

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC. APP. NO. ML 05 OF 2016

- 1. KABALE UNIVERSITY**
- 2. BOARD OF TRUSTEES OF KABALE UNIVERSITY**
- 3. PROF.G.W. KANYEIHAMBA :.....: APPELLANTS**

VERSUS

- 1. HENRY RWAGANIKA**
- 2. YOSAMU BAGUMA :.....: RESPONDENTS**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

1. In this appeal, the Applicant seeks this court to set aside the tax master’s *exparte* taxation ruling and orders therefrom and order a fresh taxation hearing *interparte*. The Appellants contend that the taxing master erred in law and fact when he proceeded *exparte* denying them a right to be heard during the taxation hearing and that the amounts of Ug. Shs. 15,000,000/= as instruction fees and Ug. Shs. 121,170,000/= in items 2-150 of the bill awarded were excessive and exorbitant. The Appellants also contend that the taxation ruling delivered on 11th April 2016 was injudiciously made as their previous counsel - Mr. Chris Bakiza had withdrawn from the case and all the Appellants were not personally served with the hearing notice of that day. The Appellants also contend that the taxing master used wrong principles governing taxation of costs and used a wrong value in determining the value of the subject matter in the application.

2. The Appellants are represented by Mr. Justine Semuyaba of M/s. Semuyaba, Iga & Co. Advocates and the Respondents are represented by Mr. Raphael Baku of M/s. Rwaganika, Baku & Co. Advocates.
3. The Respondents raised preliminary objections that they were served out of time with this application; the affidavit in support of this application was incurably defective and that there was a pending application for contempt of court that should take precedence over this appeal. In the interest of justice and in my discretion, I roundly reject these objections as I view them as only calculated to defeat the hearing of this appeal hence prejudicial to the Appellants.
4. In my discernment, the real issue for determination in this appeal is whether the taxing master properly proceeded *ex parte* to award costs of Ug. Shs: 15,000,000/= as instruction fees and Ug. Shs: 121,170,000/= in items 2-150 of the bill to the Respondents. It is not disputed that Bakiza & Co. Advocates represented the Appellants in Misc. cause No. 145 of 2014 in this court. The Respondents were Applicants and they were awarded costs. They proceeded to file for taxation before the taxing master and extracted hearing notices which they served on M/s. Bakiza & Co. Advocates. M/s. Bakiza refused to acknowledge service. Later they wrote a letter to court saying that they had no further instructions from the first Appellant.
5. The Respondents contend that the taxing master was alive to the need to act within the law as regards the amounts awarded. That the letter written by M/s. Bakiza & Co. Advocates confirms that M/s. Bakiza & Co. Advocates and M/s. Mugisha received service of the bill and hearing notice but refused to acknowledge receipt. That the letter from Bakiza and Co. Advocates was written in an apparent effort to frustrate the taxation proceedings and that the writing of the letter coupled with failure to attend court by counsel for the Appellants is a show of bad faith. The Respondents also contend that the appellants were properly and effectually served through their lawyers and that the amounts awarded by the taxing master are justified given the complicity of the issues handled in the main cause.

6. I have looked at the taxation hearing record. The hearing was on 23rd March 2016. On the same day the court received a letter from M/s. Bakiza and Co. Advocates notifying that they no longer represented the Appellants and that service should be made directly on the Appellants.
7. In circumstances where Bakiza and Co. Advocates informed court and the Respondent counsel that they were no longer counsel for the Appellants by the time of the taxation hearing, there was no proper service on the Appellants. The *ex parte* taxation hearing was therefore unfair and prejudicial to the Appellants. The taxing master ought to have first satisfied himself that the Appellant was effectively served within the requirements of the law. He should have adjourned to give the Applicants an opportunity to find a new lawyer or adequately prepare their defence. Change of lawyers for the Applicant warranted an adjournment to find new lawyers especially when it is considered that the taxation hearing had been fixed for the first time.
8. In these circumstances the taxing master's award was entered unfairly and is accordingly set aside. The file is sent back to the taxing master for the taxation hearing *interparte*. The taxing master can only proceed *ex parte* after satisfying him or herself that parties were properly summoned or served for hearing but failed to attend court without good cause. The execution proceedings that resulted from this taxation hearing are accordingly stayed until the taxing master hears the taxation afresh *interpartes*. To avoid acrimony between the parties, each party shall bear its own costs.

I so order.

Lydia Mugambe
Judge
21st December 2018.