facts and evidence in the present case shows that chamber summons were signed and endorsed by the registrar of this court on 15/3/2022; and were not served upon the respondent until 6/7/2022; in regards to court practice, whereas it is the registrar who signs and endorses chamber summons, the fixing of the hearing date on the summons is reserved for the adjudicating judge; upon chamber summons being signed and endorsed by the Registrar of this court; the file is forwarded to the trial judge for further handling of the matter. This implies that until a date is fixed on the summons as court's duty, the appellant in this matter, could not effectively serve the chamber summons bearing no date upon the respondents; for such summons would not be valid; as a matter of fact, all copies of the summons are under court's custody until a date is fixed thereupon; as such, the appellant cannot be faulted in this case;

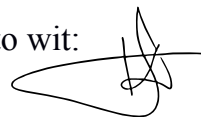
21. In the case of **Soroti Municipality Counsel V. Pal Agencies HCMA 181 of 2012** also cited by counsel for the appellant; court stated that; *"an application is by its nature a summons issued by court requiring the respondent to attend court on the appointed date and time. It becomes valid only when it has been given a date, signed and sealed. It is after the above has been done by the court that the application is capable of validly giving rise to another application."* in the present case, I agree with the submissions by counsel for the appellant that chamber summons without a date are incomplete and incapable of service.

22. On 5/7/2022, a date of 24/8/2022 was fixed on the chamber summons; this is proved by a WhatsApp message dated 5/7/2022, wherein counsel for the appellant is informing the respondents' counsel that the date has been fixed; this communication has not been rebutted by the respondents nor their counsel; that being the case, the mandatory timelines of 21 days for service of summons commenced on 5/7/2022; and it is not in contest that the chamber summons was eventually served upon the respondents' counsel on 6/7/2022; which I find within time.

In the premises this preliminary objection also has no merit.

Merits of the Appeal:

23. The appeal is premised on three grounds to wit:



a)The learned Deputy Registrar erred in law when she ignored the authorities cited by the appellant.

b)The learned Deputy Registrar erred in law when she allowed the taxation of a bill of costs presented by advocates who had no locus.

c)The learned Deputy Registrar erred in law when she delved into the constitutional right to a fair hearing that includes legal representation when the same was not in issue.

Resolution of grounds of appeal.

I shall handle the grounds 1 & 2 together as presented and ground 3 lastly.

Ground of appeal no.1 & 2.

The learned Deputy Registrar erred in law when she ignored the authorities cited by the appellant.

The learned Deputy Registrar erred in law when she allowed the taxation of a bill of costs presented by advocates who had no locus.

24. It is the appellant's argument that in its written submissions on the Taxation Application No.49 of 2021;they cited Balwantraai D. Bhatt V. Ajeet Singh & Another (1962 EA 103 at 104) and Hajji Hartjna Mtjlangwa V. Shariff Osman Supreme Court Civil Reference No.3 of 2004; to the effect that an advocate who has never participated in the court proceedings is ineligible to present a bill of costs; that the Deputy Registrar in reaching her decision, completely ignored the authorities yet they are from a superior court; the respondents' claim of 800 million Uganda shillings as instruction fees is for the benefit of the respondents; notice of instructions filed by the current counsel for the respondents was filed recently in 2021 long after judgment was passed in HCCS No.092 of 2010.

25. In opposition, counsel for the respondents submits that the Deputy Registrar declined to rely on the decisions cited by the Appellant because the laws upon which the decisions were made are completely different; that is; The East African Court of Appeal Rules, 1954 and The Judicature (Supreme Court Rules) Directions, S.I-13-11.

Court's decision on ground 1 & 2:

26. The term Stare decisis is derived from a Latin phrase that means 'to stand by things decided'; **Black's Law Dictionary 1626 (10th ed.2014)** defines '*stare decisis*' as "*the doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation.*" More to that, the principle of precedent is elaborated in **Black's Law Dictionary, 18th edition page 1214**; "*in law a precedent is an*

adjudged case or decision of a court of justice, considered as furnishing a rule or authority for the determination of an identical or similar case afterwards arising, or of a similar question of law.”

- 27.** In **Attorney General V. Uganda Law Society, Constitutional Appeal No.1 of 2006**; the Supreme Court stated that; *“Under the doctrine of stare decisis which is a cardinal rule in our jurisprudence, a court of law is bound to adhere to its previous decision save in exceptional cases where the previous decision is distinguishable or was overruled by a higher court on appeal or was arrived at per incuriam without taking into account a law in force or a binding precedent...”*
- 28.** From the pleadings and submissions by counsel for each party; the major issue in controversy is whether counsel who was not on record in the entire trial court proceedings till delivery of judgment has locus to file a bill of costs in respect of services not rendered? a similar question of law was considered in both cases of; *Balwantrai D. Bhatt V. Ajeet Singh & Another (1962 EA 103 at 104)* and *Hajji Hartjna Mtjlangwa V. Sharriiff Osman Supreme Court Civil Reference No.3 of 2004*.
- 29.** Concerning the facts presented in the instant case, it is undisputed that M/s Tuhimbise & Co. Advocates represented the respondents at appeal level in the court of Appeal and at the Supreme Court; on record, there is a copy of a notice of change of advocates dated 30/5/2021; indicating that M/s Tuhimbise & Co. Advocates had received instructions to take over the conduct of HCCS No.092 of 2010 on behalf of the 2nd -7th plaintiffs (the respondents herein); I find the contention based on the instruction fees of 800 million shillings which counsel for the respondents included in the bill of costs.
- 30.** In *Balwantrai D. Bhatt V. Ajeet Singh & Another (1962 EA 103 at 104)*; court stated that if the solicitors have been changed during the proceedings, the bill of the first solicitor may be annexed to that of the current solicitor and its total shown as a disbursement. More so, court referring to Sir Newnham’s defined as to what should be contained in the bill of costs in the case of *Bhagwanji Premchand and Others V. J.M.Gomes and Others (1)(1956),23 E.A.C.A. 296*; *“A bill of costs is a factual statement of services rendered and disbursements made and, if any of the facts alleged in the bill are shown to be untrue, e.g. if it is shown that a particular service charged for has not been rendered or that a particular disbursement has not in fact been made, the relevant item in the bill will be taxed off. The commonest example of this in England is probably the instruction fees which had not been paid when the bill was presented.”* Overall, court held that; the bill was not a true factual statement of services rendered, as it purported to be an account of services rendered to the respondents, of disbursements made and of instructions given to counsel on their account by advocates who had not done this work.



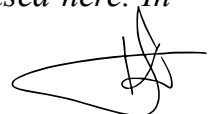
31. In a similar manner, court in **Hajji Hartjna Mtjlangwa V. Sharriff Osman (supra)**; considering a party to party bill of costs; court reproduced the bill titled as ‘APPLICANT’S BILL OF COSTS’ in the ruling; court upheld the definition of a bill of costs in Bhatt v. Singh (1962) EA 103 at 104; essentially, court considered that the question pertinent to the matter was; whether an advocate should appear on record merely to lodge a bill of costs calcimining costs for service that he or she never rendered?; court found that no one but the advocate on record for the time being can lodge or tax a bill. Court also stated that; “If the advocate has been changed during the proceedings, the bill of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement.”

32. I have had the occasion of examining the ruling delivered on 21/12/2021 by the learned Deputy Registrar as a taxing master; she pointed out that counsel for the plaintiffs (the respondents herein) submitted that the aforesaid authorities were misplaced citing Hajji Hartjna Mtjlangwa V. Sharriff Osman Supreme Court Civil Reference No.3 of 2004; in my view, the learned Deputy Registrar did consider the principles in both cases of; **Balwantraai D. Bhatt V. Ajeet Singh & Another (1962 EA 103 at 104)** and **Hajji Hartjna Mtjlangwa V. Sharriff Osman Supreme Court Civil Reference No.3 of 2004**; when she held I quote; “*where the litigant or client has instructed another advocate, the previous firm loses authority to act on his behalf. The previous advocate is at liberty to file a client bill of costs against the litigant for service rendered if not paid.*”; she chose to interpret it the way she did.

33. Evidence as adduced in the matter before this court shows that the respondents were represented by M/s Mwesigwa Associated Advocates who appear on record up to judgement in HCCS No.092 of 2010; I find it improper for M/s Tuhimbise & Co. Advocates who received instructions in 2021 to include instruction fees of 800,000,000/=for a suit filed in 2010 in the bill of costs arising out of HCCS No.092 of 2010; yet no counsel from the law firm appears on court record until judgment; if at all there are instruction fees incurred by the respondents to M/s Tuhimbise & Co. Advocates in HCCS No.092 of 2010; such fees ought to be limited to post judgment legal services so rendered.

34. In Hartjna Mtjlangwa v Shariff Osman (Civil Reference 3 of 2004) [2004] UGSC 26 (29 August 2004); the following was stated- I have found it pertinent to reproduce His Lordship J. W.N. Tsekooko JSC ‘s statement because it clarifies the issue at hand it here because it clarifies and unravels the issue at hand:

‘The objection raised by Mr. Tibaijuka is similar to an objection raised forty years ago against a similar bill of costs drawn in the same fashion in the case of Bhatt Vs Singh (Supra) where the taxing officer had upheld an objection similar to that raised here. In



that case, the taxing officer accepted the objection and disallowed the bill in toto, because, as in this case, the only work done by the current advocates there was to draw up an order and lodge the bill of costs. A reference was made to a single judge of the East African Court of Appeal. Sir Alastair Forbes, V.P, heard the reference and affirmed the decision of the taxing officer. Because of the relevance of that decision I reproduce it in extenso. In his ruling the learned Vice President referred to an earlier ruling in another reference by a different Judge of Appeal Sir Newnham of the same Court who had state that: "A bill of costs is a factual statement of services rendered and disbursements made and, if any of the facts alleged in the bill are shown to be untrue, e.g., if it is shown that a particular service charged for has not been rendered or that a particular disbursement has not in fact been made, the relevant item in the bill will be taxed off. The commonest example of this in England is probably the inclusion in the bill of counsel's fees which had not been paid when the bill was presented: e.g. In re Taxation of costs: In re a Solicitor, [1943] 1 All E.R. 592 and Polak v. Marchioness of Winchester, [1956] 1 W.L.R. 818. Now, if the bill before me is judged by that standard it should probably be taxed at Sh. nil for it is not a true representation of the facts. It purports to be an account of services rendered to the appellants and disbursements made on their account by Messrs. Shah and Gautama and makes no mention of Mr. Nazareth. I have no doubt that it was a genuine and well-meant attempt to meet the peculiar circumstances resulting from Mr. Nazareth's having taken silk: it is nevertheless, an inaccurate bill." Thereafter Sir Alastair Forbes agreed with these principles and stated: - "On the principles applied by SIR NEWNHAM it seems to me that the

bill in the instant case is no more an accurate bill than that which SIR NEWNHAM was considering. It purports, on the fact (sic) of it, to be an account of services rendered to the appellants, of disbursements made on their account, and of instructions given to counsel on their account, by Mandla & Co. It is not a true factual statement; and on the principles stated by SIR NEWNHAM, by which as I have said, I am bound, I think that the taxing officer was right to tax the bill at Shs.nil, no application to amend having been made to him. The question in issue is purely a matter of form. The respondents were awarded their costs and should, I think, be given the opportunity of recovering them by being allowed to file a bill in proper form. The form appropriate appears to be adequately prescribed by Practice Note No.7 of 1956." The note referred to by Sir Alastair Forbes, VP, spelt out at least two important points: First no one but the advocate on the record for the time being can lodge or tax a bill. Second if the advocates have been changed during the proceedings, the bill of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement. It may be shown as 'by anticipation', if unpaid. It will be taxed in the ordinary way, the current advocate being heard on it. Although the taxing Officer described this procedure as mere technicality,



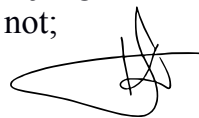
those two points constitute the present paragraph 16 of the 3rd schedule to our Rules and I personally think that they are based on the need to prevent

a successor advocate from reaping where he or she never sowed, a practice which Mr. Tibaijuka says is rampant in High Court. I think that Mr. Tibaijuka was justified in his objection to the bill. The learned taxing officer overruled Mr. Tibaijuka's objection on the basis that para 16 does not set out the form of how the bills should look. With respect, I think that the provision is clear. The items which should have been claimed by the previous advocate must be listed separately on a separate bill and be made an annex to the bill of the current advocate. The current advocate should explain to the taxing officer what costs are due to him or her and those due to previous advocate. In that way the bill presented for taxation would be stating the true position. It is not just a question of form curable under Article 126(2)(e) of the constitution as stated by the learned taxing officer. The bill as presented indeed purports to show that Ms. Musoke had been herself instructed in 1995 to oppose the cross-appeal and was therefore entitled to claim shs 10,000,000/= as instruction fees. Of course that is fundamentally and absolutely false and it must not be encouraged. Further Mr. Tibaijuka justifiably criticised the taxing officer when the latter appeared to imply that counsel did not object to the first item in the bill.

Therefore ground three must succeed. This really disposes of this reference. I find no need to discuss the remaining two grounds.

Consequently I allow this application. I set aside the order of the taxing officer. I uphold the objections raised before the Taxing officer by Mr. Tibaijuka. I order that the respondent may lodge his own bill of costs claiming any costs due to him or if he wishes to engage an advocate that advocate may amend the bill now filed or file two separate bills of costs namely one for the current advocate and the other for messrs Muwayire-Nakana, the previous advocate. The latter is to be annexed to the former as stipulated by para 16 (2) of the 3rd schedule. The applicant in this reference will have the costs of this reference in any event'

35. While a successful litigant deserves to enjoy the fruits of his litigation as costs follow the event; and a taxing master has discretion in the matter but must exercise that discretion judicially and not whimsically. (see: **Makumbi & Another V. Sole Electrics (U) Ltd SCCA No.1/1994 reported in (1990-1994) 1 EA 306**; the bill must indicate what is proposed to be due as fees to the correct advocate at the time; and ought not be bundled up to look otherwise; what may be claimed for the period M/s Mwesigwa Associated Advocates who appear on record up to judgement in HCCS No.092 of 2010 should be distinct; and attached as annexure; it is not;



36. M/s Tuhimbise & Co. Advocates presenting a bill of costs to look as if they have always been the advocates with instructions since HCCS No.092/2010 was first heard and judgment rendered can not be allowed and according to the principles stated in **Hartjina Mtjlangwa v Shariff Osman**(supra); *It is not just a question of form curable under Article 126(2)(e) of the constitution. The bill as presented indeed purports to show that Ms. Tuhimbise & Co. Advocates had been himself instructed in 2010 to represent the plaintiffs and so entitled to claim shs 800,000,000/= as instruction fees is to use the words of Tsekooko JSC 'fundamentally and absolutely false and it must not be encouraged;*

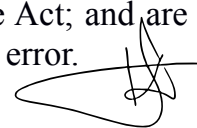
37. Ground 2 would succeed because allowing a bill of costs for taxation containing a substantially, fundamentally and false statement or item was an error in law; clearly the advocates who presented the bill of costs had no locus; I respectfully do not agree with counsel for the respondents' submission that the principles laid out by the Supreme court, on the requirement for a current advocate to attach a bill of former advocate in case of change of advocates, does not apply to this court, because the learned Justice of the Supreme Court went into detail on why that principle is required to ensure that people do not reap where they do not sow. There is no justification why counsel feels advocates practicing before the high court should not be protected.!

38. I would therefore allow this application and set aside the orders of the Deputy Registrar/Taxing Officer and up hold the preliminary objections by the applicant herein/ respondent in Taxation Application No. 49/20219 Arising from HCCS No. 92 of 2010);

39. Let the respondents if they wish, lodge their own bill of costs claiming any costs due to them or if they wish to engage an advocate that advocate may amend the bill now filed or file two separate bills of costs namely one for the current advocate and the other for M/s Mwesigwa Associated Advocates the previous advocate.

On the ground that the learned Deputy Registrar erred in law when she delved into the constitutional right to a fair hearing that includes legal representation when the same was not in issue.

In my view the learned Deputy Registrar rightly stated the law enshrined in Article 28 of the Constitution; that the respondents have a constitutional right to fair hearing and be represented by an advocate of their choice and reserve a right to withdraw the instructions at will if dissatisfied with the advocate's performance; in that context, the respondents herein having been successful litigants in HCCS No.092 of 2010, hold a right to recover costs due as envisaged under section 27 of the Civil Procedure Act; and are at liberty to enforce this right through legal representation. I do not find any error.



In the premises, this application/appeal succeeds. It is hereby ordered:

1. The orders of the Deputy Registrar/Taxing Officer in Taxation Application No. 49/20219 Arising from HCCS No. 92 of 2010); are hereby set aside;
2. The preliminary objections by the appellant herein/ respondent are upheld;
3. The respondents may lodge their own bill of costs claiming any costs due to them or if they wish to engage an advocate that advocate may amend the bill now filed or file two separate bills of costs namely one for the current advocate and the other for M/s Mwesigwa Associated Advocates the previous advocate.
4. Costs of this appeal are awarded to the appellant



Ketrah Kitariisibwa Katunguka

Judge

3/01/2023

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