

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT KAMPALA
(CIVIL DIVISION)

MISC. APPLICATION NO. 491 OF 2008

(Arising from Misc. Cause 112 of 2008)

AYA INVESTMENTS (U) LTD:.....APPLICANT

VERSUS

M/S KIBEEDI & CO. ADVOCATES:.....RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING [NO.2]

This application was made under 0.51 r. 6 and 0.52 rr. (1) and (2) of the Civil Procedure Rules. It is for leave to be granted to the applicant to file an appeal to the judge of the High Court out of time against the decision of the Taxing Officer made on 20-05-2008 taxing the respondent's Advocate — Client Bill of Costs *ex parte* and allowing it at USD 2,448,500.

The main grounds of the application are that:

1. The respondents, M/S Kibeedi & Co. Advocates, never served their Advocate — Client Bill of costs on the applicant as required under Sections 57 and 58 of the Advocates Act.
2. M/S Kibeedi and Co Advocates fraudulently claimed instruction fee of USD 2,075,00 contrary to the agreement of the parties in this regard.
3. Taxation of the Advocate — Client Bill of Costs proceeded *ex-parte* on 20 05-200 when the applicant had not been served with both the Advocates — Bill of costs and

the Taxation Hearing Notice for the same.

4. It is just and equitable that the orders sought be granted.

From the records, when the application came up for hearing, Counsel for the respondent made a prayer to Court to order the applicant to produce some records. From the tone of the prayer, Counsel harboured a suspicion that two Vouchers said by the applicant to have been signed by one Mr. Kibeedi were forged. I allowed that prayer and ordered the necessary documents to be produced.

Following production thereof, hearing commenced. As it has now turned out, the applicant alleges that the respondent manipulated Court to obtain the orders that it did and the respondent alleges that the payments allegedly made to them were never made and that the Vouchers relied upon by the applicant are forged.

I had invited the parties to continue further inquiry of the matter but on a second reflection, I am of the view that the course adopted herein will not yield the necessary results. Court has clearly been diverted from the main application, leave to be granted to the applicant to file an appeal to this Court, and is now actually investigating the merits of the case. It is in my view not too late to remedy this unsatisfactory state of affairs. After all, it is trite that this Court has inherent power to make such orders as may be necessary for the ends of justice or prevent abuse of the process of the Court.

Suffice it to add, that the allegations of fraud raised herein are very serious. They relate to both parties. It is a serious moral stigma to attach to someone. The law properly requires proof and the burden is higher than in ordinary complaints.

The law requires that fraud be pleaded and proved on evidence that can be tested under cross-examination. In the instant case, fraud is under investigation when it has not been pleaded.

This is a procedural irregularity that can not be continued with.

In any case, even if the allegations of forgery are determined herein one way or the other, the heart of the matter, that is, the allegation that the applicants were condemned unheard will remain unanswered. It will require yet another hearing and this will promote a multiplicity of proceedings.

In all these circumstances, the justice of the case warrants that these proceedings be discontinued in favour of a more apparent procedure where the rights of the parties shall be determined once for all so that any party aggrieved by the status quo appeals.

In my view the said apparent procedure would dictate, considering the huge amount of money at stake, that the order of the learned Registrar dated 20/05/08 be set aside so that the impugned Advocate — Client Bill of costs is taxed *inter partes*. If, depending on the reply to the application for taxation of the bill, it becomes necessary that the issue of alleged fraud be investigated and remedied, Court shall make appropriate orders.

Accordingly, this application stands discontinued. All impugned orders herein are set aside and the file remitted to Deputy Registrar of this Division to handle as by law established. Costs herein shall abide the outcome in HCMA NO. 112/2008.

I so order.