THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

HCT-03-CV-RC-019-2022

(ARISING FROM CIVIL SUIT NO.037 OF 2017)

PASTOR ZACHARIA SERWADA::APPLICANT

VERSUS

TSMP (U) LTD *(Suing through an Attorney BOB NAPINDER SINGH DHILLON*::RESPONDENT

Application for Revision

Held: *This Application is GRANTED. An Order is hereby made for learned Counsel for the Applicant to comply with the Ruling delivered by His Worship Okumu Jude Muwone, in paragraph 1, whereby he stated that "The current Advocate for the Defendant in this case is supposed to file his own Bill of Costs and annex the Bill of Costs of the first Advocate."*

The file is hereby returned to the Chief Magistrate Court for the Bill of Cost so filed to be presented again and taxed in accordance with the law.

The costs of this Application are awarded to the Applicant.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

RULING

This Ruling follows an Application brought under **Section 98 and 83 of the Civil Procedure Act Cap 71** seeking for orders that:-

1. The order for the dismissal of the Defendants Bill of Costs vide **Civil Suit No.37 of 2017** be revised.
2. The magistrate irregularly dismissed the Defendants Bill of Costs vide **Civil Suit No.37 of 2017**.
3. That the taxation for **Civil Suit No.37 of 2017** be re-instated and taxed before a different magistrate
4. Costs for the application.

The grounds upon which this Application are that:-

a) That the taxation hearing of **Civil Suit No.37 of 2017** was fixed for hearing on the 23rd of November 2022 at 12 0'clock.
b) That his lawyers and due to unavoidable circumstances were not able to make it for the taxation hearing for the Bill of Costs.
c) That the Magistrate dismissed the Bill of Costs because of the non-appearance of the defendants.
d) That the dismissal was irregular/illegal.
e) That is just, fair and equitable that the application be granted.

The above stated grounds are reiterated in the Affidavit in support of the Application deponed by **Pastor Zachariah Sserwada,** the Applicant, the gist of which are that the:-

1. Respondent instituted **Civil Suit No.37 of 2017** against him in the Chief Magistrate Court of Jinja, at Jinja.
2. Matter was concluded and Judgment entered in favor of the defendant; and accordingly his lawyers filed a Bill of Costs and the same was fixed for taxation on the 23rd of November 2022.
3. His lawyers and him were not able to make it on the day the fixed for the taxation of the defendants' Bill of Costs.
4. Magistrate dismissed the defendant's Bill of Costs for no appearance.
5. He has been informed by his lawyers, M/S. Songon & Co. Advocates whose advise he verily believes to be true, that the dismissal was irregular/illegal, and not backed by any law.
6. Magistrate exercised power not vested in him by law; and that this court has the power to call the above file and revise the same.
7. It is in the interest of justice that this application be granted; and whatever he has stated herein is true to the best of his knowledge and belief save for paragraph 8 and 9 whose source he verily believe to be and he has herein duly disclosed.

The Respondent filed an Affidavit in Reply deponed by **Bob Napinder Singh Dhillon**, in which he averred that together with his lawyers of M/S Malinga, Kinyiri & Co. Advocates, he had read and understood the contents of the Applicant's Application and replied as hereunder:-

1. He has been advised by Respondent's lawyers mentioned above whose advice he believes to be true that the instant Application is misconceived and incompetent in seeking to revise the Orders of the Chief Magistrate for the dismissal of the Applicant's Taxation of Costs Application.

2. The Respondent's lawyers mentioned above were served with a Taxation Hearing Notice fixed for 23/11/2022 at 12:00pm.
3. On 23/11/2022 at 12:00pm when the Application was called for hearing, neither the Applicant nor his lawyers were present in Court for the hearing of their Taxation Application.
4. That Taxation of Costs Hearing is a legal Civil Proceeding and a Court process.
5. The Chief Magistrate acted within the purview of the law in treating the Applicant's impugned Application as a legal proceeding of a civil nature when he dismissed the same under **Order 9 Rule 22 of the Civil Procedure Rules,** for non-appearance by the Applicant when the Application was called for hearing on 23/11/2022.
6. The Applicant for purposes of the impugned Taxation of costs Application was a plaintiff and the Respondent was a defendant respectively.
7. That he deposed this Affidavit in opposition to the Application for Revision of the Chief Magistrate's Order for reasons given hereinabove; and whatever he has stated hereinabove is true and correct to the best of my knowledge, save for the contents of paragraphs 3, 6, 7 and 8 whose source is disclosed therein.

REPRESENTATION

When this Application came before me for hearing, the Applicant was represented by Counsel Songoni Mustafa of M/S. Songon & Co. Advocates, while the Respondent was represented by Counsel Kinyiri Juma of M/S. Malinga, Kinyiri & Co. Advocates.

Both parties were directed to file written submissions and they have all complied. I have analyzed the same and relied on them in this Ruling.

BACKGROUND

The background for this Application is that the Respondent filed **Civil Suit No. 37of 2017** against the Applicant/Defendant in 2017 and the matter was dismissed with costs against the Respondent/Plaintiff on the 3rd day of March 2021 for lack of pecuniary jurisdiction by His Worship Elias Kakooza, the then Chief Magistrate.

On 24th day of August 2021, the Applicant/ Defendant filed his Bill of Costs of Shs. 5O, 379,000/= and applied that his Bill be taxed before this court.

When the matter came up for taxation on the 6th day of April 2022, Counsel Godfrey Malinga and Juma appeared for the Plaintiff/Respondent and raised a preliminary objection on the point of law in respect of this Bill of Costs. According to their objection, the Bill is for two Counsel, thus Counsel Asingwire & Co. Advocates and Counsel Songoni & Co. Advocates, and yet there is no Certificate of the two Counsel for purposes of recovering the costs as provided for under **rules 41 of The Advocates (Remuneration Taxation of Costs] Rules,** which would allow a Bill of this nature to be presented for taxation.

To them, no Certificate or separate Certificate certifying the costs for two Counsel has been presented before this court which is contrary to rule 41. In his ruling, His Worship Okumu Jude Muwone delivered on the 3rd day of May, 2022, upheld the preliminary objection and found that the Bill of Costs was not proper before this court because it flawed the provision of **Rule 41 of the Advocates [Remuneration and Taxation of Costs] Rules** and it was struck out.

Being dissatisfied with the decision, the Applicant brings this application for revision by Motion under **Sections 83 and 98 of the Civil Procedure Act, Section 17 of the Judicature Act, Order 52 Rules 1 and 3 of the Civil Procedure Rules** against the Respondent.

The order for the dismissal of the defendants' Bill of Costs vide **Civil Suit No.37 of 2017** be revised. The Magistrate irregularly dismissed the defendants Bill of Costs vide **Civil Suit No.37 of 2017**; and Costs for the application.

THE LAW

Section 83 of the Civil Procedure Act provides that;

*"**Revision***

The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and if that court appears to have—

(a) exercised a jurisdiction not vested in it in law;

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,

The High Court may revise the case and may make such order in it as it thinks fit; but no such power of revision shall be exercised—

(d) unless the parties shall first be given the opportunity of being heard; or

(e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person".

Section 98 of the Civil Procedure Act Cap 71 provides that;-

"***Savings of inherent powers of court***

Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".

This section gives the High Court wide discretionary powers to make any just orders to meet the ends of justice or to prevent abuse of the process of the court.

RESOLUTION OF THE APPLICATION

In his submissions, learned counsel for the Appellant cited **Black's Law Dictionary (9th Edition),** defines Revision as; *"a re- examination or careful review for correction or improvement or an altered version of work".*

They submitted that the parameters for the High court to properly apply in its revisional Jurisdiction are set out under **Section 83 of the CPA** that provides as follows;

"*The High court may call for the record of any case which has been determined under this Act by any Magistrate's court and if that court appears to have;*

a) Exercised a jurisdiction not vested in it in law

b) Failed to exercise a Jurisdiction so vested

c) Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice, The High court may revise the case and may make such order in it as it thinks fit..."

They relied on the case of ***Mabalaganya v. Sanga (2005) E.A 152***, where it was held that; *"in cases where High Court exercises its revisional powers, its duty entails examination of the record of any proceedings before it for the*

purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High court".

That deducing from the above, decisions are revised when the trial Magistrate fails to exercise his or her Jurisdiction or where he or she acts illegally or with material irregularity or unjustly. In the instant case, they submitted that the learned Chief Magistrate exercised his power illegally as he did not have any law to support the dismissal of the defendant's Bill of Costs in **Civil Suit No. 37 of 2017**.

That the law governing taxation of advocate's costs are; **the Advocates Act** and **Advocates (Remuneration & Taxation of Costs) Regulations Statutory Instrument 123 of 1982.** These rules are made under **paragraph (e) of subsection (1) of section 77 of the Advocates Act Cap 267.**

The taxation of advocate's Bill of Costs in the high court and the magistrates' courts is governed by the 6th Schedule of the said rules.

Rule 11 of the Advocates (Remuneration & Taxation of Costs) Regulations Statutory Instrument 123 of 1982 provides that:-

"Any advocate who, after due notice, fails without reasonable excuse to appear on the date and at the time fixed for taxation or on any date and time to which the taxation is adjourned or who, in any way, delays or impedes the taxation or puts any other party to unnecessary or improper expense relative to the taxation shall, on the order of the taxing officer, forfeit the fees to which he or she would otherwise be entitled for drawing his or her bill of costs and attending the taxation and shall in addition be personally liable to pay for any unnecessary or improper expenses to which he or she has put any party; and the taxing officer may proceed with the taxation ex parte".

Rule 54 of the same rules also provides that: -

"the taxing officer shall have power to proceed to taxation exparte in default of the appearance of either or both parties or their advocates, and to limit or extend the time for any proceedings before him or her, and for proper cause to adjourn the hearing of any taxation from time to time".

That these are the only provisions under which the Chief Magistrate as the taxing officer had to proceed under when there was non-appearance of the defendants for the taxation of the defendant's Bill of Costs; but instead, the

learned chief magistrate grossly misguided himself when he proceeded under a wrong law thus under **Order 9 rule 22 CPR** to dismiss the Bill of Costs for non-appearance.

Order 9 rule 22 CPR provides for Procedure when defendant only appears and reads;

"*Where the defendant appears, and the plaintiff does not appear, when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part of it, in which case the court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.*"

That with due respect the learned Chief Magistrate, the above provision of the law does not in any way apply to a Bill of Costs or let alone the current scenario. The rule talks about the absence of the plaintiffs and not the Defendant. In this case the plaintiff was in court, it was the Defendant that that came in late.

Secondly, that the rule refers to a suit, but this was a Bill of Costs, which is an incidental pleading. The magistrate was wrong to have treated a Bill of Costs as suit. They therefore submitted that the law under which he proceeded to dismiss the Bill was a wrong law with wrong principles and invited court to revise the order.

Further, that the Chief Magistrate in dismissing the defendant's Bill of Costs did not follow the law governing taxation of advocates' costs, which is **The Advocates (Remuneration & Taxation of Costs Regulations Statutory Instrument 123 of 1982, but instead applied Order 9 rule 22 of the CPR;** which does not apply in taxation matters. Therefore, such dismissal was illegal, irregular and not supported by any law.

They prayed on the above premises that court finds that the Chief Magistrate's dismissal of the defendant's Bill of Costs illegal/irregular; and or the Chief Magistrate exercised powers that he did not have, or wrongly exercised his powers. Revise the same and sets aside the taxation for **Civil Suit No.37 of 2017** be re-instated and be taxed before a different Magistrate; and costs for the application be provided for by the Respondent.

In reply, learned counsel for the Respondents raised points of law and submitted that the application for Revision of the decision of the Chief Magistrate, His Worship Okumu Jude Muwone of the 23rd day of November,

2022 wherein he dismissed the Applicants taxation application under **Order 9. Rule 22 of the CPR** is incompetent misconceived, bad in law and an abuse of Court process.

They contended that the Application is supported by the affidavit of the Applicant, which upon interrogation is found not to be factual and or confined to such facts as the deponent is able of his own knowledge to prove. This is provided under **Order 19 rule 3(1) of the CPR**, where the only exception is for interlocutory applications where a deponent can swear an affidavit based on belief and information.

The strict application of this rule was discussed in the case of ***Besigye Kiiza vs. Museveni Yoweri & Electoral Commission. Presidential Election Petition No. 1/ 2001 reported in (2001) KALR1.*** At page 13 where court stated that:-

"*... Affidavits based on information and belief should be restricted to interlocutory matters. In proceedings, which finally determine the matter, only affidavits based on the deponent's knowledge should be acted upon.*

Further at page 14, court held that an affidavit based on information given to the deponent by someone else is hearsay and inadmissible.... "

In view of the law and the Supreme Court authority above cited, the instant application is not an interlocutory one, but one originating action as a revision cause. They submitted that the affidavit in support of the application is inadmissible and should be struck off for not complying with the law above.

Further, that in the absence of an affidavit in support of the Application, the application must collapse as per the case of **M/S *Jobconnect (U) Ltd vs. DFCU Bank LTD HCMA No. 627 of 2014,*** which cited the case of ***Kaingana v Dabou Boubou (1986) HCB 19*** among others for the holding that:- "*where an the application is grounded on evidence by affidavit, Notice of motion cannot on its own be a complete application without the affidavit. Therefore, in the instant case, the Notice the application is of Motion alone was not enough....incompetent without the supporting affidavit and cannot stand.*"

That the said Application for taxation was dismissed following the non-appearance of the Applicant when the application was called for hearing. The Applicant should have applied for an Order to set aside the dismissal by the learned Chief Magistrate upon satisfying Court that there was sufficient

cause for non -appearance when the suit was called on for hearing, as is provided under **Order 9 rule 23 of the CPR;** or in the alternative appealed against the Order of dismissal under **Order 44 of the CPR.**

They argued that the Chief Magistrate made his Orders pursuant to **Order 9 rule 22 of the CPR** and the deal procedure would be to challenge it through the same **Order, or Order 52 of the CPR.**

They therefore submitted that this application is not properly before Court. That Revisional power of this Court are derived from **section 83 of the CPA**. As was held by the Hon. Mr. Justice Stephen Musota in ***Olegum Joseph vs Arono Betty High Court Civil Revision No. 13 of 2011,*** "*the above section refers to irregular exercise or non-exercise of Jurisdiction. It does not refer to conclusions of law or fact in which a question of jurisdiction is not involved*".

They submitted that the learned Chief Magistrate had the jurisdiction to entertain not only the Application for taxation considering that it is the same court that awarded the costs, but also the Respondent's prayer to dismiss the Taxation Application under **Order 9 rule 22 of the CPR** since the same application was filed before him as the Taxing Master.

They also cited ***Sentamu Jamilu & Ors vs Sekatawa Haruna Civil Revision No. 021 of 2018,*** per Hon. Justice Oyuko Anthony Ojok, while citing with approval the Privy Council case of ***Amir Khan vs Sheo Baksh Singh (1885) 11 CA 16, A 237*** thus;-

"*It will be observed that S.83 Civil Procedure Act applies to Jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact if the question of jurisdiction is not involved... ... it is settled that where a court has jurisdiction to determine a question, it cannot be said that it acted illegally or with material irregularity because it has come for erroneous decision on the question of fact or even law.*'

That in the instant case, the learned Chief Magistrate had the jurisdiction not only to entertain the Taxation Application, but also the Application for dismissal of the Taxation Application under **Order 9 Rule 22 of the CPR**, a prayer that was made after the suit/application had been called for hearing. That, it is very clear from the record that the instant Application does not merit the criteria set out in **Section 83 of the CPA** and should accordingly be dismissed with costs.

That **Order 9 Rule 22 of the CPR** provides thus;

"*Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part of it, in which case the court shall pass a decree against the defendant upon Such admission, and , where part only of the claim has been admitted shall dismiss the suit so far as it relates to the remainder.*"

Section 2(x) of the CPA defines a suit thus;

"*suit means any proceedings commenced in any manner prescribed*".

Section 2(q) defines 'prescribed' to mean "*prescribed by the Rules*'"

And

Section 2 (t) of the CPA defines Rules as "*Rules and forms made by the rules committee to regulate the procedure of courts.*'"

They submitted that the Taxation Application amounts to a suit as defined above and in that case, the Applicant becomes the Plaintiff and the Respondent becomes the Defendant for purposes of the Application/Order. It would be wrong to fault the jurisdiction of the learned Chief Magistrate in terms of legality and regularity.

In specific response to the Applicant's submission and allegation that the learned Chief Magistrate exercised his power illegally as he did not have any law to support the dismissal of the defendants Bill of Costs in **Civil Suit No. 37 of 2017**, they submitted that:-

Firstly, what was dismissed was not the Bill of Costs, but the application for Taxation of the Bill of Costs, and the same is reflected on the record. That **Section 27 of the CPA** originates the discretion of court in the award of costs, and the same was summarized in the case of ***Candiru vs. Amandua & 2 Ors H.C Civil Suit No.19 of 2014,*** per Mubiru J thus;

" *in deciding this issue, this court is guided by the provisions of section 27 (1) of the Civil procedure Act which confers upon a Judge the discretion and full power to determine by whom and out of what property and to what extent costs incident to all suits are to be paid, and to give all necessary directions for that purpose.... Ordinarily, costs follow the event and a successful litigant receives his or her Costs in the absence of special circumstances justifying some other order...* "

That **Order 21 rule 8 of the CPR** highlights the jurisdiction of a Magistrate in matters of taxation of Bills of Costs in as far as it mandates him/her to sign the Certificate of Taxation separate from the Decree or Order. In essence as a court which heard the case and awarded the costs, and the learned chief Magistrates mandate being outlined as above, the Court is clothed with jurisdiction and discretion in managing the said award; and one cannot therefore argue that there was no law to support the order by the learned Chief Magistrate.

The above read together with **section 207 (5) of the Magistrates Courts Act, Cap 16** to the effect that;-

“A magistrates Court may grant any relief which it has power to grant under this Act or under any other written law and make such orders as may be provided for by this Act or any written law in respect of any case or matter before the Court."

Further, that the current application unfairly alleges the illegal exercise of power and the absence of a law to support the decision of the learned Chief Magistrate. The Chief Magistrate exercised jurisdiction vested in him when he entertained the Applicant's Application for Taxation of Costs.

That even if this Court finds that the learned Chief Magistrate erred in his deliberate exercise of his jurisdiction, and the application of the law, specifically **Order 9 rule 22 of the CPR**, it does not merit an application for Revision as he acted within his Jurisdiction, and the order can only be faulted by way of an Appeal, or in the alternative, an Application for Reinstatement of the Application.

That the Applicant herein has attempted to smuggle the Application for Reinstatement of the dismissed Application through his prayers. They submitted that the same can only be done in the court that dismissed the Application and upon satisfying court that there was sufficient cause for his nonappearance, under **Order 9 rule 23 of the CPR**, and not through a Revision Application such as the instant one.

The Applicant also prays for taxation before a different Magistrate without giving any reason for the said unfortunate prayer, considering that Civil Suit No. 37 of 2017 was heard and decided by the Chief Magistrate, who awarded the costs to the applicant herein and is therefore mandated to tax the said costs accordingly and regulate the process accordingly. It would also appear to be self-defeating for Court to order the Chief Magistrate to surrender the matter to a subordinate for taxation, for no apparent reason.

They prayed that this Honourable Court be pleased to dismiss the Application with costs to the Respondent, as it does not merit the criteria set out in the law for a Revision Application. That there is nothing to be revised, the Application is incompetent and lacks merit. It does not satisfy the requirements set out under **section 83 of the CPA.**

In rejoinder, learned counsel for the Applicant's submitted that he had read the Respondent's Affidavit in Reply and the attendant submissions; and noted that they do not in any way attack the merits of the Application, but have raised farfetched Preliminary Points of Law to which they responded or rejoined as follows;

That whereas they agree with Counsel for the Respondent on the principles embedded in the case of ***Besigye Kizza vs Yoweri Kaguta Museveni P.E.P 1 of 2001***, the principles in that case do not apply to the current case as there is no paragraph in the Applicant's Affidavit in Support that offends the law. In fact, Counsel has not even mentioned the individual paragraphs which he says offends the law, but has instead made general allegations without substantiating the same.

Similarly, that the case of ***MVS Job Connect (U) Ltd -vs-DFCU Bank Ltd HCMA 627 of 2014*** is quoted out of context and does not apply to the current case. They reiterated their submission that the dismissal of the Bill of Costs under **Order 9 Rule 22 CPR** was erroneous; and the respondent's contention that they would have applied to have the same reinstated or appealed against the decision under or **rule 44** is erroneous and misleading, in so far as none of those provisions of the law apply to a Bill of Costs.

That a Bill of Costs is regulated or taxed under the **Advocates Act and Advocates (Regulations SI 123 of 1982);** it is not regulated by **the CPR** as counsel for the Respondent wants us to believe. That if that was the intention of the draftsman, then would have been clearly stated in the **Advocates Act** and the **Regulations** thereto.

They referred to **regulation 11 of the Advocates (Remuneration & Taxation of costs) Regulations** which empowers a Judicial Officer to tax exparte, in the absence of the opposite counsel is very clear on what a Judicial Officer is supposed to do, in case an advocate fails to turn up for a taxation or causes a delay of the taxation.

In summary, that the Magistrate proceeded under a wrong law to dismiss the Bill of Costs and passed an illegal verdict, which is not provided for by the parent law. There is no provision empowering a Judicial Officer to dismiss a

Bill of Costs because counsel is late or absent. The Judicial Officer has to proceed and tax the Bill in the absence of counsel.

In the premises that the current Application falls within the ambit of **section 83 of the CPA,** because the Magistrate illegally and irregularly handled a legal process; it cannot be confined to setting aside or appealing. They invited court to revise the decision of the Magistrate.

RESOLUTION OF THE APPLICATION

I have carefully analyzed this Application and the supporting Affidavit, the law under which it was brought and Affidavit in Reply and the submissions of both sides as captured in this Ruling. The only issue in this Application is;-

i. **Whether this is a proper case for Review of the decision of the Taxing Master?**

The current Application is for Revision and the major objective, purpose and import of **Section 83 of the CPA (supra)** is to deter Magistrate Courts from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. It vests the High Court with authority and power to ensure that the proceedings of the Magistrate Courts are conducted in accordance with the law, within the bounds of their jurisdiction and in furtherance of justice.

Further, under **Section 17 (1) of the Judicature Act**, the High Court is vested with supervisory powers over Magistrates Courts and this power enables the High court, when necessary, to correct errors of jurisdiction committed by subordinate courts and provides means to an aggrieved party to obtain rectification of orders entered without jurisdiction and have occasioned injustice to them.

In ***D.L.F Housing and Construction Co. Ltd vs Sarup Singh (1996) 3 SCC 807: AIR (1971) SC 2324***, the Supreme Court observed that; *"The words illegally and with material irregularity as used in this clause do not cover either errors of fact or of law; they do not relate to the decision arrived at, but rather the manner in which it's reached. The errors contemplated in this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate, and not to errors either of fact or law, after the prescribed formalities have been complied with."*

Relating the above to this matter and having carefully analyzed and examined the manner in which His Worship Okumu Jude Muwone dismissed

the Applicant's Bill of Costs in **Civil Suit No.37 2017** on a Preliminary Objection raised by counsel for the Respondent. The principles of taxation of Advocates' Bills have time and again been stated by the courts on references, following the decision in the case of ***Premchand Raichand Ltd. & Another v. Quarry Services of East Africa Ltd. & Others [1972] EA 162.***

They were re-stated in the case of ***Akisoferi Ogola v. Akika Othieno & Another, C/A Civil Appeal No. 18 of 1999*** as follows: -

i. The court will only interfere with an award of costs by the taxing officer if such costs are so low or so high that they amount to an injustice to one of the parties.
ii. Costs must not be allowed to rise to such a level so as to confine access to the courts only to the rich.
iii. That a successful litigant ought to be fairly reimbursed for costs he or she has to incur.
iv. That the general level of remuneration of advocates must be such as to attract recruits to the profession, and finally,
v. That as far as possible there should be some consistency in the award of costs.

I am also alive to the law that a decision from the Magistrate's Court is only revised where the trial Magistrate fails to exercise his or her jurisdiction or where he or she acts illegally or with material irregularity or injustice.

In the first place, I have taken time to analyze all the records related to this case. I have found that it was filed in court on the 23rd day of June 2017 by the Respondent, whose cause of action was that the Applicant was trespassing on his suit property. The Applicant/Defendant filed his defence and witness statements and scheduling was conducted. Witnesses gave their evidence in court until the time of Judgment, which was delivered on 3rd March, 2021 where the suit was dismissed for lack of pecuniary jurisdiction after a period of 04 years in court.

It is therefore not surprising to me that the justice of the case required that the Applicant is entitled to his costs. It is undisputed that the Applicant defended the suit for a period of 04 years and it would have been unjust to deny him costs on a mere technicality, which in my view does not go to the root of the case.

I have also analyzed the submissions of both learned counsel. For the Respondents, I do not agree with them since they are just diversionary and have not addressed the issues at hand.

Secondly, **the Advocates (Remuneration and Taxation of Costs) Regulations SI 123 of 1982 Regulation 41(1)**; provides for costs of more than one advocate to be certified by the judge and states that;-

"The costs of more than one advocate may be allowed on the basis hereafter provided in causes or matters in which the judge at the trial or on delivery of judgment shall have certified under his or her hand that more than one advocate was reasonable and proper, having regard, in the case of a plaintiff, to the amount recovered or paid in settlement or the relief awarded or the nature, importance or difficulty of the case and, in the case of a defendant, having regard to the amount sued for or the relief claimed or the nature, importance or difficulty of the case."

(2)A certificate for two counsel may be granted under this regulation in respect of two members or employees of the same firm.

Regulation 11 of the Advocates (Remuneration and taxation of costs) Regulations SI 123 of 1982 provides that;-

"Any advocate who, after due notice, fails without reasonable excuse to appear on the date and at the time fixed for taxation or on any date and time to which the taxation is adjourned or who, in any way, delays or impedes the taxation or puts any other party to unnecessary or improper expense relative to the taxation shall, on the order of the taxing officer, forfeit the fees to which he or she would otherwise be entitled for drawing his or her bill of costs and attending the taxation and shall in addition be personally liable to pay for any unnecessary or improper expenses to which he or she has put any party; and the taxing officer may proceed with the taxation ex parte". **[Emphasis Mine]**

Regulation 2 of the Advocates (Remuneration and Taxation of Costs) Regulations SI 123 of 1982 provides for the Application of Regulations and it states that;-

"The remuneration of an advocate of the High Court by his or her client in contentious and non-contentious matters, the taxation of that remuneration and the taxation of costs as between party and party in contentious matters in the High Court and in magistrates' courts shall be in accordance with these Regulations".

The above confirms that taxation of Bill of Costs is under the above stated law; and there was no need for the learned Chief Magistrate to invoke the **CPR.** The fact that the Applicant and his Advocate were absent on the date when the Bill was fixed for hearing is also accommodated in the procedure for hearing such Applications.

It was therefore not necessary to entirely dismiss the Bill of Costs, since the law under which Taxation of Bill of Costs is clear and gives room for a Taxing Master to tax the Bill exparte as provided under **Rule 54** of the same rules which reads that:-

"...the taxing officer shall have power to proceed to taxation exparte in default of the appearance of either or both parties or their advocates, and to limit or extend the time for any proceedings before him or her, and for proper cause to adjourn the hearing of any taxation from time to time".

The above law is clear that even in the absence of any of the parties or their advocates, there is no bar that would preclude a Taxing Master from taxing a Bill of Cost before him or her once notice of the date of doing so has communicated to the parties.

The net outcome of the above is that while it is not denied that the learned Chief Magistrate was clothed with jurisdiction, he nevertheless acted in the exercise of its jurisdiction illegally and with material irregularity or injustice; and this is the gist of this Application.

The above therefore means that this is a proper case for the High court to exercise its powers of revision. I have also beefed up by decision with **126(2) (e) of the Constitution of the Republic of Uganda 1995** which is to the effect that substantive justice should be exercised by courts with undue regard to technicalities. In ***Horizon Coaches vs. Edward Rurangaranga and Mbarara Municipal Council SCCA No. 18/2009 (unreported***), Katureebe JSC, as he then was, held as follows:

"*Article 126 (2) (e) of the Constitution enjoins Courts to do substantive justice without undue regard to technicalities. This does not mean that courts should not have regard to technicalities. But where the effect of adherence to technicalities may have the effect of denying a party substantive justice, the Court should endeavor to invoke that provision of the Constitution. "*

Additionally, upon further scrutiny of the order emanating from the Ruling delivered by His Worship Okumu Jude Muwone, in paragraph 1, it was ordered that;-

1. *"The current Advocate for the Defendant in this case is supposed to file his own Bill of Costs and annex the Bill of Costs of the first Advocate."*

The above is proof that the learned Chief Magistrate was alive to the fact that two firms of Advocates were involved in defending the suit; and it is only fair that two Certificates are presented for taxation. The taxation for **Civil Suit No.37 of 2017** is hereby re-instated and should be taxed before the current Chief Magistrate Jinja.

It is therefore my decision that this is a proper case for Revision. The decision of the Taxing Master to dismiss the whole Bill of Costs under **Order 9 rule 22 of the CPR** is vacated; and replaced by the decision of this Honourable Court.

Finally, it is now well established law that costs generally follow the event as per **S. 27 (2) of the CPR,** which provides that:-

"Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of an incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid".

See also ***Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)*** and ***Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35***.

Indeed, in the case of ***Sutherland vs. Canada (Attorney General) 2008 BCCA 27*** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a *'reasonable expectation'* of obtaining an order for costs.

In the instant case, the Applicant has succeeded in this Application; and I see no justifiable reasons to deny him costs. He is therefore awarded the costs in this Application. My decision is that: -

1. This Application is GRANTED.
2. The taxation for **Civil Suit No.37 of 2017** is hereby re-instated and shall be taxed before the current Chief Magistrate Jinja.

3. An Order is hereby made for learned Counsel for the Applicant to comply with the Ruling delivered by His Worship Okumu Jude Muwone, in paragraph 1, whereby he *stated that "The current Advocate for the Defendant in this case is supposed to file his own Bill of Costs and annex the Bill of Costs of the first Advocate."*
4. The file is hereby returned to the Chief Magistrate Court for the Bill of Cost so filed to be presented again and taxed in accordance with the law.
5. The costs of this Application are awarded to the Applicant.

I SO ORDER

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JUSTICE DR. WINIFRED N NABISINDE
JUDGE
20/05/2024

This Ruling shall be delivered by the Honorable Magistrate Grade 1 attached to the Chambers of the Senior Resident Judge Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

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JUSTICE DR. WINIFRED N NABISINDE
JUDGE
20/05/2024