

UGANDA / JUDGMENT

Kyagonza v Magadu

(HCT-12-CV-CA-0027 OF 2017) [2017]

UGHCCD 168 (22 November 2017)

[2017] UGHCCD 168

COURT

HC: Civil Division (Uganda)

BEFORE

Rugadya, J

CASE / FILE NUMBER

HCT-12-CV-CA-0027 OF 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI

HCT-12-CV-CA-0027 OF 2017

(Arising from MSD-CS-0075 OF 2013)

KYOGONZA FRED APPELLANT

VERSUS

MAGADU JAMESRESPONDENT

BEFORE: HON. JUSTICE RUGADYA ATWOKI

JUDGMENT

This is a taxation appeal brought by way of chamber summons under S.62 Advocates Act and Regulation 3 of the Advocates (Taxation of costs) (Appeals and References) Regulations. It seeks two orders; 1st that the Registrar's order allowing the respondent to file an amended or new bill of costs be set aside and or quashed; and 2nd, that the Registrar's order issued on 5/5/2017 directing the appellant to pay costs of 260,000/= before the next date of taxation hearing be set aside or quashed. It is also seeks costs of the application to be provided for. The application was supported by the affidavit of the appellant.

The complaints against the Registrar's orders arose as follows. The respondent was the successful party in two applications, MA No. 96 of 2013 in the Chief Magistrates court, and Revision Application No. 005 of 2013 in the high court. The respondent filed a single bill of costs in respect of both matters before the Registrar. When the bill came up for hearing Kyogonza raised points of objection. One such was on the propriety of having a single bill of costs in respect of two applications, one of them in the magistrates court, and the other in the high court.

The Registrar allowed that objection and directed that the bill be split to reflect the two different applications. Kyogonza was dissatisfied with that order, as he wanted the entire bill thrown out. He sought the ruling of the Registrar so as to formulate his grounds of appeal.

Meanwhile, the bill of costs in respect of MA 096 of 2013 was duly filed and taxed inter parties by the Chief Magistrate. Kyogonza filed this appeal and he complained that there was a delay to avail him the ruling, and when it was so availed, it was fundamentally different from the one delivered in the chambers of the Registrar.

In paragraph 5 of his affidavit in support of the appeal, Kyogonza deposed that the Registrar;

‘ in her ruling upheld the preliminary objection but strangely ordered that the respondent withdraws the bill of costs and files an amended one in both the high court and the chief magistrates court.’

That was an admission of the order that the Registrar directed the splitting of the omnibus bill of costs so that each court handles its own taxation.

In submissions, Mr. Tugume learned Counsel for the respondent told court that the complaint about splitting the two bills of costs was by this time also overtaken by events as the same in the Magistrates court had already been taxed inter parties, a fact which the appellant conceded.

I found no merit in the complaint where court ordered the splitting of an omnibus bill of costs so that each court handles its own taxation in respect of the matter that was before it.

The appellant ought to have been awarded costs arising from the delay and inconvenience since it was the fault of the respondent to file the omnibus bill of costs. There was no appeal or complaint in that regard, and so I will leave that as it is.

The appellant prayed for the setting aside of the order of the Registrar to pay costs of sh. 260,000- before the next taxation hearing. He told court that the prayer for adjournment for which the Registrar was penalizing him arose from her failure to avail to him her ruling from which he had already intimated that he wished to appeal.

The response to that from the respondent was that the order for costs of the day arose from the behavior of the appellant, who sought the adjournment when all parties were present. The appellant next asked the Registrar to recuse herself from the taxation proceedings and she promptly did so. From the above, I would give the appellant the benefit of the doubt and set aside the order for him to pay costs of the adjournment, considering that it appears the written ruling was not ready.

The order of the court is that the taxation proceedings should continue to completion before the taxing master of the court. In the event that the appellant is dissatisfied with the process or the result, he will have his right to take the next lawful steps.

The appeal therefore succeeds only in part. I direct that each party bears its costs as success was divided.

RUGADYA ATWOKI

JUDGE

22/11/2017.

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