The Hon. Mr. Justice Tsekooko

THE REPUBLIC OF UGANDA.

IN THE HIGH COURT OF UGANDA AT KABALE DISTRICT REGISTRY

CIVIL APPEAL NO.MKA 5 OF 1986. Appeals against Bill of Costs

AB. KATESHUMBWA ========== APPELLANT

- VERSUS -

1. J. MBUNDUKYE }
2. KAFUNZI } ========== RESPONDENT

Absence of decree not fatal in Kabale

BEFORE: HONOURABLE MR. JUSTICE A.N. KAROKORA.

JUDGMENT:

This is an appeal against the order of Magistrate Grade I made on bill of costs made on 21st May, 1986.

Before I heard the appeal, I invited Mr. Beitwenda, counsel for appellant, to address me as to whether the appeal was properly before court when there was no decree drawn and filed. After listening to his submission, and the law, See Section 61(1) of the Advocates Act (1970) and Masaba & others V Manmbe Mukhwana (1988-90) HCB 146, it is established that although a decree may be extracted and filed, failure to do so, in taxation proceedings is not fatal to the appeal. An appeal can be lodged without a decree being filed against Taxation order. And as Section 61(1) of the Advocates Act which confers jurisdiction on any party aggrieved by decision of a taxing officer to appeal, does not make it mandatory for any aggrieved party in such proceedings to first extract and file a decree before lodging an appeal, this appeal is properly before this court despite the failure by the appellant to extract and file decree. I therefore asked the parties to argue the appeal.

Mr. Beitwenda, counsel for appellant argued all the grounds together and submitted that after the judgment was delivered, the learned trial Magistrate went ahead to tax the bill of costs which was not there. He contended that the trial Magistrate had no bill of costs before him. Notwithstanding that even what was disclosed by appellant was not properly considered by the trial Magistrate.

For instance, according to the record, the appellant stated he went to court 12 times and was spending Shs. 3000/= per day on single journey and Shs. 7200/= return journey. He brought 2 witnesses and did so 8 times and on each occasion he came, either alone or came with his witnesses, he spent money on accommodation and meals. It was contended that the taxing officer never considered all those items and was never given opportunity to do so.

He added and contended that although it was within discretion of the court to award costs, according to law, Pemchand Leiclgud Ltd V anarry Service Ltd & others (1972) EA 162, it is that a successful litigant, ought to be fairly reimbursed for costs he has had to incur, but in this case, taxation was not fairly done.

He submitted that the appeal should be allowed with costs.

The respondents had nothing useful to add to what was contained in the judgment.

I carefully listened to Mr. Beitwenda, counsel for appellant and went through the memorandum of appeal and the proceedings and must state that Iam satisfied that there was no bill of costs presented to the taxing officer. Even in the absence of the bill of costs, what the appellant verbally presented was not considered as no reasons were given as to why only Shs. 40,000/= was taxed as the amount due to appellant. The taxing officer stated the appellant had exaggerated but no evidence of exaggeration was presented and considered.

Mr. Beitwenda stated that appellant had brought 2 witnesses with him 8 times and that on each occasion they were having accommodation and meals, but yet he had not presented this to the taxing officer. I would wonder how the taxing officer could consider what was not presented to him.

If the plaintiff was not ready to deal with taxation of his bill of costs, he ought to have asked for adjournment so that it was taxed when he was fully prepared. Otherwise talking of receipts and accommodation in Kabale and meals could now be considered as an afterthought.

In any case, this was Shs. 280,000/= before Currency Reform Statute which ~~demonelaged~~ demonatised our currency by cutting off two zeroes, and especially in 1986.

However, since I have not been presented with evidence so as to review and re-avaluate the evidence, I think Iam unable to make my own assessment/judgment as there is insufficient evidence upon which I can come to a sound decision. The remedy, in the circumstances, is to order a retrial by Magistrate Grade I so that he reviews all the relevant materials presented to the court.

Accordingly, the appeal is allowed but costs shall follow the results of the retrial of the taxation proceedings.

A.N. Karokora,
Judge,
2/11/93.

5/11/93: Mr. Beitwenda present.
Both parties present.
Judgment delivered.

A.N. Karokora,
Judge,
5/11/93.