

UGANDA / JUDGMENT

M/s Ahabwe James & Co. Advocates v Muramuzi (Miscellaneous Cause 3 of 2024) [2024] UGHC 846 (29 August 2024) [2024] UGHC 846

COURT
High Court of Uganda

BEFORE
Mugabo, J

CASE / FILE NUMBER
Miscellaneous Cause 3 of 2024

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC. CAUSE NO. 003 OF 2024 (ARISING FROM HCT-01-CV-LD-002 OF 2014)**

M/S AHABWE JAMES & CO. ADVOCATES ::::::::::::::: APPLICANT

VERSUS

MURAMUZI LAUBEN ::::::::::::::: RESPONDENT

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This application was filed by way of notice of motion under section 57 of the Advocates Act Cap. 295, and Order 52 Rule 1 of the Civil Procedure Rules. The applicant seeks the following orders:

- a) An order for taxation of the Advocate-client bill of costs against the respondent in Civil Suit No. 002 of 2014
- b) Costs of the application be provided for.

Background

The applicant, a law firm, represented the respondent in Civil Suit No. 02 of 2014, wherein the respondent was declared the owner of the suit land, with each party bearing its own costs of the suit. Subsequently, the applicant demanded legal fees from the respondent. However, the respondent failed to comply with this demand, thereby necessitating the filing of the present application.

Grounds in Support of the Application

The grounds in support of the application are set out in the affidavit of Wahinda Enock, an advocate attached to the applicant law firm, the gist of which is that;

- a. The respondent instructed the applicant in Civil Suit No. 002 of 2014.
- b. The applicant executed the instructions diligently, but the respondent refused to pay its legal fees.
- c. On the 15th of December 2023, the respondent was served with a statutory notice for a claim of UGX. 55,940,000/= as legal costs but the respondent refused to acknowledge receipt of the same.
- d. The respondent has refused to pay the legal cost due to the applicant.

The Respondent filed an affidavit in reply opposing the application stating that he was not duly served with the statutory notice and the bill of costs.

In its affidavit in rejoinder deponed by Mr. Wahinda Enock, the applicant stated that it had duly served the respondent with the statutory notice and the bill of costs on the 15th of December 2023, but the respondent refused to acknowledge receipt of the same.

Representation and hearing.

Mr. Wahinda Enock represented the applicant while the respondent was represented by Mr. Ayebare Mugarura. Both counsel filed written submissions which I have considered in this ruling.

Issues for determination

1. Whether the application raises sufficient grounds for this court to issue a taxation order in Civil Suit No. 02 of 2014.
2. What remedies are available to the parties?

Resolving issues

Issue 1: Whether the application raises sufficient grounds for this court to issue a taxation order in Civil Suit No. 02 of 2014.

Submission by Counsel for the Applicant on Issue 1

Counsel for the applicant submitted that the Advocates Act provides an express right to an advocate to file an advocate-client bill of costs for taxation. Counsel referred this court to the case of **Byenkya Kihika & Co. Advocates v. Saroj Gandesha HCMA No. 019 of 2014.**

Counsel for the applicant argued that before a bill of costs is taxed, it's a requirement under section 57 of the Advocates Act to serve a statutory letter and a bill of costs to the client at least 30 days before the bill is taxed. Counsel submitted that the applicant complied with this provision as the respondent was served with the same on the 15th of December 2023.

Counsel for the applicant argued that this court has powers to tax the advocate-client bill if there is contention as to how much the advocate is entitled to from the client, as it is in the instant case.

Submissions by Counsel for the Respondent on Issue 1

Counsel for the respondent submitted that for the court to grant an order of taxation of an advocate-client bill of costs, it must be satisfied that the bill of costs together with a letter referring to it have been delivered to the client per section 57 of the Advocates Act. Counsel referred this court to the case of **Omongole & Co. Advocates v. Ecetu Vincent HCMC No. 02 of 2023.**

Counsel for the respondent argued that in the instant case, the applicant had not served the respondent a signed bill of costs with a letter accompanying it. Counsel argued that the failure of the applicant to serve the respondent with a bill of costs and a statutory letter was evidenced by the lack of an affidavit of service. Counsel argued that it is trite that the requirements of section 57 of the Advocates Act be adhered to in totality before a taxation order is granted.

Court's Determination of Issue 1

The respondent does not contest the bill of costs per se. He contends that he was not served with the bill of costs and a statutory letter referring to it per section 57 of the Advocates Act.

Section 57 of the Advocates Act provides that:

"57. Action to recover advocate's costs

(1) Subject to this Act, no suit shall be brought to recover any costs due to an advocate 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 for believing that the party chargeable with the costs is about to quit Uganda, or to become a 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 payment, 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 or her costs and may order those costs to be taxed.

(2) The requirements referred to in subsection (1) are as follows—

(a) the bill must be signed by the advocate, or if the costs are due to a firm, one partner of that firm, either in his or her own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and

(b) the bill must be delivered to the party to be charged with it, either personally or by being sent to him or her by registered post to, or left for him or her at, his or her place of business, dwelling house, or last known place of abode, and where a bill is proved to have been delivered in compliance with these requirements, it shall not be necessary in the first instance for the advocate to prove the contents of the bill (which shall be presumed until the contrary is shown) to be a bona fide bill complying with this Act."

According to section 57 of the Advocates Act, a suit of recovery of any costs due to an advocate can be filed after one month of delivery of the bill of costs and the letter accompanying it to the client. The bill of costs must effectively be served on the client. The court can only dispense with the requirement of one month of service where there is probable cause for believing that the party chargeable with the costs is about to quit Uganda, or to 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 payment. Even then, service must have been effected on the client.

In the case of *Omongole & Co. Advocates v. Eketu Vincent (supra), Hon* Justice Dr Henry Peter Odonyo held that the requirements of section 57(2) of the Advocates Act must be met in totality before a taxation order can be

issued. In that case, an application seeking a taxation order was dismissed for noncompliance with section 57(2) of the Advocates Act.

In the instant case, while the applicant law firm claims that it served the respondent with the bill of costs and statutory letter on December 15, 2023, there is no proof to that effect. The bill of costs annexed to the affidavit in support of the application is dated February 27, 2024, which is after the alleged date of service. Another bill of costs annexed to the affidavit in rejoinder, deposed by Mr. Wahinda Enock, an advocate, is dated December 15, 2023. In its affidavit in rejoinder, the applicant asserts that the respondent refused to acknowledge receipt of the bill of costs and the statutory letter. The discrepancy in the dates on the two bills of costs casts doubt on the applicant's claim that it served the respondent with the bill of costs.

Be that as it may, it is trite that evidence of service is by way of an affidavit of service deposed by a serving officer *(see: Ronald Mubunga & Another v. Asaba Paul HCMA No. 14 of 2023)*. In the instant case, no affidavit of service deposed by a serving officer is on record to prove service of the statutory letter and a signed bill of costs to the respondent.

In the absence of failure of proof of service of the bill of costs and a letter referring to it to the respondent, it is my finding that this application has not met the requirements of section 57(2) of the Advocates Act. Without meeting those requirements, an order of taxation cannot be issued.

Resultantly, this application has no merit and is hereby dismissed with no order as to costs.

I so order.

Dated at Fort Portal this 29th day of August 2024.

Vincent Emmy Mugabo Judge

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