

**IN THE HIGH COURT OF TANZANIA  
MWANZA DISTRICT REGISTRY  
AT MWANZA  
MISC. CIVIL APPLICATION NO. 01 OF 2019**

*[Originating from Civil Case No. 23 of 2015]*

**IN THE MATTER OF AN ADVOCATE ACT (CAP 341)  
AND  
IN THE MATTER OF THE ADVOCATES REMUNERATION ORDER  
2015  
AND  
IN THE MATTER OF TAXATION OF COSTS BETWEEN AN  
ADVOCATE AND CLIENT**

**BETWEEN  
JUVENALIS MOTETE ..... APPLICANT  
AND  
THE NYAMWANGA VILLAGE COUNCIL ..... 1<sup>ST</sup> RESPONDENT  
THE KERENDE VILLAGE COUNCIL ..... 2<sup>ND</sup> RESPONDENT  
THE KEWANJA VILLAGE COUNCIL ..... 3<sup>RD</sup> RESPONDENT  
THE NYANGOTO VILLAGE COUNCIL ..... 4<sup>TH</sup> RESPONDENT  
THE GENKURU VILLAGE COUNCIL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

16<sup>th</sup> January, 2019 & 16<sup>th</sup> January 2019

**M.M. SIYANI, J.**

On 4<sup>th</sup> January 2019, the Applicant who appears to be a practising advocate lodged his application under section 62 (1) (2) (a) (b) and (3) of the Advocates Act Cap 341 RE 2002 and Orders 10 (1) and 17 (1) of the Advocates Remuneration Order GN No. 264 OF 2015 for the following Orders:

- (1) That this Honourable Court be pleased to order taxation of the Advocates-Client Bill of Costs annexed hereto in respect of Civil Case No. 23 of 2015 in which the Applicant represented the Respondents.*
- (2) That in addition to the order of taxation of the Bill of Costs, this Honourable Court be pleased to also order costs of taxation and to certify what is due to the advocate, (i.e. the present applicant) in respect of costs of taxation.*
- (3) That the honourable Court be pleased to order payment of interest on the Bill at the rate of 12% per annum from the date of delivery of the itemised Bill to the Respondents till full and final payment.*
- (4) That the Honourable Court be pleased to order that until the taxation is completed, no action shall be commenced on the Bill and action already commenced, if any be stayed and;*
- (5) That the Honourable Court be pleased to grant any other order (s) and relief (s) it may in the circumstances deem fit and just to grant in the applicant's favour.*

Upon being served with the application, the Respondents who in this matter were represented by the Mr. Lameck Merumba, the learned State Attorney, filed their Counter Affidavit and a notice of preliminary objection in limine litis on one point that the application is an abuse of the Court process. Both the raised point of objection and as it will be shown later the application, were heard on 16<sup>th</sup> January 2019.

On being given chance to submit in support of the objection, counsel Merumba contended that the applicant's claims as stated in the supporting affidavit indicates that he was engaged to represents the Respondents in Civil Case No. 23 of 2015. The learned State Attorney was of the view that such a claim was a subject of this Court's decision in Misc. Civil Application No. 159/2018 between Rutabingwa and Co. Advocates and the Respondents in this matter, where the Court ruled that the applicant and the said Rutabingwa and Co. Advocates, represented the Respondents in Civil Case No. 23 of 2015. As such according to the learned State Attorney this application becomes an abuse of the Court process.

Counsel Motete was brief in his reply; he argued that he was not a party to Misc. Civil Application No. 159/2015 and therefore this application

cannot be an abuse of the Court process. It was submitted that the fact that this Court ruled in favour of Rutabingwa and Co. Advocates in Misc. Application No. 159/2015, does not bar this application as he was as well instructed to represent the Respondents in the same matter. The leaned counsel therefore prayed that the objection be overruled.

Having heard the parties as such, I ruled that the preliminary objection raised lacks merits and I accordingly overruled the same. I however reserved the reasons. I directed parties to argue the application. I will therefore start by giving the reserved reasons before I proceed to the merits of the application.

A settled position of law in our country is that preliminary objections must be on point of law. It cannot be raised if any fact has to be ascertained. [See **Mukisa Biscuits Manufacturing Co. Ltd Vs West Distributors Ltd (1996) EA**]. Such a position, has been quoted repeatedly with approval by Court of Appeal of Tanzania in a number of decisions such as **National Insurance Corporation of (T) and Another Vs Shengena Limited**, Civil Application No. 20 of 2007 and **Hezron M. Nyachiya Vs Tanzania Union of Industrial and**

**Commercial Workers & Organisation of Tanzania Workers Union**, Civil Appeal No. 79 of 2001(unreported).

With those rival submissions on the preliminary objection, the imminent question that comes is whether the objection brought by the learned State Attorney, raises a pure point of law, sufficient to dispose of the application without going into its merits. With due respect, I think it doesn't. Since according to the learned State Attorney, the applicant's claims were subject of a decision of this Court in Misc. Civil Application No. 159 of 2018, then in order to establish that this application is an abuse of the court process one needs to go through the records to ascertain the claims. That will include scrutinizing the Bill presented in Misc. Civil Application No. 159 of 2015 to satisfy whether the applicant's Claims were included therein. When such a need arises to enable determination of a point raised, then it presupposes that the so called point of objection is not a self-proof as it depends on proof by some other material facts. The objection raised therefore does not amount to a preliminary objection and for that reason the same lacks merits. I accordingly overrule it.

The reasons as to why I overruled the preliminary objection being given as such, I will now proceed to determine the application.

It was counsel Motete's submission in support of the application that following the order of this Court in Civil case No. 23 of 2015 directing the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents herein to find another advocate, he was engaged by the said three respondents to represent them. Accordingly, his first appearance was on 14<sup>th</sup> August 2017. Counsel Motete went on to argue that although initially he was engaged to represent only the above three Respondents (Plaintiffs) later all the five respondent instructed him to represent them and therefore as from 13<sup>th</sup> December 2017, he started to appear in Court on behalf of all the Respondents till 5<sup>th</sup> April 2018 when a memorandum of a compromise of a suit was filed in Court and the matter was marked settled.

The learned counsel argued further that he was the pillar in the negotiations with North Mara Gold Mining who were the defendant in Civil case No. 23 of 2015 which led to the recording of a settlement on 5<sup>th</sup> April 2018. Mr. Motete believed that information (which were not known to the Respondents) such as Gold mining statistics which he facilitated during the negotiations led to settlement. However, despite

such efforts and serving the Bill to the Respondents, the applicant submitted that he has not been paid his costs to date.

In reply; save for a number of the Respondents which the applicant represented, Mr. Merumba in essence conceded with the application. It was his submissions that the applicant represented only the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents as ordered by the Court on 7<sup>th</sup> August 2017. According to the learned State Attorney, the record were clear that the applicant rendered services to those three respondents and therefore his claims are justifiable to that extent.

As it can be noted, the fact that the applicant was engaged by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to represent them in Civil case No. 13 of 2015 is un contested. What remains at issue is whether in due course the applicant was engaged by all five respondents. This should not detain much of our time. As correctly submitted by both counsels, the applicant was engaged to represent the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Plaintiffs (Respondents in this matter). Although the record later indicates that both counsel Rutabingwa and Motete appeared for the Plaintiffs, the said record does not state that there was a change from previous arrangements that

counsel Rutabingwa represented the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the applicant represented the remaining three Respondents.

Clear as it is, no law prohibits or restricts a number of advocates a litigant can engage in one case. One may engage as many as he wants. However when it comes to claim of taxation of costs, the law sets a limit. Order 49 of the Advocates Remuneration Order GN No. 264 of 2015 required certification by the trial Judge of the necessity of having more than one advocate for a party to a case. For easy of reference I have reproduced the contents of the said Order as hereunder:

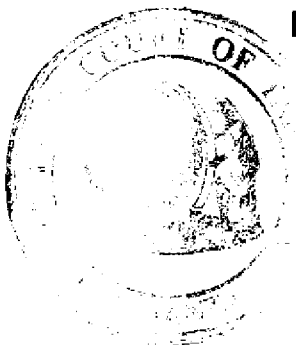
*49: The costs of more than one advocate may be allowed in cases or matters in which, the Judge at the trial, in the case of a plaintiff, having regard to the amount recovered or paid in settlement or the relief awarded or the nature, importance or difficulty of the case and, in case of the defendant having regard to the amount sued for or the relief claimed, or the nature, importance or difficulty of the case has certified under his hand that more than one advocate was reasonable and proper, and such certificate may be granted in respect of two members or employees of the same firm*

The above provision is under party IV of the Oder which in terms of Order 40 is applicable to contentious proceeding and taxation of costs



between both Advocate and Client and Party to Party. My understanding to counsel Motete's argument is that as from 13<sup>th</sup> December 2017, the five Respondents as a group had two advocates of which if that is the case, then for both two advocates to have costs separately then it must be shown that the trial Judge certified the need of having more than one advocate in Civil Case No. 23 of 2015. There is no such certification in the records. I therefore hold that the applicant remained the representative of the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondent in Civil case No. 23 of 2015 in Court and through the negotiations which led to settlement of the same.

That being said and done, I allow the application with costs and order the Taxing Master, to tax the applicant's Bill as against the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents as from 14<sup>th</sup> August 2017 to the conclusion of the matter on 5<sup>th</sup> April 2018. I also direct the Taxing Master to tax the costs of the taxation under section 62 (3) of the Advocate Act. Order Accordingly



**DATED at MWANZA this 16<sup>th</sup> Day of January 2019**

  
**M.M. SIYANI**  
**JUDGE**