

THE REPUBLIC OF UGANDA
IN THE ELECTRICITY DISPUTES TRIBUNAL
COMPLAINT NO. 8 OF 2013

YUNIDA TRADERS COMPLAINANTS

VERSUS

UMEME LIMITED RESPONDENT

RULING

Counsel for the Respondent raised a preliminary objection on the ground that; Kakona Kwotek Advocates is a stranger to the record of proceedings, that there was no change of Advocates Notice filed by Kakona Kwotek Advocates and the said firm did not inform the parties that she had been instructed. The Notice on record is from Rwakafuzi & Co. Advocates and a Notice of change of Advocates filed by Banenya Mugalu and Co. Advocates.

Counsel for the Respondent relied on Regulation 2(1) of the Advocates Professional Conduct Regulations which provides that no Advocate shall act for any person unless he/she has received instructions from that person or duly authorized Agent.

Counsel for the Respondent further relied on the case of Okodoi George & another versus Akello Opaïra Sam HCT – 04- MA-0143 of 2016 where Hon. Justice Henry Kaweesi found that a prudent Advocate files a Notice of Instructions to avoid challenge.

Counsel further quoted Kabale Housing Estates Tenants Association versus Kabale Municipal Local Council CA. 15 of 2013 where Court noted that; a fact without instructions is incomplete.

Further, Counsel relied on Uganda Vs Patricia Ojangole Criminal Case No. 1/ 2014 Holding by Hon. J. Gidudu and the case of Okodoi George & another Akello Opaïra Sam HCT – 04- MA-0143 of 2016. Hon. Justice Henry Kaweesi on page 4 stated that instructions are given to the Law firm and not to an individual.

Counsel submitted that Kakona Kwotek Advocates the firm that filed the Bill of Costs acted without instructions.

She prayed that the Tribunal finds that Kakona Kwotek Advocates has no locus in this matter and the Bill is dismissed with Costs.

The learned Counsel for the Complainant in response argued that;

The Complaint was filed in 2013, by then the Complainant was represented by Rwakafuuzi & Co Advocates and he withdrew instructions and gave to Bananya Magulu and Co. Advocates.

They effected a Notice of Change as Bananya Mugalu & Co. Advocates and proceeded until 30/8/2017 when that firm ceased to exist. A Notice of Cessation of Business was

registered and on notice to the President Uganda Law Society the public was notified through the ULS that Bananya Magulu and Kakona Advocates dissolved and Kakona & Kwotek Advocates took up the file.

Counsel submitted that as an Advocate he represented the Complainant right from the time of amending the pleadings that were filed on 28/8/2014 by then under Bananya Magulu & Co. Advocates, that he perusal the file and prepared pleadings, hearing was made and concluded and the judgement was delivered.

Counsel for the Complainant relied on the case of Okodoi George & another versus Akello Opaïra Sam HCT – 04- MA-0143 of 2016. Where Hon. Justice Henry Kaweesi found that a prudent Advocate files a Notice of Instructions to avoid a challenge. However, Counsel for the Complainant stated that the Counsel of the Respondent in that case had moved out to another firm while in the instant case they moved from a firm that was dissolved and ceased to operate in 2017.

Counsel further argued that they submitted a letter to the President Uganda Law Society for change of name from Banenya Mugalu & Co. Advocates to Banenya Magalu and Kakona Advocates and another letter indicating that M/s Banenya Mugalu & Kakona Advocates was dissolved effective August , 2017 and that they be addressed as M/s Kakona and Kwotek Advocates in all future correspondences.

Counsel invited the Tribunal to distinguish the authority of Okodoi George and another versus Akello Apaïra Sam HCT – 04- MA-0143 of 2016. The Honourable J. Henry Kaweesi allowed the Appeal to be expunged, gave a remedy to the parties and directed that a proper Bill of Costs be filed in the name of the firm that is on record and taxed by the Registrar. The Judge was a live to the fact that Costs had been awarded.

Counsel prayed that the objection is overruled, a notice is served on the Respondent and a bill is taxed.

Counsel for the Respondent in rejoinder submitted that; Counsel for the Complainant concedes that they did not file a Notice of Change instructions / change of Advocates following the dissolution of the previous firm Counsel should have filed a Notice of Change of Advocates.

The learned Counsel Kakona Joel Geoffrey represented the Complainant while the learned Counsel Joan Nakalika appeared for the Respondent.

It is my finding that;

1. Bananya Mugalu & Kakona Advocates notified the Tribunal of their instructions and the same was on record until the matter was concluded, the said instructions were never withdrawn, and the change of Advocates Notice was never filed and served, therefore, the rightful firm to file the Bill of costs should have been Banenya Mugalu & Kakona Advocates. From the Holding in Okodoi George and another versus Akello Apaïra Sam HCT – 04- MA-0143 of 2016. (supra) which I concur with, the instructions go to the law firm and not to the individual Advocate.

2. The Notice of deregistration of Bananya Mugalu & Kakona Advocates and that of change of name to Kakona & Kwotek Advocates addressed to the President of Uganda Law Society did not amount to a notice to the Tribunal and parties herein as the same was never entered on record in this matter.
3. The fact that there was no Change of Advocates Notice filed does not in itself determine whether instructions were given or not, instead, implied consent to legal representation is attributed to the attendance made by Counsel and the Complainant together in the Tribunal for the matter.

I hold that; Kakona & Kwotek Advocates failure to file a Notice of Instructions / Notice of Change of Advocates was a great omission that is not condonable, it is agreeable that; a prudent Counsel owed to have notified the Tribunal and the parties of the change of Advocates. Notice of instructions and or change of Advocates notices among others help avoid disputes over costs in cases.

The tribunal is alive to the fact that the costs accrue to the Complainant against the Respondent and it is just and fair that the Bill of Costs on record is taxed with undue regard to technicalities. *See Article 126 (e) of the 1995 Constitution.*

The question is which firm has the locus to file the bill of costs? as much as Kakona Kwotek Advocates omitted to file and serve a Notice of Change of Advocates, it is undisputed that the previous firm that handled this matter was dissolved, thereafter, Kakona & Kwotek Advocates took up the file and the same Counsel that filed the Bill of Costs represented the Complainant at the hearing of the matter until judgement.

Considering the above, the objection is hereby overruled, each party bears its own costs and it is ordered that the Bill of Costs on record be taxed.



Cheptoris Sylvia

REGISTRAR.

8/9/2020