THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

HOLDEN AT MENGO

CORAM: G. M. OKELLO, JSC

CIVIL REFERENCE NO. 01 OF 2008

B E T W E E N

JOHN KAFEERO SENTONGO: :::::: :::::: APPLICANT

A N D

(1) SHELL (U) LTD.}
(2) UGANDA PETROLEUM CO. (U)}: :::::: :::::: RESPONDENT

{A reference from the decision of the Taxing Officer, Her Worship H. Wolayo, Registrar of this Court, dated 27th May 2008, in Civil Appeal No. 1 of 2007}.

RULING OF OKELLO,JSC:

This is a ruling on a preliminary objection which was raised at the commencement of the hearing of this application, a reference from the decision of the Taxing Officer.

When the reference was called for hearing, Mr. Christopher Madrama, learned counsel for the first respondent, raised a preliminary objection seeking to strike out the grounds of reference filed on 16-06-2008, because, in his view, they do not comply with the Rules of reference. Presenting the objection, Mr. Madrama pointed out that the applicant's letter dated 30th May 2008, to the Registrar of this court, formally applying for a reference of her taxation ruling to a Judge of this court was issued and filed within the time prescribed in rule 106(5) of the Rules of this court.

He complained however, that the letter did not show, when it was expected to do so, what the applicant's grievances were in terms of sub-rule 3 of rule 106. In his view, the letter was expected to specify the item complained about and the nature of the complaint, stating whether the bill of costs as taxed and allowed was in all the circumstances manifestly high or manifestly low.

He further pointed out that in the second paragraph of that letter, the applicant requested for a typed copy of the taxation proceedings to enable him formulate the grounds of reference. Learned counsel submitted that the memorandum containing grounds of reference filed after receipt of a typed copy of the taxation proceedings was not contemplated in the Rules and was filed after the time prescribed in sub-rule 5 of rule 106. He prayed that the grounds of reference be struck out.

Mr. Sendege, who represented the second respondent, associated himself with Mr. Madrama's submissions. He reiterated however, firstly, that the points of reference had to be stated in the letter if the letter requesting for a reference to a Judge of this court was to serve any judicial purpose. Secondly, that the letter had to specify the applicant's grievance and the nature of the complaint. He submitted that the grievances cannot be left for the Judge to figure out. He concluded that since the applicant's said letter did not include the applicant's grievances and their nature, it did not comply with the law, and should therefore, be struck out.

On the memorandum containing the grounds of reference, the learned counsel contended that this is not provided for under the Rules of this court and that matters of taxation are supposed to be handled expeditiously without the need for memorandum. He prayed that this too be struck out.

Mr. Byomugisha-Guma learned counsel for the applicant opposing the objection, denied that the applicant's letter applying for a reference under rule 106(5) was defective. He contended that the letter complied with sub-rule 5 of rule 106. He stated that the matters to be referred to the judge were contained in the memorandum of reference.

He conceded that there is no specific rule providing for a memorandum of reference but argued that a reference is in effect an appeal from decision of the taxing officer. The procedure of drawing a memorandum of reference is therefore established by practice treating a reference as an appeal. He prayed that the objection be overruled.

As I can discern from the above arguments, the objection before me is twofold: firstly, that the applicant's letter dated 30th May 2008, addressed to the Registrar, under sub-rule 5 of rule 106, is defective for failure to specify the points or grounds for reference in terms of sub-rules 1 and 3 of the same rule. Secondly, that the memorandum of reference filed after receipt of a typed copy of these taxation proceedings is not provided for under the Rules of this court and that in any case it was filed outside the prescribed time. The prayer is that both the letter and the memorandum be struck out.

In my view, to determine this objection, it is necessary to interpret sub-rules 1, 3 and 5 of rule 106 and understand the scope of any rights or obligations they create. These sub-rules provide as follows:

''(1) Any person who is dissatisfied with a decision of the Registrar in his or her capacity as a taxing officer may require any matter of law or principle to be referred to a Judge of this court for his or her decision and the Judge shall determine the matter as the justice of the case may require.

(3) Any person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or manifestly inadequate may require the bill to be referred to a judge; and the judge may make such deduction or addition as will render the bill reasonable.

(5) An application for a reference may be made to the Registrar informally at the time of taxation or by writing seven days after that time.''

I should point out at the outset that this court has had an occasion to consider these sub-rules in a similar objection in ***Civil Application No. 21 of 2000, GENERAL PARTS (U) LTD. – VS – NON-PERFORMING ASSETS RECOVERY TRUST.*** This was a reference from a ruling on taxation reference to a single Judge made in Civil Application No. 13 of 2000.

In that case, taxation was done on and dated 17th May, 2000. Seven days later, on 24th May 2000, counsel for Non-Performing Assets Recovery Trust wrote a letter to the Registrar of this court under rule 105(5) (now rule 106(5)) applying for a reference to a Judge of this court. The letter stated in part as follows:

''In accordance with rule 105(5) of the Rules of the Supreme Court 1996, we are hereby applying for a reference of your decision in the matter made in your capacity as a taxing officer to be made to a Judge of this court.

We are accordingly applying to you for a typed copy of the taxation proceedings and ruling to enable us formulate grounds of reference.''

It was contended for the applicant before the court that the letter was not an application for purposes of the said rule 105(5) because the matter to be referred to the Judge, as stipulated in sub-rule (1) or sub-rule (3) of the same rule, was not specified in the letter. Learned counsel argued that the letter served only as an application for a copy of the taxation proceedings. It was further argued that the requirement for specifying the matters to be referred to the Judge was complied with in the memorandum of reference, which was dated and lodged in the Registry on the 8th June, 2000. According to learned counsel, that was the effective date on which the proper application for reference was made and therefore, that the application was out of time.

For the respondent, it was contended that rule 105(5) (now rule 106(5)) does not require an application for reference to contain or specify grounds which will be argued before the single Judge hearing the reference.

Upholding the decision of the single Judge of this court overruling the objection, this court said:

> ***''Sub-rule (1) and (3) of rule 105 are concerned with the right to require a reference to a Judge and the scope of right. In substance, the sub-rule provide that a person dissatisfied with a taxation decision by the Registrar, as a taxing officer, either on a matter of law or principle or because the amount taxed and allowed is manifestly excessive or inadequate, has a right to require that the decision be referred to a Judge of this court. Sub-rule (5) stipulates who shall be required to make the reference and prescribes the time within which to do so. It is the Registrar to be required and he has to do so within 7 days after his decision. In that sub-rule, the mode of requiring for the reference is called*** **'**application for reference.' ***To our understanding however, what is envisaged (sic) is more in*** 'nature' ***of a notice to the Registrar. It is not an application on which the Registrar has to make a decision of a judicial nature. An application in which it is necessary to state the ground on which it is made, is one which seeks a decision of the court. Under rule 41 of the Rules of this court, such application has to be by motion stating the grounds on which it is made. An application for a reference made to the Registrar does not fall in that category. We agree with the learned Justice that there was no merit in the objection. We hold that the letter of 24th May 2000, the contents of which we produced earlier in this ruling was a proper application for a reference under rule 105(5) and was made in time.''***

I have quoted that ruling at length to show that the argument that failure to specify in the letter written under sub-rule 5 of rule 106, the points or grounds for reference renders the letter defective, was rejected by this court in that case. That position still stands. The reason given for that rejection was that application for a reference is more in the nature of a ***'notice'*** to the Registrar. It is not an application on which the Registrar is expected to make a decision of a judicial nature. Only an application on which one seeks a decision of the court that must state the ground on which it is made. Such an application must be by a motion in accordance with rule 42(1) of the Rules of this court. Application for a reference made to the Registrar

under rule 106(5) does not fall in this category. This is a decision of this court. It is not a decision of a single Justice of this court. Even if it were, it would still have required a very good reason to depart from it. I have none. I agree with the reasoning of the court.

On the basis of that authority therefore, I hold that the applicant's letter dated 30th May 2008, was a proper application for a reference under rule 106(5). As it was conceded by counsel for the respondents that the letter was submitted within the prescribed time, the application was therefore, duly and effectively made.

Regarding the procedure of drawing and filing a memorandum of reference, I accept Mr. Byomugisha-Guma's argument that though there is no specific rule under the Rules of this court providing for that procedure, the same is established in practice analogous to an ordinary appeal to this court. A memorandum of reference setting out the grounds of the reference is always drawn after receiving a typed copy of the taxation proceedings and filed.

I find that that procedure is not prejudicial to the opposite party. On the contrary, it is helpful both to the court and to the opposite party because it defines the points of reference which could be on points of law or principle or on the amount taxed and allowed. No miscarriage of justice is occasioned by that procedure. The procedure is well established as it is evident in very many applications of this type. See for example the following: ***Civil Application No. 21 of 2000, General Parts (U) Ltd. - vs – Non-Performing Assets Recovery Trust, Civil Application No. 17 of 1993, Attorney General***

- vs – Uganda Blanket Manufacturers; Civil Application No. 23 of 1999, Bank of Uganda - vs – Banco Arabe Espanal, to mention but a few.

In the result, I find no merit in the objection and I accordingly overrule it. I order that the hearing of the main application do proceed now.

Dated at Mengo this: 24th day of July 2008.

G. M. OKELLO
JUSTICE OF THE SUPREME COURT