**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**MISC. APPEAL NO. 020 OF 2014**

**BAITAMWINE FREDA :::::::::::::::::::::::::::::::::::::::: APPLICANT**

***VERSUS***

**MUKWANO INDUSTRIES (U) LTD :::::::::::::::::::::: RESPONDENT**

**BEFORE: HON.JUSTICE STEPHEN MUSOTA**

**RULING**

This is a taxation appeal, filed by way of Chamber Summons under Section 98 of the Civil Procedure Act and Section 3(b) of the Judicature Act and Order 41 rules 1(a) and 9 of the Civil Procedure Rules for orders that;

1. The ruling and order of the registrar taxing master in Misc. Application No.197 of 2010 be set aside.
2. The advocate-clients bill of costs be declared null and void.
3. Costs of the application be provided for.

The applicant Baitamwine Freda is represented by M/S Walusimbi & Co. Advocates. The grounds upon which this application is premised are contained in the affidavit of the applicant but briefly are that;

1. An advocate- client bill of costs as filed by Baziregedde & Co. Advocates was taxed and allowed in the sum of 8,638,000/-
2. The registrar erred in law and fact when he entertained and proceeded with taxation of the bill of costs that was in contravention of the Advocates (Remuneration And Taxation of Costs) Rules, Statutory Instrument 127-4.
3. The taxing master erred in law and fact when he proceeded with the taxation of the advocates-client bill of costs yet the same was defective on the face of it and in material substance.
4. The taxing master erred in law and fact in awarding the said taxed costs of 8,680,000/= from a defective advocate client bill of costs.
5. The said bill of costs cannot by its nature be enforced against a client for want of form and materiality.
6. It is in the interest of justice that this appeal be allowed.

The applicant further deponed that the defects in the bill of costs are *inter alia* as follows;

(a) The bill sought to tax matters that occurred in courts of different hierarchy and jurisdiction before the registrar ie. Matters of the High Court and those of the Magistrate’s Court combined.

(b) The bill did not make the advocate intending to benefit from the taxed costs a party to the said bill of costs hence making its enforceability, void *abnitio*

In his affidavit in reply, the respondent justified his advocate-client bill of costs which was taxed by consent that it is not true that the bill was not taxed in accordance with the law but that even if this was true, the applicant has not stated the law that was broken and how she was prejudiced. That in the interest of justice, this application be dismissed because the respondent had personally conducted the applicant’s case for six years

I have considered this appeal and the submissions by learned counsel for the applicant and the only one who filed his submissions. I am in agreement with him that the learned taxing master erred in law when he entertained and proceeded to tax the advocate-client bill of costs which did not make the advocate intending to benefit from the bill of costs a party to the same thus making its enforceability impracticable. He also erred when he taxed a bill containing both the costs of the Magistrates’ Court and High Court.

The advocate-client bill of costs is in the name of the parties to the pending suit, i.e ***Baitamwine Freda Vs Mukwano Industries Uganda Limited, High Court Civil Suit NO 268 of 2008***.

It is trite that under Section 60(1) of the Advocates Act Cap 67 that every application for an order of taxation of an advocates bill or for delivery of such a bill and delivery of any deeds, documents and papers by an advocate shall be in the name of that advocate.

It was held in the case of ***Joseph B. Byamugisha t/a J.B Byamugisha Advocates Vs N S S F, Civil Reference 1912 inter alia that;***

***The advocate-client bill of costs is always between the advocates and the client of that advocate. It relates to costs that a party has to pay to the lawyer for legal services rendered whether in respect to proceedings in court of law or for some other transactions outside the court of law.***

The bill that was presented in this case was in actual fact a party to party bill of costs and not an advocate-client bill of costs because it was presented in the names of the litigating parties to a suit which is pending disposal.

I will therefore make a finding that the taxing master erred in law when he entertained the said bill of costs that was deffective, illegal and barred in law. I will therefore set aside the ruling arising from the same and strike the bill off the record.

Secondly, in the instant case, the provisions of Section 57(2)(b) of the Advocates Act was not followed. The bill was served on the advocate instead of the client personally. The said law provides that the bill must be delivered to the party charged with it either personally or by being sent to him or her by registered post or left for him or her at his/her place of business, dwelling house or last known place of aboard. The law further provides that where the bill is proved to have been delivered in compliance with the requirements above, it shall be necessary in the first instances for an advocate to prove the contents of the bill. This omission is a further confirmation that the taxing officer entertained a bill of costs that was improperly before court for being defective and in violation of the law.

Consequently I will allow this taxation appeal with costs.

**Stephen Musota**

**J U D G E**

**15.10.2015**