IN THE EAST AFRICAN COURT OF JUSTICE-FIRST INSTANCE DIVISION
AT ARUSHA
TAXATION CAUSE NUMBER 1 OF 2012

(In Reference No. 6 of 2010 and Application No. 6 of 2011)

DEMOCRATIC PARTY AND MUKASA FRED MBIDDE……..…….APPLICANTS

VERSUS

THE ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA…...…..RESPONDENT

RULING

DATE: 3RD MAY 2013

PROF. DR. JOHN EUDES RUHANGISA, TAXING OFFICER

This ruling is in respect of taxation of a bill of costs filed by the Applicants herein who featured as claimants in Reference No. 6 of 2011 and as applicants in an application for injunction, Application No. 6 of 2011 arising from the above mentioned reference. The Bill is for a total sum of USD 11,178,936.55 covering among others instruction fees, attendances and disbursements in the above mentioned Reference and Application. The Applicants in this taxation were represented by Mr. Justin Semuyaba Advocate while the Respondent was represented by Mr. Philip Mwaka, State Attorney.

The background of this bill of costs is that the Applicants herein filed a Reference together with an Application for Injunction against two Respondents the Secretary General of the East African Community First Respondent and the Attorney General of the Republic of Uganda Second Respondent. In its ruling of 30th November 2011the Court granted the application for injunction and ordered that costs of the application be in the cause. In its judgment of 10th May 2012 the Court found that the applicants had made out a case that the 2006 Rules did not conform to the Treaty. Accordingly, the Court ordered that they are entitled to orders restraining the Parliament of the Republic of Uganda from conducting the EALA elections unless and until they amended the impugned Rules to conform to Article 50 of the Treaty. The case against the First Respondent was dismissed with no orders as to costs while the Second Respondent was ordered to pay costs to the Applicants.

At the taxation hearing Counsel for the Applicant presented his bill as drawn except for items 15, 25, 31, 75 and 76 which he deleted and added item 127 as expenses incurred for the taxation hearing, that is, USD 751 for air ticket, USD 600 three days hotel fee and USD 50 as airport transfer plus USD 20 for photocopying. Counsel for the Applicant undertook to adduce the receipts later for this additional item.

To justify the instruction fee charged in items 1, 2, 9 and 10 Counsel for the Applicant relied on the case of Prof. Anyang Nyongo and submitted that the case was akin to Reference No. 6 of 2010 relating to rules of procedure of election of Members of Kenya and that the Court had to go through those rules and consider aspects of some elections which had taken and awarded the award of USD 2,033,164.99. He also relied on the case of Attorney General Versus Anyang Nyongo and 10 Others, Appeal No. 1 of 2009 on the issue of public interest and interest of the public. Counsel also submitted that in the case at hand the, judges in their judgment blamed the Attorney General for playing hide and seek game thus making the matter to go for a full blown trial when it would have been handled at an administrative level and that is why he was claiming a high fee.

Mr. Mwaka in his response submitted that by and large the bill of costs was not drawn according to scale. Counsel submitted that he had no problem with items 69 to 91 with the exception of those that were deleted by Counsel for the Applicant in his submissions. He also submitted that

Item 92 should be deleted in addition to those already deleted for grounds that there was only one necessary follow up on enforcement of the judgment.

Mr. Mwaka further submitted that in the bill there were items whose dates were not reflected. He pointed out the items as numbers 3, 4, 7, 8, 11, 12, 13, 14, 16, 26, 27, 28, 29, 30, 31, 39, 40, 45, 47, 49, 54, 56, 57, 58, 63, 64, 65, 66, 67, 68, 115 to 126. He submitted that the items were not in compliance with Rule 3(1) regarding dates which states that the left hand column should be for dates of the items and that the rule intended to make it easy for the Court to ascertain whether the work was done or not. I posed the question to Counsel whether this should be the case even where evidence of receipts is produced and he responded by saying that there can only be such an exception where receipts are produced for filing fees and that kind of items and he can concede as far as that is concerned.

Counsel Mwaka also submitted that he had no problem with items claiming for an activity done in two days which include items 93, 94, 95, 96, 97, 98 and 111, but on items 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 which claimed more days, three days would be reasonable for reason that one day for filing and the other two days for travelling.

Mr. Mwaka concluded by submitting on issues of instruction fees. He submitted that the instruction fees are absolutely and grossly excessive and that it was unfair for the same party to divide itself and claim two different costs. He submitted that for the Democratic Party Claim USD$ 5 million and the Secretary General of the Democratic Party to claim another USD $ 5 million to make USD$ 10 million. His proposal was that even if the Court was to agree that the parties are separate although the minimum fees according to the rules is USD$ 100 the fee of USD$ 3000 for each of the two applicants would be fair and just, but if the court is to look at them collectively and together then they be awarded a fee of USD$ 5000 as instruction fees.

On the interim order application counsel Mwaka reiterated his earlier arguments that these are the same people, but if the Court is to divide them he prayed that item 9 the First Applicant gets USD$ 1000 and the Second Applicant also in item number 10 get USD$ 1000 but if they are put together they be given USD$ 2000. He argued that there was no complex in the case like the Counsel was trying to suggest and that out of the 9 orders sought by the Applicants in the

Reference, they only succeeded in one and therefore the matter was simple. He submitted that on the issue of punishing the government of Uganda for not administratively solving the problem, much as the court says it, the instruction fees which he has proposed covers that. He further submitted that whatever reduction the Court comes up with it will in its own wisdom add VAT. In terms of getting up fee claimed in items 3 and 4 he prayed that it be charged once because the advocate did not get up twice and that Rule 13 provides that the minimum is a quarter.

In rejoinder Mr. Semuyaba submitted that to him the second follow up in item 92 was necessary but he had left it to the discretion of the Court to find if it was necessary or not. He also submitted on the issue of dates and stated that where disbursements are supported by receipts, the Court considers Rule 4(1), (2) and (3) that those costs are allowable. On the number of days he submitted that at times it can be more than three days required to do an activity. He submitted the USD$ 3,000 proposed by Mr. Mwaka was unreasonably too low.

Having considered submissions by both Counsel, I will tax the bill in the sequence that both Counsel have used in their respective submissions, to wit, considering items 5 to 7 and 11 to 127 that are not related to instruction fees and then finalize by considering items related to instruction fees together with getting up fees.

Following submissions on charging items according to scale, I will in taxing items on drawing, on making copies and perusing apply the scale of charges as per Rule 9(4) of the Second Schedule paragraph 3, 4 and 7. I tax Item 5 on drawing 17 folios of the reference at **USD$ 16**, and item 6 on making 8 copies of the 17 folios on reference is taxed at **USD$ 68**.

With regard to items 7 and 8, although no date is indicated, Mr. Semuyaba submitted that by using the marks "……." in most of the items in the bill he meant the previous date. It is my view that the mark that is used in accounts, lists, etc, to avoid repetition is symbolized by two small marks (") and not those that he has used. The rules are very clear about the first column having dates and not symbols. Although he might have got the symbol wrong or overlooked the rule on dates, in the interest of Justice, I will not tax the items off but proceed to tax them accordingly. I therefore tax items as follows:

Item 7 is taxed **at USD$ 3**; item 8 at **USD$ 12**; item 11 at **USD$ 5**; item 12 **USD$ 24**; item 13 is **taxed off** for reason that Counsel is not entitled to charge for perusing documents drawn by himself and that they should be charged under instruction fees; the applicant deleted item 15. Item 17 is **taxed off** for reasons applied to item 13 and item 17 is taxed at **USD$ 90** whereas item 18 is taxed at **USD$ 8.** Item 19 is taxed at **USD$ 40** since it was 8 copies of 10 folios at USD$ 0.5 per folio. Item 20 is taxed at **USD$ 3**, item 21 is taxed at **USD$ 12**, item 22 is taxed at **USD$ 7**, item 23 is taxed **USD$ 32**, Item 24 is **taxed off** as the rules do not provide for preparing an affidavit; item 25 was deleted by applicant; item 26 is deleted for reasons applied in item 13. Item 27 is **taxed off** as there were no witnesses called to give evidence in the Court and evidence was only by way of affidavit. Item 28 is taxed at **USD$ 4**; item 29 is taxed at **USD$ 20**; item 30 is **taxed off** as no receipts were produced; item 31 was deleted by Counsel for the applicant.

Items 32, 33, 34, 35, 36 are all taxed as drawn in a total of **USD$ 175**; item 37 is **taxed off** for being a disbursement that should appear under item 124 and item 38 is taxed at **USD$ 5** as drawn. Item39 is taxed at **USD$ 5** because there was only one application by the Applicant herein; item 40 is taxed at **USD$ 10**; item 41 is taxed at **USD$ 50** as drawn; item 42 is taxed at **USD$ 15**; item 43 is taxed at **USD$ 9** and Item 44 is taxed off as it does not state where the exhibits were annexed to. Item 45 is taxed at **USD$ 5** because no other documents were attached to the hearing notice; item 46 is taxed at **USD$ 30**; item 47 is taxed at **USD$ 40** and item 48 is taxed at **USD$ 19** because you cannot draw and peruse your document. Item 49 is taxed at **USD$ 24**; item 50 is taxed at **USD$ 50** as drawn; items 51 and 52 are **taxed off** as these are service of Court documents by the applicant which cannot be charged under attendances. Item 53 is taxed at **USD$ 55** because they were 11 folios to peruse and not 24 as claimed; item 54 is taxed at **USD$ 50** because they were 10 folios to peruse and not 24 as claimed and item 55 is taxed at **USD$ 18.** Item 56 is taxed at **USD$ 76**; items 57 and 58 are **taxed off** as they are perusal of the applicants own documents which should be charged under instruction fees and item 59 is taxed at **USD$ 50** as drawn.

Items 60 and 61 are **taxed off** because they are related to service of documents but are claimed as attendances; item 62 on attendance for delivery of judgment (half a day) and perusal of the 23 folio judgment is taxed at **USD$ 155.** Item 63 on drawing of a 2 folio order is taxed at **USD$ 5**;

item 64 on drawing the 27 folio bill of costs is taxed at **USD$ 27**; items 65 and 66 on attendances for taxation and ruling are taxed as drawn in the total sum of **USD$ 100.** Item 67 on perusal of this taxation ruling is taxed at **USD$ 50**; item 68 is **taxed off** because it is claimed and taxed in items 65 and 66. Items 69 to 91 with the exception of items 75 and 76 that were deleted by the applicant are taxed in the total sum of **USD$ 13,359** and item 92 which was in dispute is **taxed off** for reasons that only one follow up was necessary.

Items 93 to 98 on subsistence, allowance and accommodation were not disputed and I therefore tax them as drawn in the total sum of **USD$ 2400**; items 99 to 110 which were also on subsistence, allowance and accommodation were disputed on grounds that three days are reasonable for doing an activity like one of filing a document and not the nine days claimed by the applicant. I agree with counsel for the Respondents argument and give three days for each of the items claimed that is 600 for each and tax items 99 to 100 in the total sum of **USD$ 7800.** Since item 111 is not in dispute I tax it at **USD$ 800** as drawn and on item 112 I award three days and tax it at **USD$ 1200** for advocate and applicant. Item 113 the applicant produced receipts for USD$ 450 and I tax the item in the sum of **USD$ 450.** Item 114 had no details and is therefore deleted. Items 115 to 119 related to commissioning and notarization are **taxed off** because counsel for the applicant produced payment vouchers by his firm and not receipts as required by the Court Rules. Items 120 and 121 are taxed as drawn in the total sum of **USD$ 900** and items 122 and 123 are taxed off as no receipts were produced and no fees is chargeable for filing authorities or affidavits. Item 124 is taxed as drawn in the total sum of **USD$ 389**; item 125 is taxed at **USD$ 10**; item 126 is taxed at **USD$ 10**; and for item 127 which was not in the bill but presented at the time of taxation hearing and counsel undertaking to produce receipts which he did later I award the sum of **USD$ 751** for the air ticket, **USD$ 600** for accommodation and subsistence, **USD$ 50** airport transfer and **USD$ 20** for photocopying and binding.

Having gone through the bill taxing each item accordingly, I hereby award a total sum of **USD$ 30,106** for all the above items and now revert to items related to instruction fees.

I have considered all the submissions and authorities on the items related to instruction fees and have the following to say. The applicant in justifying his charging of instruction fees compared his case to the Anyang' Nyong'o Reference, but as much as this case was about rules on

elections of members to EALA as was the case in Anyang' Nyong'o, in the Nyong'o case elections had already been conducted under the impugned rules but in this particular case they had not. The Nyong'o case, apart from being filed with an application for injunction, attracted several applications that included among others, intervener applications by members who had been elected under the impugned rules, recusal application, *amicus curiae* application and application for contempt. The Nyong'o case which was the first of its kind was more complex than this and this can even be shown by the battery of lawyers representing the parties and including the Attorney General of Kenya who appeared in person before the court. The number of parties in the Nyong'o case was more than the parties in this case, that is, there were 11 Applicants representing various political parties and 6 respondents, while in this particular case we had one political party and its Secretary.

While the Anyang Nyongo case had 11 applicants, they did not charge instruction fees separately as has been the case in this taxation. The instruction fees was charged once for all the applicants and it included instruction fees for all the interlocutory applications in the reference at USD 3,740,900.30 but I taxed it down to USD 1,300,000.

With regard to the public interest argument and supported by the authority of the Anyang' Nyong'o Appeal where the judges of the Appellate Division of this Court stated that "In the case before us, the essential element for consideration of the public interest is missing – namely, there would be absolutely nothing "unlawful", or "immoral", or reprehensible about the Attorney General of Kenya paying litigation costs from the Public Treasury of the Republic. If anything, such payment would indeed redound to the rule of law, in general, and to the enforcement of Court judgements, in particular – both of which are the very essence on which any law-abiding ship of State is anchored. We should, as a court be circumspect of what LORD HALSBURY (in the Janson case above (and others e.g. Egerton v Brownlow; Bowman v Secular Society Ltd [1917] AC at 427), termed as "inventing a new head of public policy". I am of the view that the same view of the judges apply to this case

I am in agreement with the Respondent that the claim of USD$ 21,081,080 as instruction fees in total is outrageously excessive and I disagree with his proposal of USD$ 7,000 which I find to be too unreasonable. For the above reasons and taking into consideration the complexity of this

matter, time taken in research, the fact that it was not a new matter of its kind, I award the sum of USD$ 15,000 as instruction fees for both the reference and interlocutory application plus VAT at 18% USD$ 2,700 making a total of USD$ 17,700. This instruction fees award covers items 1, 2, 9 and 10. I award getting up fees at one quarter of the instruction fees as provided under Rule 2 of the taxation schedule and not one third as claimed by the applicant. The getting up fee is taxed at USD$ 3,750 and this covers items 3 and 4.

In conclusion I tax the bill and come up with a grand total that I compute as follows: Instruction fee is taxed at **USD$ 15,000** plus VAT at 18% **USD$ 2,700**, plus getting up fee at **USD$ 3,750** plus total amount of **USD$ 30,106** awarded for all the other items that included among other things attendance and disbursements making a grand total of **USD$ 51,556 (United States Dollars Fifty One Thousand Five Hundred Fifty Six Only)**

I so tax.

Dated at Arusha this of 2013

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PROF. DR. JOHN EUDES RUHANGISA
TAXING OFFICER