



**IN THE HIGH COURT OF UGANDA SITTING AT GULU**

Reportable  
Misc. Civil Application No. 0011 of 2020

In the matter between

**OCIRA DENNIS**

**APPLICANT**

And

**OKWERA ALEX alias MUKUNGU**

**RESPONDENT**

**Heard: 23 June, 2020.**

**Delivered: 23 July, 2020.**

**Civil Procedure** — *Taxation of Bill of Costs* — section 62 (1) of *The Advocates Act and Regulation 4 of The Advocates (Taxation of Costs) (Appeal and References) Regulations*, — a person affected by an order or decision of a Taxing Officer may by way of summons in chambers supported by an affidavit appeal within thirty days of the decision — The affidavit in support should set forth in paragraphs numbered consecutively particulars of the matters in regard to which the Taxing Officer, whose decision or order is the subject of the appeal, is alleged to have erred. — *Ex-parte proceedings*— an order which is made on an application in the presence of counsel for both parties may not be correctly termed *ex-parte*.

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**RULING**

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**STEPHEN MUBIRU, J.**

Introduction:

[1] This is an appeal under the provisions of section 62 (1) of *The Advocates Act*, sections 64 and 98 of *The Civil Procedure Act* and Regulation 3 of *The Advocates (Taxation of Costs) (Appeal and References) Regulations*, seeking an

order setting aside that of the trial Court directing taxation of a bill of costs ex-parte. The application is premised on the ground that the trial court never afforded the parties opportunity to convene a pre-taxation meeting before it made that order. By his affidavit in reply, the respondent is opposed to the grant of the order sought, contending that it is premature and misconceived.

- [2] The background to the appeal is that the appellant filed an application before the trial court that was decided in his favour but the costs were awarded to the respondent. Counsel for the appellant was on 11<sup>th</sup> December, 2019 served with a taxation hearing notice, but when he turned up for taxation on 20<sup>th</sup> February, 2020 he argued that the parties should be allowed first to convene a pre-taxation meeting. He was overruled and the court directed that taxation proceeds. Counsel for the applicant opted to appeal that order.

#### Arguments of the Applicants.

- [3] In his submissions, the applicant argued that when the matter came up for hearing before the trial court, Counsel for the respondent moved court to dismiss the matter for want of prosecution. The court rightly declined to dismiss the matter and directed Counsel for the respondent to serve the applicant personally before the matter could proceed. When the matter next came up for hearing, Counsel for the respondent moved the court to dismiss it for want of prosecution, which the court did despite the fact that they had not complied with the court's order to serve the applicant personally. Counsel for the respondent swiftly prepared a bill of costs and fixed a date for taxation before the same Judicial Officer. On this occasion Counsel for the respondent was "miraculously" able to find the applicant and personally serve him with the taxation notice. The applicant then requested that a pre-taxation meeting be held before the taxation could be done as is required by the law and is mandatory but this request was also rejected. The request for leave to appeal the decision was also rejected

despite the fact that the applicant did not need leave to appeal a ruling arising from taxation under the Advocates Act, hence this appeal.

Arguments of counsel for the respondent.

- [4] In their submissions, counsel for the respondent, argue that counsel for the applicant chose to withdraw from the taxation proceedings after his preliminary objections opposing taxation of the bills of costs before a pre-taxation meeting is convened by both counsel. Counsel had as well applied for the presiding Magistrate to recuse herself which application had been rejected. To-date the bill of costs has not been taxed. The application therefore is not only frivolous but is also an abuse of process.

Appealing decisions of a Taxing officer.

- [5] Under section 62 (1) of *The Advocates Act*, a person affected by an order or decision of a Taxing Officer may appeal within thirty days of the decision. Under Regulation 4 of *The Advocates (Taxation of Costs) (Appeal and References) Regulations*, appeal is by way of summons in chambers supported by affidavit, setting forth in paragraphs numbered consecutively particulars of the matters in regard to which the Taxing Officer, whose decision or order is the subject of the appeal, is alleged to have erred. The decision appealed was made on 20<sup>th</sup> February, 2020 and the appeal was filed on 21<sup>st</sup> February, 2020. The only ground of appeal is that the parties ought to have been allowed first to convene “a statutory pre-taxation meeting.” It is the decision overruling that contention that the applicant characterises as an order of ex-parte taxation.
- [6] In its more usual sense, *ex-parte* means that an application is made by one party to a proceeding in the absence of the other (see *Jesse Kimani v. McConnell [1966] E.A. 547*). It would not be called *ex-parte* if the adversary had proper notice of it and chose not to appear to oppose it. Therefore, where a party’s

advocate asks for an adjournment and on it being refused withdraws, the subsequent proceedings are not *ex-parte* (see *Din Mohamed v. Lalji Visram & Co (1937) 4 E.A.C.A. 1*). In the other sense, an order which, in proceedings that are themselves inter-parties, is made on the application and in the presence of one party but in the absence of the other may be also correctly termed *ex-parte*, notwithstanding that the other party had notice of the application and chose not to appear. However, an order which is made on an application in the presence of counsel for both parties may not be correctly termed *ex-parte*.

[7] In the instant case in proceedings that were in themselves inter-parties, where counsel for the appellant raised an objection which was overruled, those proceedings cannot be deemed to have been *ex-parte* since there was at that time appearance on behalf of the appellant. The appellant did appear by his advocate duly instructed when the suit was called out for taxation of the respondent's bill of costs. On the other hand, this court has neither been presented with a certificate of taxation nor the record of proceedings of taxation as proof of the allegation that taxation of the respondent's bill of costs thereafter proceeded in the absence of and without notice to the applicant or his counsel. Indeed in his written submissions, the applicant states that the taxation is set to proceed *ex-parte* on the 19<sup>th</sup> of August 2020.

[8] It is argued by the applicant that the Taxing Officers decision to proceed with taxation of the respondent's bill of costs before the mandatory pre-taxation required by Regulation 13A of *The Advocates (Remuneration and Taxation of Costs) (Amendment) Regulations, 2018* was erroneous. In his view, this provision was intended to discourage the practice of conducting *ex- parte* taxations as well as to allow parties to build consensus which will quicken the process of taxation. Whereas it is true that this amendment was intended to expedite the process of taxation of costs, it was never intended to stifle that process. The provision places the burden upon the parties to take the initiative to meet and agree on such items as are not in dispute. This should ideally be done

within a reasonable time prior to the date fixed for taxation, or latest just before the taxation commences. The Taxing Officer's only obligation is to record those costs, fees and expenses that are identified as un-contested, if any, and then proceed to tax the costs, fees and expenses on which there is no agreement, if any.

[9] When the parties appear on the date fixed for taxation and have not mutually identified any costs, fees and expenses as un-contested, it is entirely within the discretion of the Taxing Officer either to accord the parties time to do so, if persuaded that there is sufficient reason for their failure to do so before that time, or to proceed immediately with taxation in the event that there is no sufficient reason advanced to explain that failure.

[10] In the instant case, apart from insisting that it is a mandatory step in the process, the applicant did not advance any justification for that failure. The Taxing officer therefore rightly decided to proceed immediately with the taxation. When the applicant waives his right to attend the taxation proceedings now to his knowledge fixed for 19<sup>th</sup> of August 2020 he cannot characterise such proceedings as ex-parte.

Order:

[11] In the final result, this application is therefore entirely misconceived and is accordingly dismissed with costs to the respondent.

Delivered electronically this 23<sup>rd</sup> day of July, 2020

.....Stephen Mubiru.....

Stephen Mubiru

Resident Judge, Gulu

Appearances

For the appellant :

For the respondent : M/s Kunihira and Co Advocates.