

**IN THE HIGH COURT OF TANZANIA
MWANZA DISTRICT REGISTRY
AT MWANZA
MISC. CIVIL APPLICATION NO. 159 OF 2018**
[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
RUTABINGWA & CO. ADVOCATES APPLICANT
AND
THE NYAMWANGA VILLAGE COUNCIL 1ST RESPONDENT
THE KERENDE VILLAGE COUNCIL 2ND RESPONDENT
THE KEWANJA VILLAGE COUNCIL 3RD RESPONDENT
THE NYANGOTO VILLAGE COUNCIL 4TH RESPONDENT
THE GENKURU VILLAGE COUNCIL 5TH RESPONDENT**

RULING

10th January, 2019 & 14th January 2019

M.M. SIYANI, J.

In terms of section 62 (2) (a) (b) and (3) of the Advocates Act Cap 314 RE 2002 and Orders 10 (1) and 17 (1) of the Advocates Remuneration Order GN No. 264 of 2015, Rutabingwa & Co. Advocates, a law firm which claims to have been engaged and represented the respondents herein in Civil case No. 23 of 2015, is in this court praying for the followings Orders:

- 1. That the Bill of Costs served to the Respondents on 27th June 2018 be taxed by the Taxing Master.*
- 2. That the Taxing Master tax as well the costs of taxation*
- 3. That the Taxing Master certify what is due to the Applicant Advocates in respect of the Bill and the costs of taxation*
- 4. That the Taxing Master order payment of interest on the Bill at the rate of 12% per annum from the date of delivery of the Bill to the Respondents to the date of payment.*
- 5. Costs of the Application be provided for.*

An affidavit of Joseph Ishengoma Rutabingwa has been filed in support of the application. What can be glanced from the contents of the affidavit is that on 15th September 2015, the Respondents engaged the Applicant to file a suit against North Mara Gold Mine Limited for a claim of US\$ 26,786,250.50. According to the Applicant, the suit (Civil Case No. 23 of 2015) was accordingly filed in this Court on 1st October 2015 and after pleadings were complete and other preliminaries done, the suit

was finally determined through a settlement deed filed in Court on 19th March 2018.

When the application came for hearing on 10th January 2019, Counsel Rutabingwa appeared for the applicant and the Respondents enjoyed the legal services of Ms Subira Mwandambo, the learned State Attorney. While adopting the contents of his affidavit in support of the application, it was submitted by counsel Rutabingwa that on 26th June 2018, the Respondents were served with a Bill in a respect of Civil case No. 23 of 2015 which was also copied to the District Commissioner Tarime. On 9th July 2018, the District Commissioner wrote to the Respondents copying Tarime District Executive Officer. The later wrote to the Respondents directing them to pay the Bill. Nothing was however paid.

Counsel Rutabingwa was of the view that if the Respondents were disputing the Bill, they ought to have replied the two letters to that effect or file an application in Court of law under section 62 (1) of the Advocates Act Cap 341 RE 2002 for the Court to tax the Bill presented. The learned counsel submitted that, despite having no written agreement, the applicant rendered services to the Respondent and the law under section 55 (1) (i) of the Advocate Act allows filling of

applications of this nature where the Advocate have rendered legal services without a written agreement. It was argued that the applicant represented the Respondents in Court and throughout the negotiation which finally led to settlement of the matter, the fact which according to Mr. Rutabingwa was not denied by the Respondents through their counter affidavit. Despite, praying before the Court on 7th August 2017 that they would wish to find another advocate, it was contended further that the court record shows it was the applicant who drew the Pleadings and appeared in Court on behalf of the Respondents and later in settlement negotiations with North Gold Mine to its finality.

In conclusion, counsel Rutabingwa invited the Court to subscribe to a persuasive authority in **Peter Jogo Tabu Vs Peter Langi** Misc. Civil Application No. 0023 of 2017 (High Court Uganda) where in similar facts the Court granted the application without there being a written agreement. He contended that the Respondents have already been paid by the defendants in Civil case No. 23 of 2015 (North Mara Gold Mine Ltd) and have therefore no justifiable reasons not to settle the Bill. He argued this Court to certify the Bill for taxation by the Taxing Master with Costs.

Responding to the above submissions, Ms Subira Mwandambo, strongly objected the application on the reason that there was no agreement between the applicant and the Respondents to represent them in civil case No. 223 of 2015. The learned State Attorney contended that the applicant's claim under paragraphs 11 and 12 of the counter affidavit that the Respondents undertook to pay him was unsubstantiated as no proof has been given to that effect. It was argued that indeed the law under section 53 and 54 of the Advocates Act Cap 341 RE 2002 makes it mandatory for there to be a written agreement for claims of this nature to stand. In absence of such written agreement, Ms Subira argued; the Bill is unjustifiable against the Respondents who even contested the applicant's representation and the Court ordered the later not to represent the respondents. According to the learned State Attorney, if at all there was such representation, the same then was done to the 2nd and 3rd Respondents.

In rejoinder, counsel Rutabingwa submitted that since when served with a Bill, the Respondents never challenged it in Court, they are estopped from objecting the same on the reason that there was no agreement. In the learned counsel's view, since even the application itself indicates that there was no written agreement, the duty of this Court is to satisfy

itself that the applicant rendered services to the Respondents and certify its taxation for otherwise had there been such a written agreement the applicant would have simply applied to enforce the same.

The above being the summary of what was submitted to me, I find it prudent to state from the outset just as both parties agree that; in this application where the applicant being a law firm claims to have rendered legal services to the Respondents; there was no any written agreement as between the two to that effect. Indeed presence of a written agreement is an optional requirement under Part VIII, sections 53 and 54 of the Advocates Act for both contentious and non-contentious businesses. Since this application originates from a contentious matter in civil case No. 23 of 2015, I have reproduced hereunder the contents of section 54 of the Advocates Act for easy of reference:

54. Whether or not any order is in force under section 49 an advocate may make an agreement in writing with his client as to his remuneration in respect of any contentious business done or to be done by him, providing that he shall be remunerated either by a gross sum or by salary, or otherwise.

[The underlined emphasis supplied]

In my considered view, drawing of a written agreement above is an optional requirement because the words used in the above provisions is "may" which presupposes that one may choose either having it or not. Indeed the law under section 62 (1) and (2) of the Advocates Act, allows either a chargeable party or an advocate to apply for an order that the Bill be taxed. For an easy glance of what I will be saying shortly, I have reproduced the contents of the said provisions as hereunder:

62.-(1) On the application, made within one month of the delivery of an advocate's bill, of the party chargeable therewith, the High Court shall, without requiring any sum to be paid into Court, order that the bill shall be taxed and that no action shall be commenced thereon until the taxation is completed.

(2) If no such application is made within the period mentioned in subsection (1), then, on the application either of the advocate, or the party chargeable with the bill, the High Court may, upon such terms, if any, as it thinks fit (not being terms as to the costs of the taxation), order-

(a) that the bill shall be taxed;

(b) that, until the taxation is completed, no action shall be commenced on the bill, and any action already commenced be stayed: [Underlined emphasis supplied]the advocate

As it can be seen, section 62 does not mention anything regarding written agreement as a conditional precedent for one to bring in Court, an application for an Order for taxation of a Bill between an advocate and his client. It therefore, leave a room for such an application to be filed regardless of whether there is such a written agreement or not. I therefore rule that there need not be a written agreement for section 62 of the Advocates Act to apply. The duty of the Court in application of this nature is to certify to a taxing master that services were rendered and so a Bill be taxed.

I have gone through the record in civil case No. 23 of 2015. The same are clear that from 1st October 2015 when the Plaint drawn by the applicant firm was filed in this Court to 7th August 2017 when the 1st, 2nd and 5th Plaintiffs (Now Respondents) prayed to withdraw instructions of the applicant firm, all the five Respondents herein enjoyed the legal services of the Applicant law firm and therefore received services from the applicant. As noted earlier, the case was disposed of by filing of the settlement deed on 19th March 2018. Under paragraph 5 of the memorandum of compromise which was duly signed by the all the Respondents in this application it was stated as follows:

5: Representation

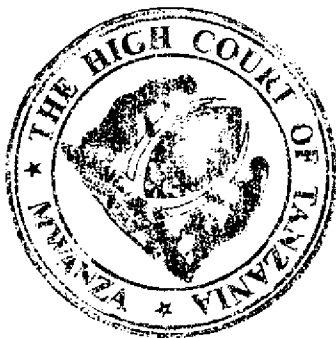
*The Parties acknowledge that before signing this agreement they received independent legal advice from IMMA ADVOCATES, of Tanhouse Tower, Plot number 34/1, 13th Floor, Ursino South New Bagamoyo Road, Po. Box 72484 Dar es salaam, (a member of DLA Piper Africa Group) and GALATI LAW CHAMBERS ADVOCATES of Plot No. 21 Block "K" Kenyatta Road, 3^d Floor, Exim Building Po. Box 11317, Mwanza for the Defendants and **Rutabingwa & Co. Advocates WDC (Ottu) Building 2nd Floor Lumumba/Uhuru Streets, Po. Box 11819 Dar es salaam** and **Juvenalis Motete, Planet Attorneys, Po. Box 72510, Dar es salaam** for the ***Plaintiffs***, who have ensured they fully understand the nature and legal effect of this Agreement.*

The above paragraph proves nothing but the fact that during the negotiations that led to the settlement of the case, the Respondents received legal services and were therefore represented by two law firms one being the applicant. By signing the settlement deed which was recorded by the Court on 5th April 2018 and a Court decree therefore extracted, the Respondents acknowledged the applicant and the services rendered.

In the upshot, I find this application to have merits. I accordingly allow it with costs and order the same to be taxed. However, since there was an order of this Court dated 7th August 2017 for withdraw of the applicant's representation with regard to the 1st, 2nd and 5th Respondents; the taxing master is accordingly directed as follows: One to tax the Bill against all five Respondents for the service rendered up 7th August 2017 when instruction was withdrawn by the 1st, 2nd and 5th Respondents. Second to tax the Bill against the 2nd and 3rd Respondents from 7th August 2017 to the conclusion of the matter including the settlement process. In terms of section 62 (3) of the Advocate Act, the Taxing master is also directed to tax the costs of the taxation.

It is so ordered.

DATED at MWANZA this 14th January, 2019



M.M. SIYANI
JUDGE