THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

(CORAM: J. W. N. TSEKOOKO, JSC. - SINGLE JUDGE)

CIVIL REFERENCE NO.3 OF 2004.

BETWEEN

HAJI HARTJNA MTJLANGWA.....APPLICANT

AND

SHARIFF OSMAN .....RESPONDENT

[Reference to a Single Judge from a ruling of the Registrar, Supreme Court as Taxing Officer at Mengo (W.Masalu-Musene, Esqr.) dated 10th of March, 2004 in Civil Appeal 38 of 1995]

RULING: This is a reference to me as a single judge, from the order of the Registrar of this Court in his capacity as taxing officer. The taxing officer overruled an objection by Mr.Tibaijuka, counsel for the applicant, regarding the form of- the bill of costs presented by Musoke & Co. Advocates, current advocate on behalf of the respondent after a change of advocates.

This matter first came up for hearing on 20/7/2004. Because Ms. Musoke, the respondent's counsel, who had presented the said bill of costs had withdrawn from the matter, I adjourned the hearing to 2 7/7/2 004, to enable the respondent who was known to be in Kampala to be served personally. He was duly served.

On 27/7/2004, he appeared in person and unsuccessfully sought adjournment. I was not satisfied with the reasons upon which adjournment was sought. My reasons for refusing the adjournment appear on the record.

I should set out the background. The applicant, as plaintiff, won a civil suit against the respondent in the High Court. The respondent unsuccessfully appealed to this Court in **Civil Appeal No.38 of 1995.** The present applicant, as respondent in that appeal, had filed a cross-appeal. He was unsuccessful in that cross-appeal. In the appeal the present applicant was awarded the cost of the appeal and costs of the trial court. At the same time the present respondent as respondent to the cross-apeal was awarded costs. Thereafter, Mr. Muwayire-Nakana, counsel who had been representing the appellant in the appeal, died apparently before lodging his bill of costs in respect of the unsuccessful cross appeal. In December, 2003, Musoke & Co, Advocates, took over and only drew up and lodged in the registry of this Court a bill of costs for taxation in respect of the unsuccessful cross-appeal. However in drawing that bill, Musoke & Co. Advocates, included therein costs which should have been claimed by Mr. Muwayire-Nakana, the original advocate who had, as stated earlier, represented the respondent as a defendant in the suit and the appellant on the subsequent appeal to this Court.

When the bill came before the taxing officer for taxation on 12/1/2004, Mr. Tibaijuka, counsel for the present applicant, raised a preliminary objection to the effect that by virtue of **paragraph 16 (1)** of the provisions set out in **the 3rd schedule to the Rules** of this Court, Musoke & Co. Advocates, who appeared on the record from 15/12/2003 and only for purposes of processing taxation should not have lumped together in the same bill their costs and those costs due to Muwayire-Nakana, the erstwhile advocates. Learned counsel contended that the bill of costs as presented contravened the said **paragraph 16(1) and (2)** (supra) and for her to claim the costs was wrong in principle.

Ms. Musoke, for the respondent, before the taxing officer, opposed Mr. Tibaijuka's objection contending that under **para 16 (2)** (supra), the bill should be taxed in the ordinary way and that the bill as presented was in proper form in as much as **paragraph 16 (2)** does not provide a format in which the erstwhile advocates' separate items of costs should look like.

The taxing officer overruled Mr. Tibaijuka and upheld Ms. Musoke's contentions. It is from that holding of the taxing officer that the applicant made this reference under **Rule 105(1)** of the **Rules** of this Court.

The reference is based on three grounds: -Mr. Tibaijuka first argued ground three separately before he argued the first and the second grounds together. The 3rd ground reads: -

The learned Registrar misdirected himself about the extent of the applicant's objection, and wrongly assumed that what was objected to were only items 2, 3 and 4 of the respondent's bill of costs."

It is the contention of counsel, that the learned taxing officer misunderstood counsel's objection because, whereas he, as the applicant's counsel, contended that only items 5,6 and 10 of the bill were properly included on the same bill of costs, and that the rest of the items should not have been included on the same bill of costs, the taxing officer in his ruling implied that Mr. Tibaijuka had objected to only items 2,3 and 4, whereas in fact the objection went beyond these three items. Learned counsel also criticised the taxing officer for his failure to appreciate that Ms. Musoke had virtually conceded to the objection.

Regarding this last contention, the record of the proceedings before the taxing officer supports Mr. Tibaijuka's contention. For at page 11 of the record, Ms. Musoke is recorded to have submitted that: -

"Rule 16 (1) provides that if there is a change of advocates, the bill of the first advocate may-be annexed to that of the current Advocate and the total be showed as disbursements. Items (2) (3) and (4) are under disbursements. Those are items referred to first advocate. But it (annexture) has to be shown as disbursements with regard to item 1, the fee provided is money paid by the appellant to the advocate."

For the sake of clarity I reproduce the bill which was presented this way:

APPLICANT'S BILL OF COSTS

ITEM	DATE	PARTICULARS	AMOUNT	AMOUNT TAXED

				OFF
1.	**1995**	**Instruction fees to oppose a cross-appeal involving a complicated contract of sale of land, demand for specific performance and compensation.**	**Shs.10,000,000**	
2 .	**23.5.1996**	**Disbursements: Transport costs for Advocate from Kampala to Mengo in Personal car for hearing and arguing the cross-appeal.**	**Shs.20,000**	
3 .	**-do-**	**Transport costs for advocate From Mengo Court to Kampala In personal car.**	**Shs 20,000**	
4 .	**31.10.96**	**Transport costs for Advocate to and from Kampala to Mengo in personal car to receive judgment**	**Shs 30,000**	
5 .	**10.12.2003**	**Transport costs for Advocate to and from Kampala to Mengo to file Bill of Costs.**	**Shs.50,000**	
6 .	**10.12.2003**	**Court fees for filing Bills of costs.**	**Shs 9,000**	
7 .	-	**Commissioner's fees for Swearing affidavit of service**	**Shs. 2,000**	
8 .	-	**Court fees for filing the same**	**Shs.1,500**	
9.	-	**Transport costs for Advocate in person**	**Shs.50,000**	

		all car to file same		
10.	**19/12/2003**	**Transport costs for Advocate in personal**	**Shs.50,000**	

		car for taxation hearing		
11.	-	**Court fees for certificate of taxation**	**Shs. 6,000**	
		TOTAL	**SHS.10,238,500**	

It is trite that a bill of costs is a factual statement of services rendered and disbursements made and, if any of the facts alleged in the bill are shown to be untrue, e.g., if it is shown that a particular service charged for has not been rendered or that a particular disbursement has not in fact been made, the relevant item in the bill must be taxed off: See **Bhatt Vs Singh (1962) EA 103 at 104.**

When sub paragraphs **(1)** and (3) of paragraph 2 of the 3rd Schedule to our rules are read together, they in effect prohibit an advocate who has not done any work from lodging a bill of costs in which he or she claims costs for work not done by him or her. For clarity I will quote the relevant provisions. The provisions state: **-"2 (1) Where costs are to be taxed, the advocate for the party to whom costs were awarded shall lodge his or her bill with the taxing officer.**

(3) A bill of costs may not be lodged by an advocate who is not on record"

The question pertinent to the matter before me is whether an advocate should appear on the record merely to lodge bill of costs claiming costs for service that he or she never rendered?

In this regard it is instructive to reflect on what **paragraph 16 of the 3rd schedule** to our Rules states. It states:

"16(1) If there has been a change of advocates, the bill of costs of the first advocate may be annexed to that of the current advocate and the total shown as disbursement.
(2) The bill shall be taxed in the ordinary way, the current advocate being heard on it, but the taxing officer may require the first advocate to attend".

I have perused the record of the substantive appeal (in which I participated) and civil application No.38/95 which I heard and settled the order of the judgment of the Court in the appeal. I have studied the record of this application. It is clear from the said records that **Ms. Musoke** did not appear on the record as an advocate for the respondent until 15/12/2003 when she only lodged the bill of costs now in dispute. Indeed **Ms. Musoke** does not appear to, nor could she, contest this. Yet her bill of costs which she lodged and which appear above includes claims for services rendered in 1995.

For instance, the first item claimed on the bill states: -**"Instruction fees to oppose a cross-appeal involving a complicated contract of sale of land, demand for specific performance and compensation".**

Clearly that item along with the claims for the year 1996 under items 2,3,4(supra) which relate to disbursements were due to the erstwhile advocate and are definitely caught by the provisions of paragraph 16 of the 3 rd schedule.

The objection raised by Mr. Tibaijuka is similar to an objection raised forty years ago against a similar bill of costs drawn in the same fashion in the case of **Bhatt Vs Singh (Supra)** where the taxing officer had upheld an objection similar to that raised here. In that case, the taxing officer accepted the objection and disallowed the bill in toto, because, as in this case, the only work done by the current advocates there was to draw up an order and lodge the bill of costs. A reference was made to a single judge of the East African Court of Appeal. **Sir Alastair Forbes, V.P,** heard the reference and affirmed the decision of the taxing officer. Because of the relevance of that decision I reproduce it in extensio. In his ruling the learned Vice President referred to an earlier ruling in another reference by a different Judge of Appeal **Sir Newnham** of the same Court who had state that:

> ***"A bill of costs is a factual statement of services rendered and disbursements made and, if any of the facts alleged in the bill are shown to be untrue, e.g,. if it is shown that a particular service charged for has not been rendered or that a particular disbursement has not in fact been made, the relevant item in the bill will be taxed off. The commonest example of this in England is probably the inclusion in the bill of counsel's fees which had not been paid when the bill was presented: e.g. In re Taxation of costs: In re a Solicitor, [1943] 1 All E.R. 592 and Polak v. Marchioness of Winchester, [1956] 1 W.L.R. 818. Now, if the bill before me is judged by that standard it should probably be taxed at Sh. nil for it is not a true representation of the facts. It purports to be an account of services rendered to the appellants and disbursements made on their account by Messrs. Shah and Gautama and makes no mention of Mr. Nazareth. I have no doubt that it was a genuine and well-meant attempt to meet the peculiar circumstances resulting from Mr. Nazareth's having taken silk: it is nevertheless, an inaccurate bill."***

Thereafter Sir Alastair Forbes agreed with these principles and stated: -

> ***"On the principles applied by SIR NEWNHAM it seems to me that the bill in the instant case is no more an accurate bill than that which SIR NEWNHAM was considering. It purports, on the fact (sic) of it, to be an account of services rendered to the appellants, of disbursements made on their account, and of instructions given to counsel on their account, by Mandla & Co. It is not a true factual statement; and on the principles stated by SIR NEWNHAM, by which as I have said, I am bound, I think that the taxing officer was right to tax the bill at Shs.nil, no application to amend having been made to him. The question in issue is purely a matter of form. The respondents were awarded their costs and should, I think, be given the opportunity of recovering them by being allowed to file a bill in proper form. The form appropriate appears to be adequately prescribed by Practice Note No.7 of 1956."***

The note referred to by **Sir Alastair Forbes,** VP, spelt out at least two important points:

First no one but the advocate on the record for the time being can lodge or tax a bill.

Second if the advocates have been changed during the proceedings, the bill of the first advocate may be annexed to that of the current advocate and its total shown as a disbursement. It may be shown as 'by anticipation', if unpaid. It will be taxed in the ordinary way, the current advocate being heard on it.

Although the taxing Officer described this procedure as mere technicality, those two points constitute the present paragraph 16 of the 3rd schedule to our Rules and I personally think that they are based on the need to prevent a successor advocate from reaping where he or she never sowed, a practice which Mr. Tibaijuka says is rampant in High Court.

I think that Mr. Tibaijuka was justified in his objection to the bill. The learned taxing officer overruled Mr. Tibaijuka's objection on the basis that para 16 does not set out the form of how the bills should look. With respect, I think that the provision is clear. The items which should have been

claimed by the previous advocate must be listed separately on a separate bill and be made an annex to the bill of the current advocate. The current advocate should explain to the taxing officer what costs are due to him or her and those due to previous advocate.

In that way the bill presented for taxation would be stating the true position. It is not just a question of form curable under Article 126(2)(e) of the constitution as stated by the learned taxing officer. The bill as presented indeed purports to show that Ms. Musoke had been herself instructed in 1995 to oppose the cross-appeal and was therefore entitled to claim shs 10,000,000/= as instruction fees. Of course that is fundamentally and absolutely false and it must not be encouraged.

Further Mr. Tibaijuka justifiably criticised the taxing officer when the latter appeared to imply that counsel did not object to the first item in the bill.

Therefore ground three must succeed. This really disposes of this reference. I find no need to discuss the remaining two grounds.

Consequently I allow this application. I set aside the order of the taxing officer. I uphold the objections raised before the Taxing officer by Mr. Tibaijuka. I order that the respondent may lodge his own bill of costs claiming any costs due to him or if he wishes to engage an advocate that advocate may amend the bill now filed or file two separate bills of costs namely one for the current advocate and the other for messrs Muwayire-Nakana, the previous advocate. The latter is to be annexed to the former as stipulated by para 16 (2) of the 3rd schedule. The applicant in this reference will have the costs of this reference in any event.

J. W.N. Tsekooko
JUSTICE OF THE SUPREME COURT.