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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(FAMILY DIVISION)**

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**MISCELLANEOUS APPEAL NO. 002 OF 2023  
(ARISING OUT OF TAXATION NO. 35 OF 2022)  
(ALL ARISING OUT OF CIVIL SUIT NO. 185 OF 2020)**

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**PRINCESS MUTEBI BEATRICE NAMIKA ..... APPLICANT/APPELLANT**

**VERSUS**

**1. ROBERT MPAGI SEBUNYA  
2. DAN AUGUSTINE MPAGI  
3. RUTH JOAN NANTALE } ..... RESPONDENTS**

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Before: **HON. LADY JUSTICE DR. CHRISTINE A. ECHOOKIT**

**RULING**

**BACKGROUND:**

25 This is a Miscellaneous Appeal against the decision of the taxing master in Taxation No. 35  
of 2022 and seeking orders that the taxation ruling of 6<sup>th</sup> March 2023 dismissing the entire  
taxation application No. 35 of 2022 be set aside and the bill be taxed accordingly; and that  
costs be provided for. The application is brought by way of Chamber Summons under Section  
62 of the Advocates Act and regulation 3 of the Advocates (Taxation of Costs) Appeals and  
30 Reference. The application is supported by the affidavit of Princess Mutebi Beatrice Namiika  
the appellant.

**HEARING AND REPRESENTATION:**

35 Counsel Senkumi Nicholas represented the appellant while counsel Nakueira represented  
the respondents. The parties filed written submissions.

**ISSUES FOR DETERMINATION BY THIS COURT:**

- 1. Whether the taxation master erred when she dismissed the entire taxation application  
No. 35 of 2022.

5 2. Whether the taxation ruling dated 6<sup>th</sup> March 2023 dismissing the entire taxation application No. 35 of 2022 should be set aside and the bill taxed accordingly.

**DETERMINATION OF THE ISSUE BY THIS COURT:**

**Issue 1: Whether the taxation master erred when she dismissed the entire taxation application No. 35 of 2022**

10 It is the appellant's case that on the 24<sup>th</sup> day of August 2020 the respondents instituted Civil Suit No. 185 of 2020 and several other applications against her; that she was not served a copy of the summons to file a defence and only got to know about Civil Suit No. 185 of 2020 when the respondents served Miscellaneous Application No. 665 of 2020 on her by way of substituted service through a newspaper; that she instructed her lawyers M/s Baraka Legal  
15 Associated Advocates to represent her in all the applications and to file Misc. Application No. 200 of 2022 to dismiss Civil Suit No. 185 of 2020 for failure to serve the summons on her; that her lawyers also prepared and filed an affidavit in reply to Misc. Application No. 665 of 2020; that when Misc. Application 200 of 2022 came up for hearing, the learned judge  
20 dismissed Civil Suit No. 185 of 2020 with costs to the appellant for failure to effect service of summons; that her lawyers filed her bill of costs vide taxation Number 35 of 2022 on 29<sup>th</sup> day of April 2022; that on the taxation day, counsel for the respondents raised a preliminary point of law seeking dismissal of her taxation with costs because counsel Senkumi Nicholas who appeared for her on the 24<sup>th</sup> day of March 2022 had not renewed his practicing certificate;  
25 that on 6<sup>th</sup> day of March 2023 the taxing master allowed the preliminary point of law and dismissed her application for taxation of a bill of costs; that she has been advised by her lawyer that the taxing master erred and misapplied the law when she set aside, amended and/or altered the decision of the trial judge awarding her costs; and that the respondents ought to have appealed if they were dissatisfied with the decision of the trial judge instead of  
30 raising a preliminary point of law in that regard before the registrar.

 The respondents in their reply state that this appeal is an abuse of court process and should be dismissed; that it is not true that the appellant was not served with summons, but that in

5 returning service the process server mis-wrote the phone number of the appellant in his affidavit of service; and that the respondents chose not to appeal against the decision of the trial judge but instead filed another suit which is still pending.

I have perused the file containing Civil Suit No. 185 of 2020 and Misc. Application No. 200 of  
10 2022 arising therefrom and find that the trial judge was moved by that application to dismiss the suit for want of service of summons. The trial judge proceeded to dismiss it with costs on 24<sup>th</sup> day of March 2022. Indeed, other than the appearance of Mr. Senkumi Nicholas in court before Justice David Matovu on the day the suit was dismissed as counsel for the defendant, there is no Defence on the file. In respect to Misc. Application No. 665 of 2020, it is indeed  
15 true that the appellant filed an affidavit in reply and written submissions under Baraka Legal Associated Advocates. It is not clear from the court file, however, whether the ruling on that application was made on 26<sup>th</sup> day of March 2022 as documented on court file. I have also perused the file containing Taxation Appeal No. 35 of 2022 arising from Civil Suit No. 185 of  
20 2020 and noted that counsel for both parties made their submissions on the issues in contention and the taxing master made her ruling on 6<sup>th</sup> day of March 2023, dismissing the entire application.

Counsel for the respondent submitted that when the taxing application came up, he raised a point of law that costs could not be awarded contrary to section 69 of the Advocates Act as  
25 amended. This was because Mr. Senkumi Nicholas did not have a practicing certificate on the 24<sup>th</sup> day of March 2022 when Misc. Application No. 200 of 2020 was heard as he had last renewed his practicing certificate on 16<sup>th</sup> day of April 2021. In such circumstances, the costs were not recoverable as practicing without a practicing certificate is an offence.

30 I agree with counsel for the respondents that section 69 of the Advocates Act is couched in mandatory terms. Indeed, Section 15(1) of the Advocates Act prohibits an advocate from practicing without a valid practicing certificate; doing so is an offence. Counsel Senkumi acknowledged that he did not have a valid practicing certificate on the 24<sup>th</sup> day of March 2023

5 when the suit was dismissed. That said, Section 14A(1)(b) of the Advocates (Amendment) Act, 2002 provides that;

10 "Where an advocate practices as an advocate contrary to subsection (1) of Section 14; then no pleadings or contract or other document made or action taken by the advocate on behalf of any client shall be invalidated by any such event; and in the case of any proceedings, the case of the client shall not be dismissed by reason of any such event."

The learned Deputy Registrar Katushaba Prossy cited the above provision of the Advocates (Amendment) Act in her ruling but went ahead to dismiss the entire application on the ground  
15 that Mr. Senkumi Nicholas did not have a valid practicing certificate on the 24<sup>th</sup> day of March 2022, which is an offence. She also relied on the case of Makula International Ltd vs. His Eminence Cardinal Nsubuga & Anor (CA 05 of 1981) [1982] UGSC2 where it was stated that once an illegality has been established it cannot be sanctioned by a court of law.

20 While the principle established in the case of Makula International Ltd vs. His Eminence Cardinal Nsubuga & anor is indeed a principle of law and cannot be refuted, it is my considered view that it was not accurately applied by the learned deputy registrar in the taxation issue in this instance. The illegality established in that case is that of practicing without a valid practicing certificate. That is an illegality without a doubt and touches not only  
25 on the professionalism of an advocate but impacts on the ability to claim instruction fees and other costs such as reimbursables incurred by the impugned lawyer in representing his client. Such fees, in my opinion, should be and are distinguishable from the costs due to the client per se. The client of the errant lawyer cannot indirectly be seen to suffer the consequences of her lawyer not having a valid practicing certificate. The client paid fees to the law firm she  
30 chose to represent her. The said law firm can assign any lawyer of the firm to handle any case and the client may or may not have a say in that assignment. Her only concern is to be well represented.

5 Counsel for the respondents submitted that the only remedy available to the appellant in the present matter is to recover costs from her lawyer since she claims to have paid instruction fees, in pursuance of Section 14A (3) of the Advocates (Amendment) Act. It is my considered view that the said provision would apply to the extent that recovery of fees relates to the instructions given to the specific lawyer that erred and committed an offence under the  
10 Advocates Act. I do not think the said provision applies omnibus in all cases; and is not meant to disentitle a client from recovering costs from the other party only because of the fault of her lawyer. Where it has not been claimed, and no evidence has been adduced, that all the legal work pertaining to the appellant's case was done by the said Mr. Senkumi Nicholas, this court cannot take it upon itself to fault Mr. Senkumi in all aspects.

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It the premises, therefore, the learned taxing master ought to have made a distinction between costs attributable to Mr. Senkumi's attendance in court on 24<sup>th</sup> of March 2022, and costs associated with other actual legal processes presented in the bill of costs before the taxing master. Hence, she ought to have disallowed costs directly attributable to the errant Mr.  
20 Senkumi (which are by any means not recoverable in the circumstances) from costs due to the appellant directly, if any, since the learned trial judge had awarded costs in Misc. Application No. 200 of 2020. Those would be costs related to the said application by the appellant/applicant and in respect to Misc. Application No. 665 of 2020, if any. While I do not see much on the court record in the main suit where the appellant/defendant did not even  
25 have a chance to file a defence, the onus is on the appellant to prove her costs before the taxing master.

**Issue 2: Whether the taxation ruling dated 6<sup>th</sup> March 2023 dismissing the entire taxation application No. 35 of 2022 should be set aside and the bill taxed accordingly**

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 In view of my findings under issue 1 above, this issue is answered in the affirmative.

5 This takes me to the last related matter under this issue. The appellant claims that the taxing  
master erred and misapplied the law when she set aside, amended and/or altered the  
decision of the trial judge awarding her costs. I do not think the learned deputy registrar set  
aside, amended and/or altered the decision of the learned trial judge. In my opinion, she was  
only applying the law in regard to the illegality of practicing without a practicing certificate and  
10 unfortunately stretched the scope of that illegality to cover all costs.

I am not inclined to address other arguments of counsel on both sides that are beyond the  
issue of taxation of costs. Specifically, this appeal is not about whether or not service of  
summons was actually undertaken in respect of Civil Suit No. 185 of 2020; nor is it about  
15 whether the said suit is stale or not or its merits. Hence, I make no finding in respect to this  
matter.

**CONCLUSION:**

In the premises, I order that;

- 20 a) This application is granted.
- b) The bill of costs is reverted for taxation, with a proviso that the costs attributable to Mr.  
Senkumi's attendance of court on the 24<sup>th</sup> of March 2022 be disallowed and that the  
appellant proves legitimate costs.
- c) Each party shall bear its own costs.

25 I so order.

Delivered on this 22<sup>nd</sup> day of February 2024.



30 **Dr. Christine A. Echookit**  
**Judge.**

Right of appeal explained.