

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 08 OF 2013
(Arising out of Civil Suit No. 051 of 2012)

MAHJUB IBRAHIM ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

**THE REGISTERED TRUSTEES OF
KAMPALA ARCHDIOCESE ::::::::::::::::::::::::::::::::::::::: RESPONDENTS**

BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW.

JUDGMENT

Background facts:

The Applicant had filed a suit against the Respondent before the Chief Magistrate Court of Mengo which was dismissed for want of pecuniary jurisdiction. The Respondents filed 2 bills of costs which were all taxed separately and the Magistrate awarded 5,513,500/= and 9, 390,000/= for the application and the main suit respectively making a total award of 14,552,500/= against the Appellant. The Appellant now contends that when taxation was done Counsel for the Applicant was in Soroti Chief Magistrates Court; a fact that was brought to the attention of the trial magistrate but was ignored. The Applicant prayed for orders that:-

- (a) *The bills of costs be retaxed.***
- (b) *Execution of the said bill of costs be stayed until the determination of this appeal.***
- (c) *That the costs of this application be provided for.***

Counsel for The Respondent raised a preliminary objection that the application was brought under the wrong law and procedure. That the application was brought under ***Section 98 of the Civil Procedure Act and Order 52 rr. 1, 2 & 3 of the Civil Procedure Rules***. That the applicable law is ***Section 62(1) of the Advocate Act, Cap 267*** which provides for any person affected by an order or decision of a taxing officer made under that part of the Act or ***Regulations*** under that part a right to appeal that order or decision within 30 days to a Judge of the High Court. That under ***Regulation 3(1) of the Advocate (Taxation of costs) Appeals and Reference) Regulation*** an appeal against the decision of a taxing master is by way of summons in chamber and not by Notice of Motion as was done by the Applicant.

This preliminary objection was raised by the Counsel for the Respondent in his submission. The Applicant did not reply to the preliminary objection. It is trite law that the rules of procedure must be complied with. However, each case has to be decided on its facts. Courts have stated that citation of the wrong law or procedure does not in itself invalidate proceeding. In **Saggu v Road Motor Cycles (U) Ltd. [2002] I E.A 258**; it was held that;

As far as wrong citation of law is concerned or wrong procedure is concerned the court restated the law the wrong procedure or wrong citation of law would not invalidate proceedings. It does not go to jurisdiction or cause prejudice to the opposite side. The general rule is that where an application does not cite any law at all or cites the wrong law but jurisdiction to grant the order sought exists then, the irregularity or omission can be ignored and correct law instilled.

The court of Appeal went on to restate the law that the court should not treat any incorrect act as a nullity with the consequence that anything founded thereon is itself a nullity unless the correct act is of the most fundamental nature. The Court further held that matters of procedure are not normally of a fundamental nature. And that the administration of justice required that the substance of a dispute should be investigated and decided on the merits and the error and lapses should not necessarily debar a litigant from the pursuit of his rights.

I am bound to follow this above decision that although the irregularity exists and the Applicant ought to have come by Chamber Summons instead of a Notice of Motion, since this court is vested with the necessary jurisdiction to hear and determine this application, the wrong procedure should not be a hindrance for justice to prevail, especially so it has not occasioned injustice to the Respondent.

Issues:

- (1) Whether the learned trial Magistrate erred in law and fact when he awarded costs which are manifestly herein?**
- (2) The learned trial Magistrate erred in law and fact when he taxed the bill of costs ex parte thus denying the Applicant the right to a fair hearing.**
- (3) The Applicant prayed that court be pleased to set aside/quash and or re-tax the bill inter party.**
- (4) The Applicant is entitled to costs of the application.**

The principles which govern an appellate court reviewing the decision of a taxing master were stated in, *Bank of Uganda v Bank Arabe Espanol Civil Application No. 29 of 1999 per Mulenga J.S.C. (R.I.P.)* that;

“... I should reiterate briefly some pertinent principles applicable to review of taxation, such as I am called upon to do in this reference. Counsel would do well to have them in mind when deciding to make and or when framing grounds of reference. The first is that save in exceptional cases as judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are wholly of quantum costs are matter with which the taxing officer is particularly fitted to deal action which he has more experience than the Judge. Consequently the Judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount.

Secondly, an exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised or applied a wrong principle. In this regard application on a wrong principle is capable of being informed from an award of an amount which is manifestly excessive or manifestly low.

Thirdly, even if it is shown that the taxing officer erred on principle the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount would cause injustice to one of the parties.”

With these principles in mind, I shall now move to consider the grounds of appeal.

Bill of costs on the civil suit: The Applicant stated that the award of 7,187,500 on the instruction fee was harsh because the matter was not complex.

Under 6th schedule 1(a) (iv) the formula is clearly laid out.

500,000 x 12.5%	-	62,500/=
4,500,000 x 10%	-	450,000/=
5,000,000 x 7.5%	-	375,000/=
10,000,000 x 5%	-	5,000,000/=
580,000,000 x 10%	-	5,800,000/=
Total	=	7,187,500/=

Looking at the above I cannot interfere with the award of these costs because they were not excessive. According to the proceedings the Magistrate reached the figure in accordance with the laid down formula. I have had the privilege of perusing through the taxation on proceedings, and I believe the taxation officer was well apprised by what was before him. However, items 7, 8 and 9 should be struck off in the taxation of the bill for the civil suit because they are not provided for by the law, where as item 35 is repeated as item 56 which should also be struck off.

Item 7 -	15,000			
Item 8 -	1,000			
Item 9 -	45,000	-	161,000	
Item 56	-		100,000	7,026,500/=

The Bill should be 7,026,500.

The Miscellaneous Application was taxed in accordance with the law and this court cannot interfere with the taxation officer’s award.

2. Whether the learned trial magistrate erred in law and fact when he taxed the bill of costs ex parte thus denying the applicant the right to a fair hearing.

Rule 54(supra) provides that;

“The taxation officer shall have power to proceed to taxation ex parte in default of the appearance of either or both parties or their advocate and to limit or extend the time for any proceedings before him and her and for proper cause to adjourn the hearing of any taxation from time to time”.

According to the record of proceedings the learned trial magistrate clearly noted that this is not the first time Counsel for the Plaintiff and Plaintiff are failing to appear for taxation. That the taxation had been adjourned previously on grounds that Counsel had matters in Soroti, but that this time Counsel for the Appellant did not even attach hearing notices to prove his claims. The trial magistrate also noted that there was evidence that Plaintiff had been served with the notices of taxation but failed to show up.

I have come to a conclusion that the Plaintiff and his Counsel were given an opportunity to appear which they abused and justice cannot be delayed by a party who is buying time not to pay costs. The trial magistrate was right and justified to proceed *ex parte*. I therefore uphold the taxation save for the 4 items identified above. I award costs of this matter to the Respondent.

BASHAIJA K. ANDREW
JUDGE
02/04/2014