

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**

**MISC. APPLICATION (TAXATION APPEAL NO.1346 OF 2019**

**SEMAKULA JAMIL:.....APPLICANT**

**VERSUS**

**MUSOKE LASTO:.....RESPONDENT**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This is an appeal brought under Section 62 of the Advocates Act and Regulation 3 of the Advocates (Taxation of Costs)(Appeals and References) Regulations S1267-5. The grounds of the application are that;

- i) The taxation proceedings were conducted with intent to render the application challenging the order awarding costs nugatory thereby occasioning a miscarriage of justice.
- ii) That the taxation proceedings were conducted *ex-parte* without notice to the Appellant, contrary to the provisions of Regulation 50 of the Advocates (Remuneration and Taxation of Costs) Regulations S1267-4.

- iii) The taxed costs were manifestly excessive contrary to the principles of taxation.

The application is supported by the affidavit sworn by Semakula Jamil. In reply, the Respondents filed an affidavit in reply sworn by Musoke Lasto.

The Applicant argued the grounds based on the evidence in the affidavits above as follows:

- i) Taxation is disregard of pending proceedings.

According to the Appellant, it is trite that in this type of application, the Appellant must show that there exists a substantive application as per *Hwang Sing versus Tajodin Hussein; SCCA No. 19/2008.*

The Appellant in this case claims to have filed a substantive application for review vide Misc. Application No.592/2019 against the Respondent as well as the application for interim stay vide Misc. Application No. 593 of 2019.

These were fixed on dates as shown on 10<sup>th</sup> September 2019 before the Judge. It was their wrong in the opinion of Counsel, for the DR to fix and proceed with the taxation proceedings before here thereby rendering the application for review nugatory.

I have looked at the record and do agree with the Appellants. The procedure adopted by the DR of fixing the Taxation and hearing it well aware that a substantive application was fixed by the Judge

to consider a review of the main cause was irregular. This issue is terminated in the positive.

ii) Taxation proceedings *ex-parte* and without notice

As pointed out by Counsel for the Appellants, Regulation 50 of the Advocates (Remuneration and Taxation of Costs) Regulations S1267-4, taxation proceedings are supposed to be conducted with notice to the party against whom the costs were awarded.

The affidavit in reply filed by Musoke Lasto, alludes to the fact that on 21<sup>st</sup> August 2019, the matter rightly proceeded *ex-parte* since parties had been given that date to report on the progress of their consent on costs (paragraph 5).

This position is however untrue. The record clearly indicates that on 18<sup>th</sup> June 2019, the parties appeared with their lawyers in Court and submissions were made, indicating that the taxation ought to be stayed. The Court adjourned the matter to 21<sup>st</sup> August 2019 at 12.30 pm. For Counsel for the Respondents to submit on this application on 21<sup>st</sup> August 2019, the Court instead went ahead and taxed the bill in spite of the objections raised irregular and an abuse of Court process. The grounds succeeds.

iii) Taxed costs were manifestly excessive.

Without a further ado, the findings on ground 1 and 2 render it unnecessary to consider this ground. The entire taxation was a *nullity*. The procedure was not followed. The taxation was done contrary to the guidance set forth in the 6<sup>th</sup> schedule of the Regulation 50 of the Advocates (Remuneration and Taxation of

Costs) Regulations S1267-4. The resultant force of law, having been reached at without following the due process of law. This ground succeeds as well.

The appeal is proved on all grounds. The taxation proceedings are found to be illegal and are accordingly set aside; as prayed.

Costs granted to the Appellant.

I so order.

.....

Henry I. Kawesa

**JUDGE**

10/03/2020

10/03/2020

Plaintiff in Court.

Clerk: Grace Kanagwa.

Court:

Ruling delivered today in the absence of the Defendants and all Counsel.

Sgd:

Flavia Nabakooza K.

10/03/2020