

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(EXECUTION & BAILIFFS DIVISION)
MISC. APPLICATION NO. 64 OF 2019
(Arising from HCT EMA No. 989 of 2018)
(Arising from CS-00-EXD-EMA-702-2018).

LUKWAGO JIMMY..... APPLICANT
VERSUS
TALENGA PATRICK T/a
MARSHALL AGENTS & COURT BALIFFS..... RESPONDENT

BEFORE: HON. LADY JUSTICE. MARGARET MUTONYI, JHC
RULING:

1. This ruling is in respect of an application brought by way of Notice of Motion under the provisions of ***Section 82 and 98 of the CPA Cap. 71, Order 46 and 51 of the CPR SI 71-1*** for orders that;
 - a) The certificate of taxation dated 21/ Nov/2018 vide ***HCT EMA No. 989 of 2018 Arising from Civil Suit No. 703 of 2017*** be reviewed and set aside.
 - b) A declaration that the bill of costs filed by the Respondent as taxed is illegal due to the fact that it was based on misrepresentations.
 - c) An order that the Respondent refund UG. SHS. 7,000,000 which he illegally received from the Applicant
 - d) That the amount of UG. SHS. 36,772,000 taxed as bailiffs' costs are unfair, unreasonable, un-proportionate, grossly exaggerated and highly irregular.
 - e) Costs of the Application be provided for by the Respondent;
2. The grounds on which the application is premised are;
 - i) That the bill of costs filed by the Respondent is illegal and void
 - ii) That the purported bill is full of falsehoods and misrepresentations and contravenes all taxation laws.
 - iii) That the bill of costs filed by the Respondent was grossly exaggerated,

unreasonable, unfair and highly irregular.

iv) That it is in the interest of justice that this Application is allowed.

3. The application is supported by an affidavit in support which was sworn by the Lukwago Jimmy, and it entails thereof;

1. That in 2017, I was sued by Gomboripai Mathew, Tamarigu Gabrieline through her next friend Anisa Gabriel Mathew Gbera **vide civil suit No. 703 of 2017. (A copy of the plaint hereto attached and marked 'A')**
2. That on the 26th day of April 2018, they executed a consent order and the matter was settled and agreed that I pay the plaintiff (as was then) Ugshs. 10,000,000 (ten Million shillings only). **(A copy of the consent herein attached and marked 'B')**
3. That on the 5th of September 2018, because I was travelling, he requested his relative Anisha Nakimera to deposit for me the decreed sum of 10,000,000/= (Ten Million shillings only) and the duplicate certificate of title in Court and she duly informed me that she immediately called the Judgment creditor to come and pick their money and the duplicate certificate of title.
4. That she informed me that the Judgment Creditor's Counsel came and collected the money and the duplicate certificate of title.
5. That after I had paid the money and handed over the duplicate certificate of title, I thought that everything was done. I was shocked to receive a phone call from Talenga Patrick telling me that I had not paid the costs and that he was going to arrest me. The Respondent continued bothering me but because I am a person who does not need pressure, I paid the Respondent UG SHS. 7,000,000(seven million shillings). **(A copy of the acknowledgement herein attached and marked 'C')**
6. That it pained me to pay him UG. SHS. 7,000,000 (seven million shillings only) and I decided to go to Court to find out how this cost arose.
7. That on perusing the file, I found out that the Respondent lied that he managed to recover the duplicate certificate of title whereas not. **(A copy of the return of warrant of arrest is herein marked as annexure 'D').**

8. That I also managed to look at the warrant of arrest which I found on the Court file and it is clear that the Respondent was only authorized to recover UG. SHS. 10,000,000 (ten million shillings only) and not the duplicate certificate of title. **(A copy of the warrant of arrest herein attached and marked "E").**
9. That I was highly dismayed to find out that the Respondent filed a bill of costs against me and the same was taxed and allowed at UG SHS. 36,772,000 which amount is unreasonably excessive and unfair. **(A copy of the taxed bill and certificate of taxation herein attached and marked 'F')**
10. That I have never been arrested by the Bailiff/ Respondent and I voluntarily handed over the duplicate certificate of title to my relative Aisha Nakimera and I have never been produced before any Court on a warrant.
11. That to the best of my knowledge, that warrant expired unexecuted and it was overtaken by events when I paid.
12. That it does not make logical sense for someone to incur Ug.shs 36,720,000/= to recover UG SHS. 10,000,000 which I even paid voluntarily without being arrested by the Respondent.
13. That I have been reliably informed by my lawyers of M/S Mwesige Mugisha & Co. Advocates which information I verily believe to be true that this Court was misled by the Respondent to tax a bill on a warrant which was not executed.
14. That the Respondent is not entitled to any payment and he must refund my UG. SHS. 7,000,000 which he illegally extorted from me.
15. That it is just and equitable that this Honorable Court allows this Application.
4. On the other hand, the Respondent, Talenga Patrick in his affidavit in rebuttal/reply dated 21st February 2019 made very lengthy averments opposing this application but the most relevant ones are as follows;
5. **THAT** on the 20th day of March 2018, the parties in HCCS No. 703 of 2017 extracted a consent decree and a copy of the same is hereto attached and marked annexure 'TP1'
6. **THAT** on the 30th day of April 2018, the parties extracted the decree

and the copy of the same is hereto attached and marked annexure **'TP2'**

9. THAT the notice was asking the Defendant to pay the debt due and also avail the duplicate certificate of title to the Plaintiffs as was decreed in the High Court Land Division **Civil Suit No. 703 of 2017. A copy of the Notice to show cause is hereto attached and marked annexure 'TP5'.**
12. THAT on the **3rd day of July 2018**, both Counsel for the Judgment creditor and the Judgment debtor appeared and counsel for the Judgment creditor prayed for one month within which to produce the certificate of title and pay the costs. **A copy of the records of proceedings is hereto attached and marked annexure TP9.**
14. That on the 22nd day of August 2018, the Judgment debtor and his lawyer never appeared in Court and counsel for the Judgment creditor prayed for a warrant of arrest for failure to fulfill the terms of the consent and court issued the warrant. **A copy of the proceedings is hereto attached and marked 'TP10.'**
18. THAT in further reply to **paragraph 4** of the Applicant's Affidavit that on the 5th day of September 2018 the Judgment debtor gave me the money UGX 10,000,000/= (ten million shillings only) as costs and the land title for the suit property which I acknowledged receipt by issuing the debtor with receipt which he has avoided to mention in his affidavit. **A copy of the receipt is hereto attached and marked annexure 'TP12.'**
20. THAT on the same day of 5th September 2018 I delivered the money in Court in the presence of counsel for the Judgment creditor together with the land title and the Registrar asked counsel for the Judgment creditor to acknowledge receipt of both the money and the title which he did before Court. **A copy of the acknowledgment of counsel is hereto attached and marked annexure 'TP13'**
22. THAT Counsel for the Judgment creditor has never received any money from a one Aisha Nakimera and/or a call for that matter in respect of the costs and title for the suit property, all these are lies that must be disregarded.
23. THAT on the 18th day of September 2018, I filed my bill of costs and served counsel for the Judgment debtor for taxation on the 15th day of November 2018 and it was duly received by the lawyers. **A copy of the taxation hearing notice and affidavit of service hereto attached and marked 'TP14.'**

24. THAT the Applicant together with his former lawyer responded by asking for a negotiated amount instead of taxation and he (debtor) offered to pay UGX. 45,000,000 (forty-five million shillings only) which he did not honor hence the taxation and UGX 36,772,000. **A copy of the bill of costs is attached and marked TP15.**
26. THAT in further reply to paragraphs 11 & 12 of the Applicant's Affidavit the warrant of arrest was for the fulfilment of the terms of the consent decree and that since the Applicant handed over the duplicate certificate of title and the money to me, there was no need of arresting him and therefore the warrant was duly executed and returned to court as per the copy of the return and counsel's acknowledgement of the title and money that was delivered to Court by the bailiff. (Mr. Talenga Patrick).
27. THAT in reply to paragraph 13 of the Applicant's affidavit the bailiffs bill of costs arose out of the values of the suit property which is UGX. 560,000,000/= (Five Hundred Sixty Million shillings only) plus costs of UGX 10,000,000 (ten Million shillings only) totaling to UGX 570,000,000 (Five Hundred and seventy million shillings). That it is therefore wrong for the applicant to conceal some facts in abide to achieve an evil motive.
28. THAT in further reply to paragraphs 14 & 15 of the Applicant's affidavit, it is true that the warrant was executed and a return made to the file and the Applicant knew of his obligation to pay costs of execution.
29. THAT the Applicants issued cheques to the Respondent totaling to UGX 20,000,000/= (twenty million shillings only) in abide to clear the costs of execution and after the cheque bounced, I made an express demand to the Applicant who responded by filing this Application. **Copies of the bounced cheques are hereto attached and marked as annexure 'TP12, TP18, TP19 & TP20'**

...

5. The Applicant was represented by M/S Mwesige, Mugisha & Co. Advocates while the Respondent was represented by M/S Mukiibi & Kyeyune Advocates.

6. Both the Applicant's and the Respondent's counsel filed written submissions which are on record and I will refer to them as and when

necessary.

7. ISSUES.

No issues were framed at the beginning of the hearing and counsel for the Applicant did not frame any issues. However, counsel for the Respondent framed three issues which the court has adopted because their resolution would adequately resolve the controversy between the two parties.

They are as follows:

- 1) Whether the application before court is competent? (on the point of law)**
- 2) Whether or not the grounds of review have been proved?**
- 3) What reliefs are available to the parties?**

8. RESOLUTION OF ISSUES.

Before I delve into the issues, it is important to note that the genesis of this application is the amount of money that was taxed and allowed as bailiff's fees for execution of a decree dated 30th April 2018 for recovery of Uganda shillings 10,000,000 /= (Ten million shillings) arising out of a consent Judgment and duplicate certificate of title. The Application for execution dated 3/5/2018 was for recovery of only shillings 10,000,000/= (ten million shillings only) and the Notice to show cause dated 18th June 2018 was for the recovery of Uganda Shillings 10,000,000/= (ten million shillings only).

The bill of costs presented by the Respondent received on 18th September 2018 totaled Uganda shillings 62,347,000 (Sixty-two million three hundred forty-Seven thousand only). It was taxed by the learned Deputy Registrar and allowed at Uganda shillings 36,772,000/= (Thirty-six million seven hundred seventy-two thousand) only as per the certificate of taxation dated 21st November 2018. The Applicant was coerced into paying Uganda Shs 7,000,000/= (seven million shillings only) to save himself from several telephone calls from the respondent which prompted him to check on the court record only to be shocked with the contents of the taxed bill of costs hence this Application. Let me now revert to the issues.

1. Whether the Application before court is competent?

Counsel for the Respondent raised a preliminary point of law that the application was incompetent, untenable and irregular.

I am only going to refer to the relevant part of the submissions and ignore the irrelevant ones like quoting **O.51 of the CPR**. Counsel submitted that **section 82 of the Civil Procedure Act** provides for review of court orders read together with **O.46 rule 1 of the CPR**. He submitted it is a general right given to anyone aggrieved by a decree or order of court and has preferred no Appeal but the appeal is allowable or not under the Act, to apply for review. The provision however does not give the considerations or circumstances for review. It simply bestows the statutory right to review.

He cited several authorities which dealt with circumstances where the Applicants were not satisfied with the taxation master, which in his own opinion was the case in the instant application. He submitted the Applicant in this case ought to have appealed against the decision of the taxing master or proceed by way of reference under the provisions of **section 33 of the Judicature Act, Regulations 3 and 4 of the Advocates (Taxation of costs) (Appeals and References Regulations S-1 267-5, Sections 62 of the Advocates Act, cap 267 and section 98 of the CPA**. This would of course imply that the application would proceed by way of Chamber Summons.

He relied on several authorities that discussed circumstances under which the judge or appellate court must interfere with the order /decision of a taxing master. And that it is done when a dissatisfied party has presented an appeal before the judge against the taxation order or ruling.

His submission in short is that the Applicant should have preferred an appeal or made a reference but not proceed by way of Review.

The law governing review is provided under **Section 82 of the Civil Procedure Act Cap 71** which reads as follows:

“Any person considering himself or herself aggrieved –

- a) By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or***
- b) By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order and the court may make such order on the decree or order as it thinks fit.”***

O.46 r rules 1(1) and 2 of the **CPR** provides for circumstances under which the aggrieved party may apply for review and to whom such an application may be made in the following terms:

ORDER XLVI—REVIEW.

1. Application for review of judgment.

(1) Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate court the case on which he or she applies for the review.

2. To whom applications for review may be made.

An application for review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or evidence as is referred to in rule 1 of this Order, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree or made the order sought to be reviewed.

Section 82 of the CPA and O.46 rule 1 of the Civil Procedure Rules supra empowers this court to review a decision where an error is apparent on the face of the record and according to the decision in the case of **Attorney General and Another versus James Mark Kamoga and another, Supreme Court Civil Appeal No 8 of 2004**, the power extends to Orders of the Registrar. This is so because The High Court has unlimited Original Jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by

Article 139(1) of the Constitution of the Republic of Uganda as amended in 1995.

An error apparent on the face of the record is not defined under the Act.

It was however defined in the case of ***Nyamogo and Nyamogo Advocates versus Kago [2001] 2 EA 173*** as ***“An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established, by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for review although it may be for an appeal”***

Justice Stephen Mubiru in the case of ***Florence Dawaru VS Angumale &Anor (miscellaneous civil application No.0096 of 2016)*** held that;

“Under order 46 rules 1 and 8 of The Civil Procedure Rules, a review may be granted whenever the court considers that is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established”.

Considering the facts of the case as deposed by the applicant in his affidavit it is clear that the amount the Respondent was to recover was 10,000,000/= (Ten million shillings) which fact is very clear on the record. The Applicant was never arrested and therefore no five police officers were ever deployed. The bill of execution costs was taxed and allowed at Shs 36,772,000/= the amount which was more than triple of the decretal sum. The error on the part of court about the allowed execution cost is apparent and self-evident which puts this application within the ambit of cases for review.

The Applicant had two options under the above cited law to deal with his grievance. He could have appealed but opted to apply for review. In the result, the preliminary objection raised by counsel for the respondent on the point of

law is not upheld.

2. Whether or not the grounds of review have been proved by the Applicant?

The applicant in his affidavit in support under paragraph 10 reproduced above proved that the Bill of costs was taxed and allowed at Uganda shillings 36,772,000/=. The taxed Bill and certificate of Taxation are on the court record and therefore not contentious. He also proved that the amount to be recovered as per the application and warrant was Uganda shillings 10,000,000/ (Ten million only).

The respondent Talenga Patrick stated under paragraphs 22, 23, 27 and 37; as follows.

22. THAT on the 18th day of September 2018, I filed my bill of costs and served counsel for the Judgment debtor for taxation on the 15th day of November 2018 and it was duly received by the lawyers. **A copy of the taxation hearing notice and affidavit of service hereto attached and marked 'TP14.'**
23. THAT the Applicant together with his former lawyer responded by asking for a negotiated amount instead of taxation and he (debtor) offered to pay UGX. 45,000,000 which he did not honor hence the taxation and UGX 36,772,000. **A copy of the bill of costs is attached and marked TP14.**
24. THAT the Applicant together with his former lawyer responded by asking for a negotiated amount instead of taxation and he (debtor) offered to pay UGX. 45,000,000 which he did not honor hence the taxation and UGX 36,772,000. **A copy of the bill of costs is attached and marked TP15.**
25. THAT in further reply to paragraph 6,7,8 & 9 of the Applicant's affidavit, it is not true that the Defendant never knew of the process and what he was paying for since the acknowledgement he has attached show the balance of the money he had promised to pay without taxing the bill. **A copy of the acknowledgement is hereto attached and marked annexture TP16**
26. THAT in reply to paragraph 13 of the Applicant's affidavit the bailiffs bill of costs arose out of the values of the suit property which is UGX. 560,000,000 (Five Hundred Sixty Million shillings only) plus costs of UGX 10,000,000 (ten Million shillings only) totaling to UGX 570,000,000 (Five Hundred and seventy million shillings). That it is therefore wrong for the

applicant to conceal some facts in a bid to achieve an evil motive.

37. THAT as a court bailiff, I performed my duties as instructed by court and I recovered both the duplicate certificate of title and costs of 10,000,000(Uganda shillings ten million). And therefore I should be paid.

Evaluation of evidence.

It is apparent from the above evidence that the Applicant paid 10,000,000/= that was the decretal sum that the Respondent claimed to have recovered and indeed that is the amount that appears on the Decree dated 30th April 2018, the Application for execution received by court on the 3rd of May 2018, Notice to show cause dated 18th June 2018 and Warrant of Arrest dated 24th August 2018 as per the court record.

It is also apparent that the respondent filed a bill of costs dated 18th September 2018 which was marked as TIP 15 claiming among others recovery of a certificate of title for land valued at 560,000,000/= and 10,000,000/= for general damages bringing the total to 570,000,000/ (Five hundred seventy million shilling) which amount of money does not appear anywhere in the decree, dated 30th of April 2018. He claimed 57,000,000/= being 10 % as his fees.

The learned registrar of court, the taxing master allowed shillings 23,640,000/= on this item without following the provision of the law.

Rule 17(1) of the Judicature Act, SI 13-16. The Judicature (Court Bailiffs) Rules provides that

“A court bailiff, or other bailiff appointed under Rule 14 of these rules shall be entitled to remuneration for his/her services in accordance with the scale of fees specified in the second schedule to these Rules.”

The second schedule is reproduced hereunder.

Second Schedule.

Scale of fees

Rules 17, 18.

When the sum for which execution. has been issued is tendered to a bailiff entrusted with the execution	9000
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before or at the time of or within an hour after attaching the property, whether movable or immovable, together with his or her legally recoverable fees and expenses to that time	
(2) In any other case— (a) on attachment of movable property—	
(i) when the amount of the decree does not exceed 120,000 shillings to include keeping possession for fifteen days	15000
(ii) when the amount of the decree exceeds 120,000 shillings to include keeping possession for fifteen days	3% of the amount of the decree but not less than 15,000shillings
(iii) for keeping possession each day after the first fifteen days provided that a minimum fee of 1,000 shillings may be charged, and no fee of more than 6,000 shillings shall be chargeable.	.25% of the estimated value
(b) on attachment of immovable property—	15,000
(i) when the amount of the decree does not exceed 120,000 shillings	
(ii) when the amount of the decree exceeds 120,000 shillings	30000
2.On sale of—(a) movable property—	
(i) when the amount of the decree does not exceed 120,000 shillings with a minimum fee of 4,500 shillings	7.5%
(ii) when the amount of the decree exceeds120,00 shillings up to 300,000 shillings	5.5%
On every 300,000 shillings or part of that amount up to 3,000,000 shillings	2%
On every 3,000,000 shillings or part of that amount up to 30,000,000	1%

shillings	
Over 30,000,000 shillings.	5% but not more than 450,000 shillings
(b) immovable property— (i) when the amount of the decree does not exceed 120,000 shillings	9000
(ii) when the amount of the decree exceeds 120,000 shillings but does not exceed 300,000 shillings	7.5% but not less than 9,000 shillings
On every 300,000 shillings or part of that amount up to 3,000,000 shillings	2.5%
On every 3,000,000 shillings or part of that amount up to 30,000,000 shillings	1% but not more than 600,000 shillings
3. On postponement of a sale (payable by the party applying for postponement)— (a) of movable property—	
(i) where the amount of the decree does not exceed 120,000 shillings	6000
(ii) where the amount of the decree exceeds 120,000 shillings	12000
(b) of immovable property	12000

It is trite law that costs of the bailiff are taxed according to the amount reflected in a decree, and according to part 2 (a) paragraph 5 of the above schedule, any amount over 30,000,000/= shillings attracts a fee of 5% but not more than 450,000, /= shillings.

In the instant case, where the decree was for 10,000,000/= the Respondent was entitled to 1% of the decretal sum as reflected in part 2 (a) paragraph 4 which should have been 100,000/=.

However, the Respondent claimed 10% of 570,000,000/= as his so called **'professional fees'** as shown in his Bill of Costs which percentage is not reflected anywhere in the second schedule.

The amount of money in the Bill of costs was unreasonable, grossly exaggerated and irregular. The execution process deals with execution of court orders and decrees not imaginations and or fantasies of the court bailiff.

The Bailiff is also entitled to payment of some expenses he incurred during the execution process as provided under Rule 19 as follows; **"The expenses of a bailiff in respect of advertising, inventories, catalogues, insurance, and safe guarding properties including wages of watch person and rent of premises for storage, shall be payable out of the fees payable to him/her and shall not be charged for additionally; except that with the permission of the Court the following additional expenses may be allowed if the Court is satisfied that they are necessary and reasonable in the circumstances;**

- (a) Actual out of pocket disbursements for publication of an advertisement of sale in one or more Newspapers.**
- (b) Actual disbursements by way of wages of a watch person to safe guard the property while under attachment on premises other than the premises of the Bailiff.**
- (c) Actual disbursement by way of rent for storage of property under attachment on the premises of the Bailiff; and**
- (d) Insurance of expensive items if the Court think fit and proportion of the general policy taking into account the time the goods have been in his/her possession."**

In the instant case, the Respondent's expenses are very limited because he did not incur any costs as per Rule 19. However, he listed so many items that are not provided for under the rules under his Bill of Costs including outright lies. For instance, he included the item of drawing of the application for execution which is the duty of the Judgment creditor and or his counsel not the bailiff, drawing of the warrant of arrest which is the responsibility of the Court and not the bailiff, hiring 5 police officers which did not actually happen in the instant case to mention but a few.

The taxing Master allowed 500,000/= for police officers who were never deployed in the execution because the Applicant was never arrested. This shows that the bill of costs was not only drawn without following the law but it was also taxed without having due regard to the law.

In cases of review, the Court is obliged to scrutinize the record and the evidence in support or in rebuttal in the application to ensure that there is no error or mistake that is apparent on the record.

In the instant case, after the perusal of the Respondent's affidavit SPECIFICALLY looking at paragraph 25, he attached an agreement dated 29th November 2018 where he acknowledged receipt of 5,000,000/= as his execution cost in EMA 989 of 2018 leaving a balance of 40,000,000/= which was to be paid on or before 5th of December 2018.

He again received 2,000,000/= on 17th December 2018 leaving a balance of 38,000,000/=. According to his own evidence, he presented to the Applicant a Bill of Costs of 62,347,000/=. And that the Applicant agreed to pay 45,000,000/= instead of presenting the Bill to Court for taxation. He received postdated cheques that were issued by the Applicant which he attached.

He further informed Court that after the Applicant failed to pay, he then presented the Bill to Court for taxation.

In my humble view, this case presents a classic example of a fraudulent Court Bailiff who abused the Court process by intimidating the Applicant with a ridiculous bill of cost with exorbitant figures that worked as coercion leaving him with no option but enter into an agreement which by all standards is illegal because the Respondent was not entitled to that amount of money in execution of a warrant of 10,000,000/=. I have no reason to doubt the Applicant who stated in his affidavit that the Respondent kept on calling and harassing him for payment of that money.

With an illegal, unfair contract in his hands and postdated cheques, the Respondent thought he had made a kill.

Being a Ugandan Court Bailiff some of whom are known for being excessively uncourteous and ruthless while executing their duties, the Applicant parted

with his 7,000,000/= in an illegal transaction between him and the Bailiff who unfortunately used the legal process as an officer of Court to extort money from the Applicant.

The Applicant's situation was made worse by the taxing master who is a professional judicial officer by taxing and allowing illegal items on the bill of costs contrarily to the decree and warrant of execution he personally issued.

It is incomprehensible that a judicial officer who issued a warrant of execution for 10,000,000/= would tax and allow a bill of cost of 36,772,000/= far and beyond the decretal sum.

Needless to mention, it is tempting to describe the taxation ruling as judicial fraud committed by the judicial officer in connivance with the Court bailiff.

It is apparent on the face of the record that the error committed during the taxation of this bill is irregular and illegal as it contravenes rule 17 of The Judicature (Court Bailiff) Rules supra and cannot be allowed to stand by this Court.

It is trite law that once an illegality is brought to the attention of court or discovered by the Court, it is the duty of Court to rectify it and ensure that justice prevails.

According to the impugned bill of costs, the Court bailiff purported to having drawn and filed the application for execution.

This error is very common in execution matters. The ideal procedure should be as follows;

1. The Judgment creditor or his counsel applies for execution.
2. The court depending on when this application is made may issue a warrant or a notice to show cause why execution should not issue.
3. In case the warrant is to be issued, the Court should appoint a bailiff from the list of approved bailiffs to execute the warrant.
4. The Bailiff being an officer of Court during this process is accountable to the judicial officer who issued him with a warrant.
5. The Bailiff should not under any circumstance enter into any agreement with a judgment debtor without the knowledge and

approval of Court to avoid abuse of Court process and powers of the bailiff.

6. Where the decretal sum is recovered like in the instant case, the judicial officer is expected to determine execution expenses there and then.
7. In a case where the amount cannot be determined by the judicial officer instantly, the Court bailiff presents a bill of costs, which must be taxed in accordance with the rules.
8. The Court Bailiff is expected to return the warrant to Court with an explanation on how he has executed the warrant or reasons why he has failed to execute the warrant.
9. In case of any consent between the judgment debtor and the Court bailiff in respect of execution fees, such consent should be executed before the judicial officer and endorsed by the judicial officer to avoid the abuse of Court process by over charging the judgment debtor.

The above procedure if followed, would protect the judgment debtors from abuse of Court process by the Court bailiff like in the instant case where the Bailiff purported to recover 45,000,000/= as his execution costs for recovering 10,000,000/= that was recovered before any arrest could be made since the Judgment debtor willingly paid the decretal sum.

The above procedure if followed would also guide the Judgment debtor, Court Bailiff and the judicial officer on the execution costs to avoid a miscarriage of justice on the part of the judgment debtor who are exploited by the circumstances they find themselves in- A warrant of arrest or attachment of property which creates panic moods and affects their bargaining power to enter into any contract outside court.

Last but not least, execution process is the end tail of litigation. Errors in the execution process like in the instant case puts the judgment debtor and the Court bailiff in fresh litigation which should not be the case if the execution process is done within the ambit of the law.

In view of the above, I hold the opinion that the Applicant has grounds for review of the Registrar's order in respect of taxation of the Bailiff's Bill of Costs.

3. What reliefs are available to the parties?

Courts of law are courts of justice. The Applicant according to the Respondent's own admission paid 7,000,000/= to the Respondent based on an illegal contract where he expected the Applicant to pay 45,000,000/= as execution cost. This money was paid before even the Bill of costs was taxed. This court holds the view that the respondent acted as an extortionist. Court has declared that transaction as illegal because the Respondent was not entitled to 45,000,000/= as execution costs in a decree and warrant of execution of a decree of 10,000,000/=.

The issue of recovery of a certificate of title was not part of the warrant. It is trite law that a party cannot benefit from an illegal contract. Even if the Bailiff eventually presented a bill of costs for taxation after the Applicant failed to pay money under the illegal agreement, and the bill was taxed and allowed at 36,772,000/=, the Court finds that the taxation was erroneous irregular and illegal because it was based on recovery of a subject matter of 570,000,000/= which was not the case.

Under Rule 20 of the Judicature (Court Bailiffs) Rules, it provides for offences and penalties in the following terms;

“(1) Any Court Bailiff who contravenes or fails to comply with any of the provisions of these rules or in any way abuses his/her powers commits an offence and is liable on conviction to a fine not exceeding 3000/= or to imprisonment to a term not exceeding 6 months or both.

(2) Before the prosecution of the Court Bailiff, the consent of the Director of Public Prosecutions shall first be obtained and the prosecution shall not prejudice any civil cases that may be brought before him/her.”

The Respondent in this case acted in abuse of his powers as a bailiff by entering into an illegal contract with the Applicant demanding for 45,000,000/= as execution costs in a warrant of 10,000,000/= which contravenes Rule 20 supra.

This kind of conduct deserves condemnation by this honorable court and recommendations of sanctions provided under Rule 20 which courts of law rarely apply despite obvious breaches like in the instant case. As officers of court, court bailiffs need to be deterred from engaging in practices that amount to thuggery and white-collar robbery against judgment debtors.

In the premises, the Application is allowed with the following orders:

- a) The ruling and The certificate of taxation dated 21/ Nov/2018 vide HCT EMA No. 989 of 2018 Arising from Civil Suit No. 703 of 2017 is reviewed and set aside.
- b) A declaration that the bill of costs filed by the Respondent as taxed is illegal due to the fact that it was based on misrepresentations.
- c) The Respondent is directed to refund Uganda. Shillings 7,000,000/= (seven million) which he illegally received from the Applicant with interest at the rate of 6% per annum from date of ruling till payment in full.
- d) That the amount of Uganda shillings. 36,772,000 taxed as bailiffs' costs is unfair, unreasonable, un-proportionate, grossly exaggerated and highly irregular.
- e) The Respondent is referred to the Police for acting in contravention of Rule 20 of the Judicature (Court Bailiffs) Rules because such conduct tarnishes the image of the judiciary because he goes out as an officer of Court.
- f) His license as a Court Bailiff if at all he is in possession of any is hereby cancelled and he should not be allowed to practice as a bailiff for 10 years.
- g) The Applicant is awarded Costs of this Application.

Dated at Kampala 26th day of August. 2020.

MARGARET MUTONYI, JHC

JUDGE EXECUTION AND BAILIFF DIVISION.