THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPL. NO. 747 OF 2002

JESHANG POPAT SHAH:: APPLICANT/DEFENDANT

VERSUS

MEERA INVESTMENTS LTD::::::::::::::::::::::::::::::::.:::RESPONDENT/PLAINTIFF

BEFORE: HON. JUSTICE J.P.M.TABARO

RULING:

This ruling arises out of the appeal lodged under s.61(l) of the Advocates Act, 1970 (Act 22 of 1970) and Rules 2,3 and 4 of the Taxation of costs (Appeals and References Rules S.I. 258 — 6;) against the orders and findings made by the Deputy Registrar sitting as the taxing officer of the High Court. The findings and orders are found in her ruling dated the 1st December, 2004. The taxation proceedings followed the judgment, ruling and orders of the court in the suit between M/S Meera Investments as the plaintiff, and one Jeshang Popat Shah as the defendant. The substantive dispute concerns property comprised in Leasehold Register Volume 85 Folio *5* Plot 11 Market Street in the City of Kampala. The facts of the case are relevant to this ruling only in so far as they clarify the background to differences as to which items should be granted or disallowed, between the parties at taxation. Prior to the suit between the parties the property in issue was registered, on 24-11-1948 in the name of General Trading Corporation Ltd, of P.O.Box 3673 Kampala, as owner of half of the property. On 27-6-1997 the plaintiff Meera Investments Ltd was registered as owner. On 18-9-1997 the defendant, Jeshang Popat Shah registered a caveat against the property (title). Subsequently the plaintiff registered its own caveat on the same title. It is not in dispute that were registered Mulchand Popat Shah, and the defendant Jeshang Popat Shah, as common tenants, owning half of the property each.

According to the plaintiff's pleadings Mulchand Popat Shah and Marilal Popat Shah are deceased. Under Administration cause No. 403 of 1997 one Bharatkummer Kulchand obtained a grant of probate for the estate of Mulchand Popat Shah while in Administration cause No 404 of 1997 Probhavant and Marilal Shah, Lalitkummar Manual Shah and Prodeop Kummar Marilal Shah were appointed executors for the estate of the late Marilal Popat Shah. It is asserted in the pleadings that the executors and the plaintiff's directors mistakenly believed that the duplicate certificate of title was inetrievably lost and therefore the plaintiff would undertake to procure a special certificate of title for the registration of the plaintiff as owner of the property. It is beyond contention that, as a matter of fact, that the certificate of title is not lost, but is in the custody of the defendant. One of the plaintiff's prayers was in order for compelling the defendant to surrender the duplicate certificate (of title) so that the plaintiff could be registered. Other prayers are; an order for lifting the caveat in issue, or in the alternative a special grant so that the plaintiffs grant may be registered.

From the record of proceedings and other documents on the file, the executors of the estate of the deceased common tenant, purported to transfer their interest to the plaintiff and did surrender their grant of probate to the plaintiff. The transfer deeds which are already signed are attached to the plaint. Attempts by the plaintiff to purchase the defendant's interest in the property came to grief. The transfer deeds indicate that the administrator and executors of the estates of the deceased tenants received purchase prices, for their interests; the defendant was not privy to the negotiations between the plaintiff and the purported sellers of the interests of the deceased tenants. The plaintiff is in physical occupation of the whole property and manages the property without the defendant's consent or approval. Rent is collected by the plaintiff.

At trial and in the pleadings the defendant challenged the legality of the sales. Defendant contends that since the executors and administrators of the estates of the deceased tenants were not registered on the titles they could not in law pass any interest to the plaintiff. There is a counter claim in the defendant's pleadings for 1/6 of the rent collected so far, general damages for unlawful occupation or violation of his proprietory rights, punitive damages for duress and intimidation on the ground that the plaintiff is exercising or attempting to employ coercion to

oblige him to transfer his share amounting to 1/6 of the property to the plaintiff.

Negotiations were entered into for sale of the defendant's interest in the property to the plaintiff. On 9-9-1999 a consent order was signed by court. The plaint and written statement of defence and counter claim were withdrawn. The plaintiff undertook to account for the rent collected hitherto. On 19.6.2000 the parties signed an agreement for terms of reference for appointment of accountants, auditors and valuation surveyors for the purpose of establishing the market value of the property for ascertainment of rent equivalent payable to the defendant. By 27.3.2002 when this court delivered its judgment largely because the plaintiff reneged on its undertakings, any payments so far had been affected with great difficulty and only after formal applications to court. One of the arguments court had to attention was that since the plaint and Written Statement of Defence (with the counter claim) were withdrawn by the parties, court lacked jurisdiction to determine questions relating to ascertainment of rent. The decree drawn by the plaintiff and approved by the defendant, obliged the plaintiff to account for and tender the rent available to the defendant. There was no gainsaying that the decree reflected what the parties agreed upon. The matter was dealt with under 0.13 r.6(a) CPR. The plaintiffs counsel's arguments were dismissed as misconceived. Court ordered that rent equivalent should be availed to the defendant.

It is significant to point out that in the judgment, court established that the plaintiffs and the administrators of the estates of the deceased tenants and did not bother to establish the whereabouts of the title deed for the property. I must also state that it was a finding of the court that the decision to shut their eyes to the facts, inter alia, brought them under the ambit of fraudulent dealings. The defendant's address is on record and no effort was made to contact him prior to the dealings adjudged by court to be fraudulent. The essence of our law of contact is consent. I am not aware of any law that can be invoked to compel the defendant to sell his interests to the plaintiff. I doubted in the judgment, whether the defendant could become a tenant in common with the plaintiff, by compulsion. The purported transfer deeds did not pass any interest to the plaintiff. It was ordered that plaintiff be deleted form the title.

The chamber summons under which the taxation order of the Deputy Registrar is attacked relies on the following grounds:

1 The learned Deputy Registrar erred in refusing to accept the costs incurred by the defendant's agents from the United Kingdom on the basis that the agents were not licensed to practise law as advocates in Uganda.

2. The learned Deputy Registrar erred in law and fact when she held that the costs incurred by Hannebberry & Co, could not be legitimately billed and were therefore not recoverable.

3. The learned Deputy Registrar erred in holding that Hannebbery & co were not foreign agents whose costs were taxable as disbursements.

4. The learned deputy Registrar erred in failing to recognise that the services provided by Hannebberry & Co, were legitimate, reasonable and necessary for the preparation of the case and were therefore taxable as disbursements.

5. The learned Deputy Registrar erred by proceeding under the wrong principle of law and therefore came to the wrong conclusion that the costs incurred by Hannebberry & co. should not be traded.

6. That it is just and proper that the Applicant/Defendant's full costs be taxed afresh.

At trial M/S Sebalu & Lule, Advocates appeared for the defendant (appellant in this taxation appeal). In attendance were also Glenn Alexander Creig Esq. and Jas Chhotu Esq. both from the United Kingdom. Mr. Craig is a solicitor of the Supreme Court of England and Wales while Mr. Chhotu is a barrister, at law, admitted to the Bar of England and Wales of the United Kingdom.

While the case proceeded at trial stage Mr. Craig and Mr. Chhotu flew to Uganda and followed the proceedings a number of times, evidently residing and subsisting in Uganda. The Deputy Chief Registrar at taxation disallowed the costs and expenses incurred by the two. In the record of proceedings it is beyond contention that they held a power of attorney granted by the defendant and were present in court as his agents.

Learned Counsel for the appellants have listed the above grounds and prayed that

1. The taxation decision of the learned Deputy Registrar be set aside.

2. That Hannebberry & Co., be recognised as foreign agents of the applicants/defendant and their costs be taxed as disbursements.

3. That the bill of this application be provided for.

0.3 r.2 of the Civil Procedure Rules (CPR) gives the list of persons who are recognised agents of parties to cases. They are;

(a) persons holding powers of attorney authorising them to do certain acts on behalf of parties.
(b) persons carrying on trade or business on behalf of foreigners, within Uganda.

The power of attorney granted to Mr. Creig and Mr. Chhotu appears to be regular and the only contention raised by learned counsel for the plaintiffs is that the power of attorney bears the words “for Bank Purposes only”. Apart from the appearance of the words (For Bank Purposes only) the body of the document indicates that the two gentlemen were appointed as agents of the

defendant, and I so find, because the intention of the grantor to make them is agents is quite clear. The more deserving issue is whether their expenses can be claimed as legitimate disbursements.

Whereas it is true that the Chief Justice did not under s. 12 of the Advocates Act, 1970, admit Mr. Creig and Mr. Chhotu to practice law in Uganda, the question does not arise. They never addressed court on any matter of law and were only present throughout the proceedings as agents of the defendant. 0.3 r.2 CPR does not require that anyone to act as a gent of any part should or should not be of any description, status, occupation or ceiling etc. The rule as it stands would be satisfied by appointing any adult who is of sound mind. That adult may be an industrialist, a fanner, a doctor, an accountant, a lawyer, a teacher, a banker etc. That agent could even be someone who is unemployed. I would on1y reiterate that if the agent happens to be a solicitor or barrister from outside Uganda and has not obtained a special practising permit he or she cannot have right of audience in Uganda and cannot legally represent any party Mr. Creig and Mr. Chhotu did not endeavour to appear as advocates for the defendant.
The defendant resides in the United Kingdom and the plaintiff's directors are well aware of the fact. There is nothing in our law which obliges him to appoint a local agent, from the wording of 0.3 r.2 CPR. There is not the slightest suggestion from counsel for the plaintiff that the defendant's agents were here in Uganda illegally. They had legitimate interests to pursue in Uganda on behalf of the defendant. It is well known that a party to a case in Uganda may appear in person or through an agent given authority by a power of attorney. It appears to me hence that the taxation officer (the deputy registrar) should have treated Mr. Creig and Mr. Chhotu as agents of the defendant although not, as already indicated, advocates.

The next issue for resolution is whether the defendant is entitled to have disbursements for two agents. Under Rule 11 of SI. 123 of 1982 the Taxing Officer is empowered to allow expenses which appear to him to have been necessary or proper for the attainment of justice. Costs incurred or increased through, negligence or mistake cannot be granted or recovered. The case involves persons, whether physical or corporate, residing in three continents, in India, in Asia, Uganda and UK in Europe. It is not in contention that reasonable expenses incurred in pursuit of

the case are recoverable as disbursements. At trial it was evident that the plaintiff was wont to employ strong arm tactics, by dealing with only some of the tenants in the hope that the rest would oblige and a transfer of all the interests would follow with or without their consent. The proclivity to resort to high handedness was also apparent at the plaintiff's attempt to deny payment of rent collections after the parties had agreed to settle the matter amicably. I think the circumstances of the case call for caution and the defendant was justified in engaging more than one agent.
The plaintiff's dealings in the findings of this court were fraudulent, and I would add, oppressive.

Travel, abode, subsistence and other items necessary for attainment of justice are recoverable. It is immaterial that the expenses are quoted in foreign currency. The process of converting British Sterling into Uganda shillings is beyond contention and the taxing officer will not doubt determine the equivalent of British pounds in local currency.

All the six (6) grounds of appeal in my evaluation of the case have been addressed by resolving the status of the defendant's agent. The bill shall be taxed afresh so that the expenses incurred by the defendant's agents are taken into account in the taxation. Many of the items in the bill are correctly addressed and therefore there is no need to upset the whole order. The appeal is allowed only in so far as this court orders that the defendant's agent's costs and expenses be taken into account

Before I conclude this matter I must comment on one item entitled "Drafting Ruling for the Judge" lodged by the defendants' agents. I understand it is permissible for counsel to draft certain rulings for the Judge to sign in some jurisdictions. It is not the position in Uganda. If counsel for the plaintiff had spent the minimum of any effort to satisfy himself as to record of proceedings he would have ascertained that all the orders and rulings are represented in my handwriting before being typed. He allowed free reign to himself to do mischief and trivialised a grave matter thereby. It would be unethical for any judicial officer in Uganda to permit an

advocate to write a ruling for him or her. No such ruling exists anywhere in the court's record it was probably an error on the part of the typist or the agent himself, as urged by counsel for the defendant. Counsel for plaintiff would be deceiving himself to believe that an assault on the integrity of the court can be countenanced, an apology should be tendered to court.

As I have decided the application in favour of the defendant, the costs of this appeal/application shall be paid by the plaintiff.

J.P.M.Tabaro

JUDGE

22-9-2003.