

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CIVIL REFERENCE NO.19 OF 2012**

*(Arising out of Civil Application No.217 of 2011 and Civil Appeal No.2 of 2004)*

JOSEPH B. BYAMUGISHA t/a

5 J.B. BYAMUGISHA ADVOCATES .....APPLICANT

**VERSUS**

NATIONAL SOCIAL SECURITY FUND .....RESPONDENT

CORAM: Hon. Justice Remmy Kasule, Justice of Appeal, sitting as a single Justice.

**RULING**

10 This is a Reference to a single justice arising out of the ruling of the Assistant Registrar, Court of Appeal, dated 17.02.2012.

By way of background, the applicant, through **Civil Application No.217 of 2011**, moved the said Assistant registrar, to tax the applicant’s Advocate/Client Bill of costs. The Bill was  
15 brought by the applicant as **“the advocate”** against the respondent as **“the client”**.

The same arose out of **Court of Appeal Civil Appeal No.02 of 2004: National Social Security Fund & W. H. Ssentogo t/a Ssentogo and Partners V Alcon International Ltd.** The applicant had been retained by the respondent to act in the case/appeal as legal counsel from 02.10.03 up to 20.05.2011 when instructions were withdrawn.

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On 02.06.2011 the applicant, forwarded to the respondent a bill of costs for the legal services he rendered and demanded for settlement of the same. The respondent refused to settle. On 20.07.2011, the applicant lodged the bill in this court for taxation. At the taxation hearing, the respondent’s counsel by way of a preliminary objection, submitted that the Bill was taxable only

25 by the High Court. In a ruling of 17.02.2012, the Assistant Registrar upheld the objection by  
ruling that, as a matter of law, jurisdiction to tax an Advocate/Client Bill of costs was vested in  
the High Court and not in the Court of Appeal. This Reference is from that ruling.

At the hearing learned counsel Masembe Kanyerezi assisted by Albert Byamugisha appeared for  
30 the applicant while Andrew Kasirye assisted by Arthur Murangira were for the respondent.

The reference is based on five grounds, namely:

**“ 1. The learned Registrar erred in law in holding that in order to invoke the concurrent  
jurisdiction of the Court of Appeal contained in the Court of Appeal Rules to tax an  
35 Advocate/client bill of costs, the Court of Appeal Rules have to be specifically cited in the  
intitulement to the application.**

**2. The learned Registrar erred in law in failing to hold that the Court of Appeal has the  
constitutional as well as inherent jurisdiction to tax Advocate/client bills of costs relating to  
appeals and proceedings before it.**

40 **3. The learned Registrar erred in law in failing to consider the effect of holding that a  
party to party bill of costs is to be taxed in accordance with the Court of Appeal scale and  
that of holding that an Advocate/client bill of costs is to be taxed in accordance with the  
High Court scale.**

**4. The learned Registrar erred in law in not according to the applicant the  
45 constitutional rights to equal treatment and fair trial and adequate compensation.**

**5. The learned Registrar erred in misconstruing section 11 of the Judicature Act which  
confers on the Court of Appeal equivalent powers to the High Court including powers of  
taxation”.**

50 The applicant sought orders that the Reference be allowed, the Court of Appeal Registrar does tax the Advocate/Client Bill of Costs and the costs of the reference be provided for.

Applicant's counsel, in effect, argued all the grounds together. He submitted that the Court of Appeal has powers to tax an Advocate/client Bill of Costs relating to an appeal the court has  
55 entertained under its overall jurisdiction to hear and determine appeals and all matters incidental thereto under **sections 10 and 11 of the Judicature Act**. The Advocate/client bill of costs was a matter incidental to **Civil Appeal No.2 of 2004** that the court had determined. This jurisdiction overrides **Rule 109** of the **Judicature (Court of Appeal Rules) Directions: S1 13-10** which is subsidiary to the **Judicature Act**.

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Further, counsel submitted that to the extent that, in the same case, **Rule 109 (3)** subjects the advocate to a lower scale of costs of the High Court, yet the client that the advocate represents is allowed to enjoy a higher scale of costs of the Court of Appeal in a party to a party Bill of costs under **Rule 109 (1) and (2)**, then the said **Rule 109 (3)** is inconsistent with **Articles 21 (1), 26**  
65 and **28 (1)** of the Constitution that guarantees equality before the law, access to a court of law for relief and the Right to a fair hearing.

Since **Rule 109** was already in existence at the promulgation of the 1995 Constitution, the same must be interpreted and applied in conformity with the spirit and effect of the Constitution under  
70 **Article 274**. Accordingly **Articles 21, 26 and 28** of the Constitution dictate that the law as to taxation be interpreted and applied in such a way that there is no element of inequality and unfairness to any of the parties to the taxation.

Relying on the case authorities of:

- **Mukasa V Bakireke [2009] 2EA 254,**
- 75 ▪ **Court of Appeal Civil Reference No.13 of 2005: National insurance Corporation Versus Pelican Services Limited,**

- **Court of Appeal Civil Reference No.01 of 2005: Hope Bahimbisomwe V Julius Rwabinumi,**
- **Saggu V Roadmaster Cycles (U) Limited [2002] 1 EA 258,**

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and

- **Supreme Court of Uganda Civil appeal No.17 of 1993: National Union of Clerical Commercial, Professional and Technical employees V National Insurance Corporation;**

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Counsel for the applicant urged this court to allow the Reference and grant the orders prayed for.

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Respondent's counsel opposed the grounds of the Reference. He submitted that **section 11** of the **Judicature Act** does not confer jurisdiction upon the Court of appeal to tax an Advocate/client bill of costs. The powers, authority and jurisdiction vested in the Court of Appeal to exercise original jurisdiction of the court from which the appeal emanates do not amount to vesting in a Registrar of the Court of Appeal such jurisdiction. A registrar is a specified court officer exercising judicial powers only delegated and vested in him/her by a specific law. **Rule 109** of the **Court of Appeal Rules** is such a law in this case. **Rule 109 (1)** vests in the Court of Appeal Registrar powers to tax bills of costs as between party and party to an appeal or application in the Court of Appeal while **Rule 109 (3)** on the other hand, provides that the taxation of an advocate/client bill of costs shall be by the High Court and is to be governed by the High Court rules and scales of costs.

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Further, since the **Advocates (Remuneration and Taxation of Costs) Regulations**, provide for an advocate to be awarded by the High Court additional remuneration on proving exceptional dispatch, importance and/or complexity, then the alleged contravention of **Articles 21** (equality

before the law), **26** (the right to fair and adequate compensation) and **28** (lack of fair trial) of the  
105 Constitution by **Rule 109 (3)** of the **Court of Appeal Rules** does not arise.

According to respondent's counsel, rules and principles governing taxation of costs are based on  
the principle of providing fair and reasonable compensation to the advocate and/or the party  
concerned, regardless of the court carrying out the taxation. There is therefore no actual  
110 prejudice suffered by having an advocate/client bill of costs taxed by the High Court.

Learned counsel further submitted that **Regulations 5 and 6** of the **Advocates (Remuneration  
and Taxation of Costs) Regulations** respectively provide for additional remuneration to an  
advocate for exceptional work of exceptional importance, dispatch and/or complexity. The  
115 burden is therefore on the advocate to make out a case before the taxing master of the High Court  
that he/she deserves to be awarded additional remuneration and/or a special fee depending on the  
nature of the legal work and/or services rendered to the client.

**Rule 109 (3)** of the **Court of Appeal Rules** was consistent with **section 80** of the **Advocates  
120 Act, cap.267**, in that both make the Registrar of the High Court to be the taxing officer of bills of  
costs brought under the Act, the Advocate/client bill of costs, the subject of this Reference, being  
in the category of such bills. This is in compliance with the **Advocates Act** that is the primary  
legislation governing the remuneration of Advocates. **Sections 57 and 58** of the said **Act**  
provide avenues to be pursued by an advocate to obtain adequate remuneration for legal services  
125 rendered to a client.

Respondent's counsel also submitted that as a matter of law, inherent powers vested in the Court  
of Appeal by **Rule 2 (2)** of its Rules cannot be invoked where there are express provisions of  
statutory law, that is **section 80** of the **Advocates Act** and **Rule 109 (3)** providing for taxation of  
the Advocate/client Bill of costs.

130 Relying on the court decisions of:

**Mudavadi Vs Kibisu [1970] EA 585,**

**Italframe Limited Vs Mediterranean Shipping Co [1986 – 1989] EA 174;**

**The owners of the motor vessel “Joey” Vs The owners and Masters of the Motor Tugs “Barbara” and “Steve B” [2008] 1 EA 367;**

135 **Kagenyi Vs Musiramo and Another [1986] EA 43;**

and

**Ryan Investments Ltd and Another Vs The United States of America [1970] EA 675,**  
respondent’s counsel prayed for the dismissal of the Reference.

140 Having considered the pleadings, the submissions of respective counsel as well as the law, I proceed to resolve the issues on the basis of the grounds of the Reference submitted upon by counsel for the respective parties.

As to the Applicant’s counsel’s criticism of the learned Registrar for allegedly holding that in order to invoke the concurrent jurisdiction of the Court of Appeal to tax an advocate/client bill of costs, the Court of Appeal Rules had to be specifically cited **“in the intitulement of the application”**, this court finds the criticism unjustified.

In his ruling on page 4 thereof the learned Assistant Registrar held:

150 **“The applicants chose to use the Advocates Act Rules, the Advocates (Remuneration and Taxation of costs Rules and Order 52 Rules 2 and 3 of the Civil Procedure Rules. They did not in any way invoke the rules of this court i.e. The Judicature Court of appeal Rules and Directions SI 13-10 so as to bring in the argument of concurrent jurisdiction Mr. Masembe referred to” (sic).**

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From the above passage I find that all that the Registrar did was to observe and point out in his ruling the fact that though the applicant had decided to lodge and prosecute **Civil Application No.217 of 2011** in the Court of Appeal, the applicant, had relied upon and stated in the body of the application **sections 55, 57 and 60 of the Advocates Act, Regulation 10 (1) of the**  
160 **Advocates (Remuneration and Taxation of Costs) Regulations, and order 52 Rules 1 and 3 of the Civil Procedure Rules**, as the law under which the application was being lodged and prosecuted. The Registrar just wondered why the applicant had not stated in his application that he was also bringing the application under the **Judicature (Court of Appeal Rules) Directions, SI 13-10**. Yet these Rules have specific provisions governing taxation of bills of costs over  
165 which the Court of Appeal has jurisdiction. It is these Rules that are the basis for resolving the submission of the applicant that the Court of Appeal has concurrent jurisdiction to entertain an advocate/client bill of costs. The learned Registrar, apart from stating this fact and making the observation, made no specific decision as the first ground of the Reference tends to imply. There is therefore no merit in this ground of the Reference. The same fails.

170 The essence of the rest of the grounds of the Reference which were argued together and will therefore be considered together in this ruling, fault the Assistant Registrar for having not held that the Court of Appeal has jurisdiction to tax an advocate/client bill of costs arising from and relating to appeals and proceedings before it.

175 The assertion made by respondent's counsel that inherent jurisdiction of the court cannot be invoked where there is a specific remedy provided by the law, as is implied in the court decisions of: **Ryan Investments Ltd and Another Vs The United States of America [1970] EA 675** and **Ahmed Hassam Mulji Vs Shirinbhai Jadavji [1963] EA 217** is no longer good law in Uganda. The correct position of the law in Uganda has now been stated by the **Uganda Supreme Court**  
180 **in Civil Appeal No.17 of 1993: National Union of Clerical, Commercial, Professional and Technical Employees Vs National Insurance Corporation** where the court unanimously held that:

**“It is now settled that the existence of a specific procedure, provision or remedy cannot operate to restrict or exclude the courts’ inherent jurisdiction under section**

185           **101 of the statute. Clearly the existence of a specific rule cannot override the**  
                  **statutory provisions of section 101 which gives wide residual powers to the court to**  
                  **prevent or correct any injustice. The question whether a court should invoke its**  
                  **inherent powers in a given case is a matter for the court’s discretion which should**  
                  **be exercised judicially. The availability of an alternative remedy or specific**  
190           **provision is only one of the factors to be taken into account, but does not limit or**  
                  **remove the court’s jurisdiction. The issue, therefore, is not one of jurisdiction, but**  
                  **one of discretion”.**

                  In two earlier decisions of **Rawal V Mombasa hardware Ltd [1998] EA 392 and**  
                  **Adonia V Mutekanga (1970) EA 429** the then Court of Appeal for East Africa had held  
195           that any rule which purports to take away the inherent jurisdiction of the courts should be  
                  looked at very carefully before it is construed in such a manner (**Rawal V Mombasa**  
                  **Hardware Ltd**) and that the existence of a specific procedure provided by a rule does not  
                  restrict the court’s inherent jurisdiction unless a statute so provides (**Adonia V**  
                  **Mutekanga**).

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                  In the exercise of its judicial discretion a court of law is at liberty to proceed to grant the  
                  reliefs sought, in such situations, where if the reliefs were not to be granted would  
                  amount to denial of a right and doing an injustice. The availability of an alternative  
                  remedy or a specific provision of a statute is just one of the factors, amongst others, that  
205           the court considers in arriving at the decision whether or not to invoke its inherent  
                  powers.

                  In the instant case the **Rules of this court** have specific provisions governing taxations in  
                  this court. In the exercise of discretion to decide whether or not court should invoke its  
                  inherent powers to tax the Advocate/client bill of costs it is necessary to consider these  
210           specific provisions. **Rule 109** provides:

**“109. Taxation.**



(1) **The Registrar shall be a taxing officer with power to tax the costs as between party and party of or arising out of any appeal or application to the court.**

215 (2) **The costs shall be taxed in accordance with the rules and scale set out in the third schedule to these Rules.**

220 (3) **The remuneration of an advocate by his or her client in respect of the appeal or application shall be subject to taxation in the High Court and shall be governed by the rules and scales applicable to proceedings in that court”.**

**Rule 109** of the **Rules of this court** therefore specifically provides for the taxation of an advocate/client bill of costs by the High Court while party to party bill of costs of an appeal or application is by the Court of Appeal.

225 It remains to be determined whether there is any denial of a right or any injustice caused to the applicant by the said Rule 109 requiring that an advocate/client bill of costs is to be taxed by the High Court while a party to party bill of costs is to be taxed by the Court of Appeal.

230 In order to resolve the above, it becomes necessary to examine the nature of what an advocate/client bill of costs is as contrasted with the party to party bill of costs. It also calls for examination of the specific provisions of the Constitution and the **Judicature Act** that have been referred to by respective counsel as having relevancy to the taxation of both the Advocate/client and party to party bills of costs.

235 Taxation is the process of examining, and if necessary, reducing the bill of costs of a lawyer by an officer of court, usually referred to as a **“taxing master”** appointed under the law for that purpose.

In civil proceedings, party to party costs are the costs that the losing party in an action is ordered to pay to the winning party. The court through its discretion makes an order directing so. See

**S.27 of the Civil Procedure Act.** Party to party taxation is between parties that have been to a  
240 court action whose prosecution has terminated and court has made an order as to which party is  
to meet the costs of the action of the other party to the action. The court may fix the amount of  
costs it orders one party to pay to the other, or the amount of costs may be assessed by a taxing  
master by reference to the relevant scale of costs.

245 The advocate/client bill of costs on the other hand, is always between the advocate and the client  
of that Advocate. It relates to costs that a party has to pay to the lawyer for the legal services  
rendered whether in respect of a proceeding (which may even be criminal) in a court of law or  
for some other transaction outside a court of law.

250 The advocate and the client may enter into a written agreement as to the costs to be charged for  
the work done. Where a court determines that the agreed upon costs in the agreement are  
unreasonable or that the agreement is not in compliance with the laws governing remuneration of  
an advocate by the client, then court in the exercise of its original jurisdiction can vary or cancel  
or declare as unenforceable such agreement against the client by the court. Such a decision by a  
255 court of original jurisdiction is of course subject to the appeal process. See: **Supreme Court of  
Uganda Civil Appeal No.09 of 2010: Kituuma Magala & Co, Advocates Vs Celtel Ltd,**  
(17.08.2011) unreported.

Subject to a court fixing the costs or ordering otherwise in exceptional cases, a party to party bill  
260 of costs is in the normal course of taxation taxed on the “**standard basis**”, that is, a basis of a  
reasonable amount in respect of all costs reasonably incurred in accordance with the **Advocates  
(Remuneration and Taxation of costs) Regulations**, or under some other laws, and as allowed  
by the Taxing master. Any doubts which the Taxing master may have as to whether the costs  
were reasonably incurred or were reasonable in amount have to be resolved in favour of the  
265 paying party. Therefore the burden is on the party whose bill is lodged in court for taxation to  
prove that such costs and/or their amounts are reasonable.

The Taxing master, in taxing such a bill, resolves whether the costs in question were reasonably incurred; and if so, then what is the reasonable quantification of such costs.

270 The party to party costs include **fixed costs** where one party pays a defined sum to the other party, **costs in the cause:** where whichever litigant is successful at the end of the trial receives the costs, **plaintiff's/defendant's costs:** awardable to the plaintiff or defendant who is successful at the end of the trial of the action, as the case may be, **costs in any event:** where one named party receives costs pursuant to that matter whether or not that party is successful or not, and  
275 **costs thrown a way:** where costs are awarded to compensate for the wasted effort and expense put in by the non-blameworthy party caused by the blame-worthy party. It is of significance to note that any of the type of these costs can be awarded by the court trying the action, the subject of the costs, regardless of whether or not such a court is of original or appellate jurisdiction.

280 By way contrast, the Advocate/client bill of costs is taxed on an indemnity basis, whereby the court allows the costs that have been incurred, except in so far as they are of an unreasonable amount or have been unreasonably incurred. In this case, unlike in the case of the “**standard basis**”, any doubts that the taxing master may have as to whether costs were reasonably incurred or were reasonable in amount are to be resolved in favour of the receiving party, that is the  
285 Advocate. Therefore the burden is on the paying party, the client, to prove that the incurring of the costs and/or the amounts demanded to be paid are unreasonable: See: **Goodwin V Storrar (1947) KB 457.**

As a consequence of the above, three presumptions apply in the case of taxation of an  
290 advocate/client bill of costs: first, the costs are presumed to have been reasonably incurred if the same were incurred with the express or implied approval of the client. In this regard, the advocate is deemed to have indicated that all items included in the bill are in relation to work done or disbursements incurred with the client's approval. Second, the costs are presumed to have been reasonable in amount if the amount was expressly or impliedly approved by the client,

295 and third: the costs are presumed to have been unreasonably incurred if, in the circumstances of the case, they are of an unusual nature, unless the advocate satisfies to the Taxing master that prior to their being incurred, he/she informed the client that they might not be allowed on the taxation of costs inter parties.

300 Since the Advocate/client bill of costs does not always necessarily emanate from a court action or cause, and indeed more often than not, it comprises of items that have nothing to do with the existence of any action in court, it is practical and logical that its determination starts at the level of the court with original jurisdiction, subject to appeal, of course.

305 They are therefore essential features, distinguishing party to party from an advocate/client bill of costs. It is therefore reasonable that each one of them is taxable under different laws and scales and at different levels of the courts of judicature. The applicant's Advocate/client bill of costs is just one of the so many other client/Advocate bills of costs, the majority of whom arise in respect of transactions outside any courts of law, unlike the party to party bill of costs whose foundation  
310 is based on some termination of a court action or cause whether in the courts of original jurisdiction or appellate ones. It is thus logical that an advocate/client bill of costs be taxed in the court having original jurisdiction, the High Court, and not the one with appellate jurisdiction, such as the Court of Appeal or Supreme Court: See: **Supreme Court of Uganda Civil Reference No.02 of 2012: Joseph B. Byamugisha t/a Byamugisha Advocates V National  
315 Social security Fund (Ruling of C.N.B. Kitumba, JSC, as a single Justice dated 21.09.2012).**

It has also to be appreciated that even where the Advocate/client bill of costs arises from some court action or cause, the contents of the said bill are not restricted to the court action only. The advocate is perfectly entitled to include in such a bill items that do not have any bearing to the  
320 court action, which is not possible in a party to party bill of costs.

Therefore the fact that, in this particular case, the applicant's Advocate/client bill of costs emanates from an appeal in the Court of Appeal is no reason to override the well founded rule, both statutory and otherwise, that an advocate/client bill of costs be taxed by the High Court  
325 which has original jurisdiction.

It is contended by the applicant that in this particular case an injustice is caused to him if his advocate/client bill of costs is taxed by the High Court where the scale of costs is lower, instead of by the Court of Appeal, where the scale of costs is higher, yet both the bills of costs arise from the same court transaction of **Court of Appeal Civil Appeal No.02 of 2004: National Social**  
330 **Security Fund & W. H. Ssentogo t/a Ssentogo and Partners V Alcon International Ltd.** This, according to counsel for applicant, is in contravention of **Article 21** which guarantees equality, freedom from discrimination as well as equal protection of the law to all persons, **Article 26** guaranteeing fair and adequate compensation and the right to access a court for appropriate relief and **Article 28** which guarantees the right to a fair hearing. It is further  
335 submitted for the applicant that it was for the purpose of avoiding the injustice that would be caused by infringing these Articles that the Constitution vested in the Court of Appeal inherent jurisdiction to tax an advocate/client bill of costs emanating from the appeal before it.

This court observes that there is no express provision in the Constitution conferring jurisdiction  
340 to the Court of Appeal to tax an advocate/client bill of costs.

As to the **Judicature Act, cap.13, Section 11** thereof provides that:

***“For purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from  
345 the exercise of the original jurisdiction of which the appeal originally emanated”.***

Counsel for the applicant contends that this section together with **Rule 2 (2) of the Rules** of the Court of Appeal vest inherent jurisdiction in the Court of Appeal to tax an advocate/client bill of costs.

350 I find that submission not valid in law. **Section 80** of the **Advocates Act, cap.267**, specifically vests the power to tax “**bills under this Act**” in the registrar of the High Court, or such other officer as the Chief Justice shall appoint. The applicant’s advocate/client bill of costs is covered by this section. Further, as already pointed out **Rule 109** governing taxations in the Court of Appeal specifically provides that party and party bills of costs are to be taxed by the Court of  
355 Appeal Registrar, (**Rule 109 (1)**) while advocate/client bill of costs are to be taxed in the High Court, on scales applicable in the High Court (**Rule 109 (3)**).

**Section 11 of the Judicature Act** is therefore restricted to “**For the purpose of hearing and determining an appeal**” and does not extend to apply to taxation of advocate/client bills of costs.

360 Further, it has already been pointed out above that in a number of respects a party to party bill of costs is very different from an advocate/client bill of costs and these differences justify the advocate bill of costs being taxed in the High Court and on the High Court scale.

The assertion of the applicant that having his bill taxed by the High Court subjects him to a lower  
365 scale of costs of the High Court, instead of the higher one of the Court of Appeal is also without merit.

The law as to taxation of advocate/client bills of costs is intended to cover all types of such bills of that nature. Some of the bills, like the one of the applicant, may arise from and/or relate to a  
370 matter in a court of law, but others may be having items outside and not connected with any action or cause in a court of law. Others still may cover items concerned with an action in court and other items not concerned with the said court action. The applicant therefore is not justified to state it, as an assertion of general application, that having an advocate/client bill of costs taxed in the High Court is always discriminatory by reason of the High Court scale of costs being  
375 lower than that of the Court of appeal. This is because there are very many other Advocate/client bills of costs that emanate from transactions having nothing to do at all with actions/causes in

courts of law whether appellate or trial courts of original jurisdiction. The law is intended to provide for all these Advocate/client bills of costs.

380 Further still, while it is a fact that the scale of costs in the High Court in respect of an advocate/client bill of costs is lower than that of the Court of Appeal in respect of a party to party costs, **Regulations 5 and 6 of The Advocates (Remuneration and Taxation of costs) Regulations** provide for granting appropriate additional remuneration, in respect of an advocate/client bill of costs, before the High Court, for work of exceptional dispatch, importance  
385 and/or complexity. The burden is upon the one presenting the bill to satisfy the taxing master in the High Court that he/she is entitled to such an increase in fees.

The above being the state of the law, it cannot be validly contended that the applicant in this application is being subjected to suffer an injustice by having his advocate/client bill being taxed  
390 at a lower scale of the High Court, in contrast to the party to party bill of costs which is being taxed at a higher scale of costs of the Court of Appeal, albeit in the same case. It is up to the applicant to justify before the High Court that he is entitled to a higher fee by reason of the nature of legal services and work he rendered to the client, who is the respondent.

395 I will now proceed to deal with the applicant's assertion that **Articles 21, 26 and 28** of the Constitution are being contravened to his prejudice.

**Article 21** guarantees equality of all persons in Uganda before and under the law and to have equal protection of the law. **Article 26 (b) (1) and (ii)** guarantee prompt payment of fair and  
400 adequate compensation and a right of access to a court of law. **Article 28** entitles one to a fair, speedy and public hearing before an independent and impartial court established by law.

The applicant contends that the three (3) **Articles** are being contravened to his prejudice because he is being discriminated against by the law requiring him to have his advocate/client bill of costs lodged and taxed by the High Court at that court's scale which is lower than that of the Court of Appeal. Yet, the same law provides for a party to party bill of costs, emanating from the same appeal, as the applicant's advocate/client bill of costs, to be taxed by the Court of Appeal and at the Court of Appeal scale of costs which is higher than that of the High Court.

410 To the applicant this amounts to a denial of the rights of equal protection of the law and of enjoying equality before the law. He also asserts he is being denied a fair trial by the whole unfairness brought about by the operation of the law in that he is denied fair and adequate compensation and access to the Court of Appeal for the appropriate reliefs.

415 It is a fundamental constitutional guarantee, now of universal application in free and democratic societies, that all persons receive the same protection of the laws as are afforded to all other persons under the same circumstances. It is the right of all persons to have the same access to the law and the courts both in procedural and substantive law.

420 These principles have their foundation in the necessity to have fairness as the fundamental basis of a free and democratic governance of society. It is the necessity to have fairness in society that was one of the major considerations for the 14<sup>th</sup> amendment of the American Constitution. The United States of America Supreme Court reinforced this necessity for fairness in the decision of **Brown V Board of Education of Topeka, 349 U.S. 294 (1954)** when led by Earl Warren, Chief Justice, the said court unanimously held that the policy of '**separate but equal education**' violated that part of the 14<sup>th</sup> Amendment; namely that:

***"No state shall deny to any person within its jurisdiction the equal protection of the laws".***



Equal protection under the law does not however mean that everyone has to be treated identically  
430 in the same way. **Article 21 (4)** of the Uganda Constitution, for example, allows Parliament to  
enact discriminatory laws necessary to implement policies and programmes aimed at redressing  
social, economic, educational or other imbalances in society.

A statute, even though discriminatory, is said to comply with the principle of equal protection of  
435 the laws, if that statute singles out a group in society for empowerment against unfair treatment,  
so that, the rights of that group are equal to those of others, or solidifies individual rights by  
ensuring enjoyment of the due process of the law, or prevents arbitrary conduct and protects the  
citizens against abuse, by making those holding state power being accountable to the people:  
See: **The Common Law 1 (1881) by Oliver Wendell Holmes, Jr.**

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Applying the above principles to the facts of this application, it appears to me, reasonable and  
sound, that since advocate/client bills of costs, unlike the party to party bills of costs, do not  
necessarily have their origin from actions or causes that are already existing and determined in  
courts of law, no injustice is caused by the law requiring that such bills be first filed and  
445 determined in the High Court which is the court of original jurisdiction. Any one dissatisfied  
with the decision of the High Court, can then follow the appellate process as is established by  
law.

A party to an advocate/client bill of costs is also allowed by law to prove entitlement to a higher  
remuneration depending on the complexity and speed of the work done. Such a party is not in  
450 any way denied access to courts of law, except that, like in ordinary suits, he/she has to begin the  
action of taxation in a court vested with original jurisdiction which is the High Court. This way  
fairness is assured.

Accordingly the law requiring that an advocate/client bill of costs be lodged and taxed in the  
455 High Court cannot be said to violate the principles of equality before the law, equal protection of  
the law, the right of access to a court of law for appropriate reliefs and the right to a fair hearing.

This court therefore finds that the applicant has not established to the court's satisfaction that **Articles 21, 26 and 28** or any other articles of the Constitution are being contravened to his  
460 prejudice. There is no injustice being caused to the applicant.

All in all, having carefully considered the pleadings and court proceedings in the Reference, the  
respective submissions of counsel as well as the law applicable, I have come to the conclusion  
that this Reference has no merit. The same is accordingly dismissed with costs to the  
465 respondent.

Dated at Kampala this .....13th.....day of .....February.....2013.

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Remmy Kasule

**JUSTICE OF APPEAL.**