

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL REFERENCE NO. 27 OF 2019

(ARISING FROM MENGU CIVIL SUIT NO. 726 OF 2016)

TWESIGYE NICHOLAS:..... APPELLANT

VERSUS

CLESSY BARYA KIIZA:..... RESPONDENT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING

BACKGROUND

The appellant brought this reference/appeal by chamber summons under **S. 62 of the advocates Act (Cap 267), Regulation 2 of the Advocates (Taxation of costs) (Appeals and References) Regulations and Article 126 of the Constitution** seeking orders that;

1. The exparte taxation ruling of the taxation officer/magistrate Mengo Chief Magistrate's Court at Mengo in Civil Suit **No. 726 of 2016** be reviewed and set aside.
2. The respondent's bill of costs in Civil Suit **No. 726 of 2016** be reviewed and set aside.
3. Costs be provided for.

The respondent instituted **C.S No. 726 of 2016** by summary procedure against the appellant for recovery of UGX 22,000,000/= (Twenty two million shillings) being an interest free credit loan given to the appellant on the **28th of April 2016** and to be repaid back within one month by **25th May 2016**.

On the **18th August 2016** Judgment was entered in default against the appellant and the respondent's bill of costs was taxed on the same date of **18th August**

2016 and a certificate of Taxation was issued by the taxing officer for UGX 3,068,000/= dated **18th August 2016** which is on court record.

The appellant being dissatisfied with the decision of the taxation master/magistrate filed this reference/appeal.

This reference/appeal was supported by an affidavit sworn by Twesigye Nicholas while the affidavit in reply opposing the reference/appeal was sworn by Clessy Barya Kiiza.

The appellant, Twesigye Nicholas represented himself while the respondent was represented by Counsel Atumanya Anxious.

Both counsel agreed to file written submissions which was done and court has considered the same in this ruling.

However, upon perusal of the written submissions by counsel for the respondent, I noticed that she had raised preliminary objections at **page 3 paragraph 6** of the written submissions. The raised preliminary objections are as follows;

1. That the civil reference/appeal was filed out of time.
2. That the appellant is not entitled to an order for review of the taxation of bill of costs in C.S No. **726 of 2016**.
3. That if this court entertains the matter, it would amount to approbation and reprobation.

It is thus prudent that the above preliminary objections should be resolved first before we proceed with the merits of this reference/appeal.

It should be noted that the appellant did not file any rejoinder to respond to the preliminary objections raised by counsel for the respondent in her submissions. However, court will go ahead to resolve the same before proceeding with the merits of the reference/appeal.

P.O 1: That the civil reference/ appeal was filed out of time C/S 62 (1) of the Advocates Act.

Counsel for the respondent in her submissions at **page 3 paragraph 7** submitted that this matter was filed out of time and it should be dismissed. Counsel relied on **S. 62 (1) of the Advocates Act** which provides that;

“Any person affected by an order or decision of the taxing officer made under this part of the act or any regulations made under this part of the act may appeal within 30 days to a judge of the High court who on that appeal may make any order that the taxing officer might have made.”

Counsel for the respondent in her submissions at **page 4 paragraph 1** submitted that the bill of costs was taxed and allowed on **18th August 2016** and this reference/appeal was filed in this court on the **29th of October 2019** more than 3 years from the time the taxation of the respondent’s bill of costs was taxed and allowed.

As I pointed out earlier, the appellant did not respond to the preliminary objections but I will go ahead to resolve the same.

Analysis of court

Section 62 (1) of the advocates Act provides that;

“Any person affected by an order or decision of the taxing officer made under this part of the act or any regulations made under this part of the act may appeal within 30 days to a judge of the High court who on that appeal may make any order that the taxing officer might have made.”

Furthermore, **Section 17 (2) (a) of the Judicature Act** grants this court powers to prevent abuse of court process by curtailing delays, in trials and delivery of judgment including the power to limit and discontinue delayed prosecutions.

Also under **S.33 of the Judicature Act**, this court has powers to grant such remedies to any of the parties in a suit before it if the remedies are legal or equitable to resolve controversies between the parties and finally determine the legal proceedings concerning the matter in question.

I have very carefully perused the lower court record and from the lower court record, the bill of costs was taxed and allowed on **18th August 2016 (see annexure AA to the affidavit in support of the reference/appeal)** while this reference/appeal was filed on **29th of October 2019** after 3 years contrary to the provisions of **Section 62 (1) of the Advocates Act**, and on this point I entirely agree with the submissions of counsel for the respondent.

In the case of *Njagi Vs Munyiri (1975) E .A 179* court held that;

“...for any delay to be excused, it must be satisfactorily explained.”

I have noted that the inordinate delay by the appellant whose bill of costs was taxed and allowed on **18th August 2016** but decided to appeal on the **29th October 2019** has not been explained in any way neither did the said appellant seek leave of court to file his reference/appeal out of time.

The instant case calls for termination to save this court from being turned into a warehouse of files containing unreasonably slow proceedings that contribute to the mischief of case backlog in this court.

In view of the above analysis, I uphold the preliminary objection raised by counsel for the respondent that this reference/appeal was filed out of time C/S 62 (1) of the advocates Act and without leave of court.

Having resolved the first preliminary objection that the reference/appeal was filed out of time as raised by counsel for the respondent, I do not find it necessary to proceed with other raised preliminary objections or the merits of the reference/appeal since this preliminary objection has disposed off the entire reference/appeal.

In the premises, this reference/appeal is therefore dismissed.

As regards the costs, considering the nature and circumstances of this reference/appeal, I am reluctant to grant costs.

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Emmanuel Baguma

Judge

16/11/2020