

**IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
TAXATION CAUSE NUMBER 1 OF 2011
(Originating from Reference No. 1 of 2010)**

Hon. Sitenda Sebalu.....Applicant

Versus

**The Secretary General of the East African Community.....1st Respondent
The Attorney General of the Republic of Uganda.....2nd Respondent**

RULING

DATE: 20th JANUARY 2012

DR. JOHN EUDES RUHANGISA, TAXING OFFICER

In this bill of costs filed by Hon. Sitenda Sebalu the Applicant who was the Applicant in Reference Number 1 of 2010 that was presented by the Applicant in this cause is for a total sum of USD 14,357,669.10 as costs incurred by the Applicant herein for conducting the suit namely Reference Number 1 of 2010. Mr. Chris Bakiza Advocate of Bakiza & Company Advocates and Mr. Justin Semuyaba of M/s Semuyaba, Iga & Company Advocates appeared in Court on behalf of Hon. Sitenda Sebalu, the Applicant while Mr. Wilbert Kaahwa Counsel to the East African Community appeared for The Secretary General of the East African Community the 1st Respondent. Ms. Christine Kaahwa Principal State Attorney appeared for the Attorney General of the Republic of Uganda the 2nd Respondents. The claim against the respondents herein, relates to instruction fee, reimbursement for actual expenses incurred by the Applicant, to wit, costs for filing the bill of costs, costs for stationary, travel and upkeep expenses between Kampala and Arusha where the East African Court of Justice is headquartered. In my ruling I will first consider items 2 to 83 then finally consider item 1 on instruction and getting up fees where submissions were made at length.

Whereas the Respondents counsel conceded to items No. 60, 63, 65, and 83 in the bill of costs, items No. 61, 66, 67, 70, 73, 74, 78, 79 and 82 lacked supporting documents. The applicant was not able to produce receipts for these items. Counsel for the applicant submitted that I exercise my discretion and grant what is reasonable in areas where proof of payment for air tickets have not been adduced largely because they had difficulties in securing them from the Applicant himself who incurred the cost.

In my ruling I will deal with item by item and in items where the applicant was not able produce receipts I will tax them off accordingly and in arriving at this decision I am guided by the rules of procedure governing litigation in East African Court of Justice, Rule 4 of the Second Schedule in particular which states that:

‘receipts for disbursements shall be produced to the taxing officer at the time of taxation’.

This is a mandatory requirement of the law. Counsel for the Applicant produced boarding passes and evidence that they travelled but these were not receipts as required by Rule 4 of the Courts Rules. The documents could not by themselves be proof of expenditure on the part of the applicants in the absence of evidence showing how much was paid. Counsel for the Respondents also submitted objecting to the use of boarding passes and invoices as evidence for disbursements which I agree with entirely.

With regard to item 2 on drawing of reference Rule 3 of the Second Schedule of the Court Rules provides USD 3.00 for the first four folios and USD 1.00 for every additional folio. I consequently tax the item at **USD 29.00**.

Item 3 is taxed as prayed at **USD 120.00**. Rule 4 provides for USD 0.5 per folio. The applicant made 8 copies of 30 folios, which brings it to 240 folios.

Counsel for the 2nd Respondent asked for clarification from the Applicant on Item 4 on the drawing of documentary proof but no proof was provided and I therefore tax the item off as the Rules do not provide for drawing of documentary proofs of evidence. I also tax off item 5 as it is related to item 4.

Items 6 and 7 which relate to the drawing of a Notice of Motion and making of copies thereof are also taxed off since they are a repetition of the drawing of Reference in item 2 which was titled Notice of Motion.

Item 8 is taxed at **USD 15.00** in accordance with Rule 3 of the second schedule while item number 9 is taxed at **USD 64.00** in accordance with Rule 4(a) of the Second Schedule.

Item 10 where Counsel for the Respondent contended that receipts need to be produced to show that the Commissioning or notarizing of annexures was paid for, the applicant could not produce any, I therefore tax off the item accordingly.

The amount charged in item 11 is also accordingly taxed off as perusal can only be charged on documents received and not documents drawn by counsel himself, which have also been charged for drawing under Rule 3 of the Second Schedule. This kind of perusal is taken care of under item 1 on instruction fees chargeable under Rule 9(3) of the Second Schedule on instruction fee to "include all work necessarily and properly done in connection with the suit or reference and not otherwise chargeable including attendances, correspondence, perusals and consulting authorities".

On items 12 and 13, I have perused the original record and found that no List of Authorities was prepared on 25th June 2010 and that the only list of authorities on record is the one attached to the Applicants Submissions dated 21st December 2010. I therefore tax off the amount in items 12 and 13.

Items 14 and 15 are also taxed off because other than an affidavit in reply there was only one affidavit sworn by Hon. Sitenda Sebalu, which has already been taxed in item 8 of the Bill.

Items 16 and 17 were not disputed and I therefore tax them as prayed by the applicant at **USD 3,450 and USD 150** respectively.

Item 18 is also taxed off as it relates to perusal of a response by the 3rd Respondent who was struck off from the reference with costs and is not a party in this cause.

The sum of USD 57.00 is taxed off from item 19 on drawing of Affidavit and taxed at **USD 3.00** because on perusing the original record the affidavit referred to is of four folios and the Scale of Charges of the Second Schedule provide for USD 3.00 for four folios or less.

The sum of USD 16.00 is taxed off from item 20 on drawing of the Amended Notice of Motion and taxed at **USD 4.00** for the five folios and not 20 folios as alleged.

The sum of USD 60.00 is taxed off from item 21 on making of copies and taxed at **USD 20.00** which is the charge for making of 8 copies of 5 folios of the Amended Notice of Motion.

The sum of USD 2,300.00 is taxed off from item 22 on perusal of the 1st Respondents Response to the Amended Reference and is taxed at **USD 1,150**. The response was 230 folios and not 690 as claimed by the applicant.

The sum of USD 90.00 is taxed off from item 23 on perusal of 2nd and 4th Respondents response to Amended Reference and is taxed at **USD 90.00**. The response was 12 folios and not 30 as claimed by the applicant.

Item 24 is taxed off accordingly on grounds that there was no response to the amended reference filed by the 3rd Respondent and that the 3rd Respondent was struck off from the reference with costs.

The sum of USD 78.00 is taxed off from item 25 on the drawing of Applicants Written Submissions and is taxed at **USD 33.00**. The submissions were 34 folios and not 111 as claimed by the applicant.

The sum of USD 308.00 is taxed off from item 26 on making of copies of the written Submissions and is taxed at **USD 136.00**. Eight copies of the 34 folios is 272 copies at USD 0.5 per folio.

Item 27 is taxed off accordingly because perusal can only be charged on documents received and not own documents, which have also been charged for drawing under Rule 3 of the Second Schedule. This item is covered under item 1 on instruction fees as provided for in Rule 9(3) of the Second Schedule which I have quoted above.

Items 28 and 29 on list of authorities which was 2 folios are taxed at **USD 3.00** and **USD 8.00** respectively.

Item 30 is also taxed off because it is taken care of under item 1 on instruction fees and Rule 9(3) of the Second Schedule mentioned above.

The sum of USD 140.00 is taxed off from item 31 on perusal of 1st Respondents Written Submissions and taxed at **USD 70.00**. The submissions were 14 folios and not 42 as claimed by the applicant.

The sum of USD 1,490.00 is taxed off from item 32 on perusal of the 1st Respondents authorities and taxed at **USD 745.00**. The authorities were 149 folios and not 447 as claimed by the applicant.

The sum of USD 210.00 is taxed off from item 33 on perusal of 2nd and 4th Respondents written submissions and taxed at **USD 165.00**. The submissions were 33 folios and not 75 as claimed by the Applicant.

Item 34 is taxed off in whole as it refers to the 3rd Respondent who was struck off the Reference with costs.

The sum of USD 33.00 is taxed off from item 35 on drawing of a 31 folio rejoinder to the Respondents written submissions and is taxed at **USD 30.00**.

Item 36 is taxed off as it refers to the perusal of the Applicants own document. This is taken care of under item 1 on instruction fees.

The sum of USD 78.00 is taxed off from item 37 on photocopying of a 31 page rejoinder and is taxed at **USD 124.00**.

The sum of USD 12.00 is taxed off from item 37 on perusal of 1 and not 3 folios of a Hearing Notice and is taxed at **USD 3.00**.

On item 39 the Court order drawn was 3 folios and not 12 folios. I therefore tax item 39 at **USD 3.00** and tax off item 40 as perusal cannot be done by counsel on a document drawn by himself.

Item 41 on making of copies of the order is taxed at **USD 12.00**, while item 42 on perusal of a 50 page judgment is taxed at **USD 250.00**

Item 43 on drawing of a 25 folio Bill of Costs is taxed at **USD 24.00**. Item 44 on perusal of bill of costs is taxed off because perusal of own document which is catered for under Rule 9(3) cannot be charged again.

Item 45 on perusing of a 1 folio Notice is taxed at **USD 3.00**. Item 46 which is a repetition of item 43 is taxed off accordingly, while item 47 on the making of 8 copies of the bill of costs is taxed at **USD 100.00**.

Except item 54, item 48 to 55 on attendance by advocates in court before the judges are taxed as prayed i.e **USD 50.00, USD 100.00, USD 80.00, USD 100.00, USD 100.00, USD 100.00, USD 100.00** respectively. Item 54 on perusal of judgment is taxed off as it is a repetition of item 42.

The supporting document produced by the applicant on Item 56 is dated 21/07/2011 while the bill shows that the expenditure was incurred on 26/03/2010. Due to this discrepancy item 56 is accordingly taxed off.

Items 57 to 59 on making of copies are also taxed off on grounds that instead of the applicant producing receipts in support of payments made for the photocopying he produced invoices. The dates on the invoices did not also tally with the dates in the bill of costs on when the expenditure was incurred. Item 60 on fees paid upon filing the reference is taxed as prayed at **USD 500.00**.

Item 61 on travel by Precision Air to Arusha is taxed off because the applicant was not able to produce a receipt in support of the expenditure. A receipt was produced for Item 62 on vaccination of counsel at the airport and I therefore allow and tax it at **USD 50.00**. Item 63 whose receipt of USD 50.00 was produced and conceded by the respondent is taxed at **USD 50.00**. Item 64 on accommodation and food is taxed off as it is not supported by any receipts.

Item 65 was conceded and is therefore allowed and taxed at **USD 18.20**. Again the applicant did not produce receipts in support of item 66 on travel and I accordingly tax that item off. Pro-former invoices instead of receipts were produced in support of item 67 on accommodation consequently this item is taxed off.

On item 68 receipts for Tshs 160,000.00 in support were produced and at the rate of Tshs 1,500.00 to 1 Dollar, I tax the item at **USD 106.00**. No receipts were produced in support of items 69 to 75 on travel, airport transfer and accommodation. I therefore tax items 69 to 75 off accordingly.

The sum of USD 50.00 is taxed off from item 76 on airport transfer because the applicant produced only one receipt and the item is taxed at **USD 50.00**. Item 77 which was amended to read Tshs 102, 000.00 and whose receipts were produced and conceded to by the applicant is taxed and allowed, and upon conversion the item is taxed at **USD 68.00**.

Items 78 and 79 on travel and airport transfer are also taxed off because no receipts were produced in support of these expenditures.

Items 80 and 81 on the bill of costs are a repetition of items 43 and 44 which have already been taxed. No receipts were produced in support of item 82 as well and I therefore tax off items 80 to 82 accordingly. Item 83 on travel and airport transfer for the hearing of the taxation whose receipts were produced and conceded is allowed and taxed at **USD 917.00**

Having considered and taxed each item from item 2 to 83 I award the applicant the total sum of USD 9, 193.20 (United States Dollars Nine Thousand One Hundred Ninety Three Twenty

Cents) only on all the said items and now go back to item 1 where submissions were made at length.

Item 1 is professional fees USD 10,000,000.00 to instructions to Mr. Chris Bakiza and Justin Semuyaba to file the Reference No. 1 of 2010 against the Respondents in this Taxation Cause.

The Applicants were awarded costs as against the 1st and 2nd Respondents. The Court struck off the 3rd and 4th Respondents from the Reference and directed that the Applicants shall pay their costs.

Counsel for the Applicant submitted that the amount of USD \$10 million takes into account a number of factors. One was the two senior lawyers instructed to undertake the application, the great international and political importance and that it was an intricate matter with novel legal points of the interpretation of the Treaty and the protocols of the EAC. He further submitted that the instructions included and constituted perusal of voluminous records of pleadings and affidavits including voluminous minutes of the EAC meetings and Council of Ministers plus numerous corresponding records which were exhibited by the parties. He also submitted that the matter imposed great professional and legal responsibility on preparation of the case in its conduct, research and examination of complex and important documents and authorities and taking into account that it was a novel matter, a landmark, the first case of its own kind in East Africa creating special and general jurisprudence in the Community laws.

On principles behind the evaluation of the item on instruction fees, counsel for the applicant cited taxation causes of *Prof. Anyang' Nyong'o and Others Vs Attorney General of the Republic of Kenya and Others, Calist Mwatela and 2 Others Vs East African Community, Modern Holdings (EA)Limited Vs the Kenya Ports Authority* and submitted that all these authorities agree that the Tax Master is entitled to use his discretion to assess such instruction fee as he considers just taking into account among others the nature and importance of the cause or matter, the interest of parties, the general conduct of the proceedings, any discretion by a trial judge or any other relevant circumstances.

In justifying a claim for USD 1,800,000 in item 1 being VAT 18% of the instruction fee, Counsel for the applicant submitted that the law firms of the counsel are VAT compliant in accordance with the laws of Uganda and produced a certificate to that effect. On the getting up

fee Counsel for the Applicant submitted that it was charged in compliance with, Rule 2 under party and party, Part A of the Second Schedule and that party is entitled to getting up fee when his advocate gets up or prepares a case for trial.

In response to the Applicants submissions on item 1. Ms Christine Kaahwa counsel for the 2nd Respondent strongly opposed the USD \$ 10 million and submitted that it was excessive, obnoxious and that the application was not complex in any way. She also submitted that there were no novel points of law and that the Respondents in this cause won in some of the issues although they were not awarded costs. She submitted that the pronouncement that came out of the Court was that there was loud silence in the Republic of Uganda not extending the jurisdiction by not making its submissions and the Secretary General not being able to police the Republic of Uganda which is not really a novel issue because if an action is not taken, it is on record that it has not been taken. She submitted that evidence was by way of affidavit, so there was nothing like taking the witnesses and preparation where there is oral evidence that is given in court. On VAT she submitted that it be taxed according to what will have been taxed in item 1.

On the getting up fee Counsel for the 2nd Respondent submitted that Counsel for the Applicant is not entitled to the getting up fee as the case dealt with affidavit evidence and not as a witnessed action.

Mr. Wilbert Kaahwa Counsel for the 1st Respondents added onto Counsel for the 2nd Respondents submissions on item 1 by submitting that the amount is obnoxious and can have dire consequences for the development of our jurisprudence and organs and institutions. He also submitted that principles which guide the discretion of the Court on matters of award of costs and taxation of costs require that an award must be reasonable, affordable and should not have effect of deterring litigants from seeking remedy in this court.

Mr. Kaahwa further distinguished the *Prof. Anyang' Nyong'o* case from the applicants case and submitted that in the applicants case the main point which was not a novel point of law was determining whether or not the 1st and 2nd Respondent had delayed in implementing Article 27(2) of the Treaty and was not interpreting a point of law but a question of interpreting a fact. He also submitted that the taxation in *Nyong'o's* case which was more complex was not even as much as it is sought in this cause yet it was more complex with ten applicants, five respondents and four

interveners. It was a case that went through many interlocutory applications and therefore became complex and required a lot of research. He also cited the *James Katabazi's* case where the court found it necessary to have the costs awarded taking into account that the case was not as complicated as the case of *Anyang' Nyong'o* which the applicant had sought to rely on.

Counsel for the 1st Respondent concluded on item 1 by submitting that the USD \$ 10 million is not by any stretch of imagination a fair and reasonable amount in costs given the relative simplicity of the case in Reference No. 1 of 2010.

Mr. Kaahwa Counsel for the 1st Respondent responded to my question on what he thought would be the appropriate claim for cost on this item by saying:

“Your worship, having gone through previous decisions and taxation of costs by this court, having read the celebrated decision in *Premchand Limited and Another*, 1972 East Africa page 162. I am sorry I have not availed a copy of the decision. Taking into account all circumstances of this case, considering the nature of the case, its relevance to the Treaty, considering its relevance to the development of the Community, I would think that a sum between USD \$50,000.00 and USD \$100,000.00 would be just and reasonable”.

In his rejoinder counsel for the applicant submitted that the reference was to assist the court extend its jurisdiction and that the taxing master in exercising his discretion he ought to be guided by the previous awards. He submitted that the sum of USD \$50,000.00 stated by counsel for the 1st Respondent is too low for a matter of this nature and that the sum of USD \$ 10 million be awarded as prayed. He further submitted that getting up fees is awarded where a matter which would have been settled went ahead for trial.

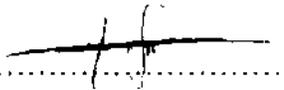
I have considered submissions by counsels for the Applicant and Respondents on item 1 above, I agree with the Respondents submission that the amount of USD \$ 10 million for instruction fee in this matter is excessive and unreasonable. The matter was not very complex and is distinguishable from the *Anyang' Nyong'o* case which was more complex with many interlocutory applications and more parties than the Applicants case herein. The Applicants case was almost similar in its complexity and amount of work involved to the case of *Calist Andrew Mwatela* and the case of *James Katabazi* where the sum of USD \$ 12,000.00 and USD 50,000.00 for instruction fees was awarded respectively.

In view of the above and what counsel for the 1st Respondent considered to be a reasonable amount, I find that the sum reasonable in Item 1, having taken into account the subject matter, its nature, importance and complexity is USD \$ 65, 000.00. I also award getting up fee at one quarter of the instruction fee as per Rule 2(1) of the Second Schedule Scale of Charges, that is, USD \$ 16,250.00 making a total of USD 81, 250.00 taxable amount plus 18% VAT USD 14,625.00, plus reimbursable USD 9,193.00 making a total sum of USD \$ 105,068.20 which I tax accordingly.

In total this bill is taxed at USD \$ 105,068.20 (United States Dollars One Hundred Five Thousand Sixty Eight and Twenty Cents) only to be shared equally between the 1st Respondent and 2nd Respondent

I so tax.

Dated at Arusha this 20th day of January 2012



A handwritten signature in black ink, appearing to read 'J. E. Ruhangisa', is written over a horizontal dotted line.

DR. JOHN EUDES RUHANGISA
TAXING OFFICER