**THE REPUBLIC OF UGANDA**

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

**CIVIL DIVISION**

**MISC. CAUSE NO. 160 OF 2014**

**M/S KIGOZI SEMPALA MUKASA OBONYO**

**(KSMO) ADVOCATES ::::::::::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**ISAAC SENTONGO ::::::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE:** **HON. JUSTICE STEPHEN MUSOTA**

**RULING**

This is an application for leave to tax the applicant’s Advocate Client bill of costs as presented before court and provision of costs for the application. It was brought under Sections 57, 58 and 60 of the Advocates Act and Rules 10, 48 and 57 of the Advocates (Remuneration and Taxation of costs) rules, Order 52 rr 1,2&3 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act.

The grounds of the application are briefly set out in the Notice of Motion that:

1. The applicant firm of advocates was at all material times dully instructed by the respondent to execute several instructions.
2. The applicant diligently performed and carried out the instructions professionally.
3. It was well known by the respondent that the applicant executed the work for a fee as a professional service.
4. That inspite of several demands, the respondent ignored or neglected and/or failed to fully pay the applicant’s professional fees.
5. The respondent was given 30 days notice to clear the applicant’s bill of costs but ignored the same.
6. That this application is meritorious and it is in the best interest of justice that the orders sought be allowed.

Mr. Sempala David’s affidavit in support further expounds on the above grounds. The respondent filed an affidavit in reply pregnant with information about the objection to this application. I will not reproduce the same here.

During the hearing of this application Mr. Mujulizi Jamil appeared for the applicant and the respondent appeared in person. Parties were allowed to file written submissions in support of their respective cases.

I have considered the submissions filed by counsel for the applicant and that by the respondent. I have also considered the affidavit evidence and the law applicable.

The summary of the applicant’s case is that the respondent is under legal duty and obligation to clear the advocates fees having received and benefited from their services without objection during the pendency of several court cases. That the respondent instructed them to represent him in court. That as such he cannot turn around and avoid his obligation to clear the bill of costs.

On the other hand the respondent opposed the application that the same is misconceived and barred in law and he denied ever instructing the applicant firm of lawyers to represent him. That Nelson Onyango should be the person responsible for clearing the bill because he is the one who instructed them. That he instructed his own lawyers to represent him.

It is trite law that an advocate’s fees is only chargeable on his client and not any other person. A client is defined as a person or entity that employees a professional for help or advice in that professional’s line of work. In Uganda, under Section 1(b) of the Advocates Act, a client includes any person who as a principal or on behalf of another or as a trustee or personal representative, or in any other capacity has power express or implied, to retain or employ, and retains or employs or is about to retain or employ an advocate and any person who or may be liable to pay to an advocate any costs. This definition means that one can become a client in two ways either by:

1. Personally or through an agent instructing an advocate or
2. By being a person who may be liable to pay an advocate.

In the instant application, I am satisfied that the respondent indeed consumed the services of the applicant without objection as deponed in paragraph 7,8, 9, 10, 11 and 12 of the affidavit in reply. Although the respondent purports that the services he enjoyed were inadvertent, I am not convinced by that argument. Nothing is regarded as such in getting one’s professional services. There was no express or written agreement between the advocate and client for representation. Nevertheless the conduct of the parties must be taken into account.

In the instant case, the respondent should have rejected the representation by the applicant from the onset if he did not want the applicant’s legal services. He did not do this. Therefore the respondent cannot be allowed to benefit and then turn around and claim it was a gift from God. In fact he made the advocates believe that he accepted their legal services. He cannot come to this court and argue technicalities. It is just and equitable that he pays for the services he consumed.

However, since the respondent was not alone in the cases the applicant was involved in, the bill must be shared amongst them all. The respondent will pay only for the services before the time he withdrew instructions. This will be determined by the taxing master.

Consequently this application will be allowed. Let the Advocates Client Bill of Costs be filed for taxation in accordance with the law. The applicant shall get the taxed costs of this application.

I so order.

**Stephen Musota**

**J U D G E**

**23.11.2015**