

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

HCT - 00 - CC - CA - 06 – 2006

KIBUUKA MUSOKE & CO. APPELLANT

VERSUS

THE LIQUIDATOR OF AFRICAN TEXTILE MILL LTD. RESPONDENT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

This appeal was brought under Ss. 60 and 62 of the Advocates Act (Cap 267) and Rules 2 and 3 of The Advocates (Taxation of Costs) (Appeals and References) Regulations, S.I. 267-5,

Seeking;

- (i) to have the ruling of the Registrar/Taxing officer in Misc. Application No. 189 of 2006 set aside;
- (ii) that Court orders the Advocate/Client Bill of Costs dated 04/04/06 to be taxed by the Taxing officer;

- (iii) costs of this appeal (and abandoning the costs in Misc. Application 189 of 2006 on ground that the proceedings were a nullity and therefore cannot attract costs).

The grounds of the Appeal are that

- 1- The Registrar/Taxing officer exercised jurisdiction which was not conferred on him by statute or with leave of the Judge in hearing Misc. Application No. 189/2006 which was a suit in the sense of S. 57 and S. 58(5) of the Advocates Act.
- 2- The Appellant has delivered a Bill of Costs to the Respondent which the Respondent has not yet paid.

Mr. Mugogo, Counsel for the Respondent argued that the appeal was misconceived since Practice Direction No. 1 of 2002 does not oust the jurisdiction of the Registrar under Order 46, r 1 of the CPR. That at the time of hearing the application the bills of costs had not been served to the Respondent and that the Applicant/Appellant also submitted to the jurisdiction of the Registrar and that it was an application to tax and not a suit for hearing evidence.

He prayed that the Appeal be dismissed with costs and that since the Bill of Costs has been served it be set to the taxing master for taxation.

Under S.62(1) of the Advocate Act, any person affected by an order or decision of a taxing officer may appeal within 60 days to a Judge of the High Court who on that appeal may make any order that the taxing officer might have made.

The application in Misc. Application No. 189/2006 was brought before the Registrar/taxing officer by Notice of Motion under S.58(5) and S.60 of the Advocates Act and 0.48 rr. 1 and 2 of the CPR, seeking for orders that

- (i) The advocate/client Bill of Costs dated 21/03/06 be taxed; and
- (ii) The costs of the application be provided for.

The grounds of the application as contained therein were that

- 1- the applicant rendered legal services at the instance and request of the respondent and remains unpaid to date.
- 2- The applicant had delivered to the Respondent a Bill to be paid which the Respondent refused or neglected to pay.
- 3- The Respondent is in the process of being wound-up and any delay in the taxation of the Advocate/Client Bill of Costs would prejudice the applicant severely;
- 4- It is just and equitable that the Advocate/Client Bill of Costs be taxed.

In his affidavit in reply to the application, Mr. Henry Sylvester Wambuga deponed inter alia, that the bill had never been served on the liquidator of the Respondent as required under S. 57 of the Advocates Act and that the applicant had not proved instructions specifically from the liquidator. He contended that the bill was received by the liquidator only on 29th March 2006, which offended S.57 above. He prayed for the same to be dismissed with costs.

The Registrar dismissed the application with costs holding that it was misconceived, premature and bad in law. He found that the applicant did not adduce evidence of instructions by the respondent and that no Bill of Costs had been presented to the Respondent by the applicant as required under S.57(1) of the Advocates Act.

S.57 (1) of the Advocates Act provides that; subject to this Act, no suit shall be brought to recover any costs due to an advocates until one month after a bill of costs has been delivered in accordance with the requirements of this section except that if there is probable cause to believe that the party chargeable with the costs is about to quit Uganda, or become bankrupt, or to compound with his or her creditors, or to do any other act which would tend to prevent or delay the advocate obtaining, the court may notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence a suit to recover his/her costs and may order those costs to be taxed.

It is clear from the wording of this provision that it only relates to proceedings for recovery of costs. In his affidavit in support of the Notice of Motion in Misc. Application No. 189 of 2006 the Applicant/Appellant deponed that he represented the Respondent in H.C.C.S No. 257 of 2005 at the Respondents request and although he presented the Bill of Costs to the Respondent, it remained un-paid and ignored by the Respondent. In reply the Respondent emphasized that the applicant had not proved instructions specifically from the liquidator/Respondent.

This therefore was an application by an advocate for recovery of costs which should have been brought by plaintiff as a suit under S.57 of the Act.

S.2(n) of the Advocates Act defines 'suit' as having the same meaning as it does in the Civil Procedure Act i.e. any civil proceeding commenced in any manner prescribed by the rules and forms made by the Rules committee to regulate the procedure of courts.

And Order 4, r 1(1) of the Civil Procedure Rules provides that every suit shall be instituted by presenting a plaint to the court or such officer as it appoints for this purpose.

The application was however brought by Notice of Motion under S.58 of the Advocate Act and 0.48 of the CPR (now 0.52 CPR S I 71-1). S.58 provides for Taxation of bills of costs on application of either the party chargeable or the advocate.

S.58(1) states that within one month of the delivery of an advocate's bill, the party chargeable with the bill may, by notice in writing, a copy of which shall be served on the advocate, require the taxing officer to fix a date for the taxation of the bill, and the taxing officer shall thereupon fix a date for the taxation of the bill and give notice of such date to the party chargeable with the bill and to the advocate.

S.58(5)(a) provides that if notice is not given by the party chargeable with the bill as provided in subsection (1) then on the application of the advocate or the party chargeable with the bill, the court may, upon such terms, if any, as it thinks fit, not

being terms as to the costs of the taxation, order that the bill be taxed by the taxing officer.

From the appellant application (Misc. Application No. 189/2005) as brought before the Registrar/Taxing officer, the law under which it was brought, the grounds for the application as stated in the affidavit in support deposed to by Mr. Kibuuka Musoke and the arguments of both counsel it was not clear whether the application was for recovery of costs, or for taxation of the bill of costs, or both.

In a suit for recovery of costs, as discussed above, the taxing officer has no jurisdiction and as was rightly stated by counsel for the Appellant, a court cannot confer jurisdiction upon itself, and by participating in the proceedings, the parties could not, and did not confer jurisdiction upon the Taxing officer that he did not have; (Desai V Warsama [1967] E.A 351; Allarackia V Agakha [1969] E.A 513.)

Taxation of the bill of costs by the taxing officer under S.58(5)(a) of the Advocates Act could only be by order of court. If, however, the appellants/applicant's intention was to have the Registrar/Taxing officer tax the bill of costs without an order of court, the proper procedure would have been under Regulation 10 of the Advocates (Remuneration and Taxation of Costs) Regulations, S.I. 267-4 which provides for taxation of costs as between advocate and client on application of either party. Regulation 10(1) provides that the taxing officer may tax costs as between advocate and client without any order for the purpose, upon the application of the advocate or client.

The provision does not deal with the recovery of costs but only with the taxation of costs the result of which could be the basis of a suit for the recovery of costs. And nowhere does S.57 of the Advocates Act, which deals with action for the recovery of costs, forbid the taxation of costs before any action for the recovery of costs can be instituted; in any case, the taxation of costs under Regulation 10 above does not by itself amount to a judgment. (Sharma V Uhuru Highway Devt. Ltd [2001] 2 E.A. 530).

In this appeal the appellant seeks, inter alia, an order that the advocate/client Bill of Costs dated 04/04/06 and served on the Respondent on 05/04/06, be taxed as provided under S. 58(5)(a) of the Advocates Act.

The Bills of Costs shall thus be set before the taxing officer for taxation and the ruling of the Registrar/Taxing officer in Misc. Application No. 189/2005 is hereby set aside.

Each party to bear its own costs.

I SO ORDER

Geoffrey Kiryabwire

JUDGE