



IN THE EAST AFRICAN COURT OF JUSTICE

AT ARUSHA

Taxation Cause No.2 of 2012

(Originating from Appeal No. 1 of 2012)

(Appellate Division)

PLAXEDA RUGUMBA.....APPLICANT

VERSUS

THE ATTORNEY GENERAL OF THE REPUBLIC OF RWANDA.....RESPONDENT

RULING

DATE: 3RD MAY 2013

PROF. DR. JOHN EUDES RUHANGISA, TAXING OFFICER

In this bill of costs filed by Mr. Rwakafuuzi learned Counsel for the Applicant, a total of USD 4, 725,189.51 is claimed as costs incurred by the Applicant in the course of conducting an appeal namely Appeal No. 1 of 2012. Mr. Rwakafuuzi Advocate from M/s Rwakafuuzi Advocates appeared in Court on behalf of the Applicant, while Mr. Malala, State Attorney appeared for the Attorney General of the Republic of Rwanda, the Respondent. The claim against the Respondent

herein, relates to instruction fee, reimbursement for actual expenses incurred by the Applicant, including costs for filing the bill of costs, costs for stationary, travel and upkeep expenses among others.

The Counsel for Respondent commenced his submission by requesting the Court to strictly adhere to its rules governing taxation of bill of costs. Mr. Malala referred to his earlier submission in Taxation Cause No 2 of 2012 with regard to perusal of documents and emphasized that in determining the costs for *perusal, court attendance and other items the Court should be guided by the Rules of Procedure.*

My understanding of Mr. Malala's emphasis on strict adherence to the rules of the court is an appeal to tax the bill of costs according to the scales of costs provided in the Rules. I quite agree with the reasoning behind the ideas and views of the Counsel for Respondent that the Rules of the Court provides the criteria and should therefore be complied with unless there are very strong reasons to justify the departure.

In the bill of costs subject of this ruling, I wish to start with items relating to "perusal and drawing of documents". Eighth Schedule of the Rules which deals with scale of costs at Appellate Division is silent on matters concerning perusal of documents. However, I take this silence on the part of the rules to be curable. Indeed the Second Schedule of the Rules which specifically deals with taxation at the First Instance Division states that *perusal of notices per folio is charged at USD 5.* In my view the silence of the Eighth Schedule should not limit this Court to tax perusal of documents in the taxation of bills of costs in the Appellate Division. I find no convincing reason to suggest that if the same were provided in the Eighth Schedule would differ in amount with the scale provided in the Second Schedule for First Instance Division. Therefore, I will tax the same by using the scale provided in the Second Schedule.

The Notice of Appeal contains only two (2) pages which are two folios, therefore, it is totaled to USD 10 (basing on the scale of USD 5 per folio), hence I tax Item No. 2 at **USD 10.** Item No. 3 which is the perusal of the Memorandum of Appeal with three (3) folios is taxed at **USD 15.** Item No. 4 which is about perusing relevant documents and authorities is **taxed off** due to the

fact that the same is already taxed in Items 2 and 3. It is my view that the “perusing relevant documents” includes perusal of Notice of Appeal and Memorandum of Appeal which have been already taxed in items 2 and 3.

Eighth Schedule provides the scale costs for drawing a Memorandum of Appeal to be USD 150. However, the said Schedule does not provide the scale of cost for reply of the same. It is my view that the scale of cost for drawing of Reply of the Memorandum of Appeal should also be USD 150 instead of USD 4.93 claimed in item 5 of the bill of costs. In my view intellectual labour involved in drawing Memorandum of Appeal is the same with that involved in its reply. Therefore, I tax Item No. 5 at **USD 150** accordingly.

According to item 13 of the Scale of Costs provided in the Eighth Schedule of the Rules of Procedure, the costs *for making any necessary copies for each folio or part thereof for the first copy is USD 3 and USD 1 for each subsequent copy*. The Applicant made only eight (8) copies of the Reply of Memorandum of Appeal. Therefore the first copy is taxed at USD 3 and the remaining seven (7) copies at USD 1 per copy which totals USD 7. Thus I tax item No. 6 at **USD 10**. Item No. 7 relating to perusal of authorities from the Respondent (ten (10) folios) is taxed at **USD 50**.

Since the rules provide that *the costs for drawing a bill of costs, for each folio or part thereof is USD 5* and the bill of costs has nine (9) folios then USD 5 times 9 folios totals USD 45. So, I tax Item No. 8 at **USD 45**.

The Applicant also made six (6) folios of the bills of costs which constitute Item No. 9. The Rules provides that costs *for making any necessary copies for each folio or part thereof for the first copy is USD 3 and USD 1 for each subsequent copy*. The first folio is taxed at USD 3 and the rest five (5) folios are taxed at USD 1 per every folio. Then I tax Item No.9 at **USD 8**. **In total items 2 to 9 relating to perusals, drawing and making copies thereof, are taxed at USD 288 accordingly.**

Item No 10 relates to attendance to the East African Court of Justice for opposing the Appeal. According to the rules of this Court as spelt out in the Eighth Schedule, the cost for *attending in*

Court on the hearing of any application or appeal for the first 30 minutes is USD 75 and 25 USD for subsequent 30 minutes. The appeal session was conducted on 23th April 2012 from 10: 30 a.m to 12:50 p.m. whereby 140 minutes were spent in Court. Guided by the quoted provision, I tax Item No. 10 at **USD 166.66** accordingly.

Item No 11 which is about attendance to registry is taxed at **USD 40** and Item No.12 which is about attendance to hear judgment for half day is taxed at **USD 10**. The Court rules in the Eighth Schedule provide that the costs for *attendance to registry should be USD10 and USD 40 for half day* for attendance to hear judgment).

Item No. 13 concerning defending the bill of cost is taxed at **USD 30**. The rules in the scale of costs provide that *attendance on the Registrar for the first 15 minutes is USD 25 and USD 10 for each subsequent 30 minutes*. The Court commenced at 10.30 a.m and was adjourned at 11.00 a.m therefore the Court Session took almost 30 minutes. The first 15 minutes therefore are taxed at the tune of **USD 25** and the rest 15 minutes are taxed at **USD 5**. Hence Item No. 13 is taxed at **USD 30**. **In total items 10 to 13 relating to Court Attendance are taxed at USD 246.66**

On the issue of **Expenses and Disbursements**, Mr. Malala, the Counsel for Respondent had no issues with claims that were support by receipts. For ease of reference I wish to quote him in extensor as follows:

“For the air tickets, we have seen the receipts and we are not contesting, but for other items, they are all contested because we have not seen the receipt” [Emphasis added]

Therefore, Items No. 15, 21, and 26 concerning air tickets amounting to **USD 1, 867** are taxed accordingly since receipts of the same were brought before this Court and were conceded by the Respondent’s learned Counsel as per his above quoted submission. On item No 14, the applicant claimed mileage expenses without even attaching the log book of the motor vehicle he used or fuel receipts. Hence Items No. 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29 and 30 are disputed on the ground that they are claimed through photocopied receipts.

While in the Court room, the Applicant was not able to produce the receipts for Items No. 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27 and 28 and where attempts were made he just produced uncertified and unauthenticated photocopies of receipts which are inadmissible.

It is not in dispute that Mr. Rwakafuuzi came to Arusha on the dates as marked on the disputed items above. He might have incurred some expenses during the said mission or he might have not incurred such expenses. It is incumbent upon him to prove to the Court that he incurred the claimed expenses. While the Court in appropriate circumstances may take judicial notice as per Court records about the presence of the Applicant in Court, but it cannot automatically base on the presence of Applicant in Court accept the claimed costs to be the actual costs incurred by the Applicant. It must be noted that the rules of this Court require the party/applicant to produce original, or primary, receipts/evidence and avoid using secondary evidence. This approach is called the “best evidence rule” and this is reflected in Paragraph 4 (2) of the Eighth Schedule of this court’s rules of procedure which provides that:

“receipts for disbursements shall be produced to the taxing officer at the time of taxation”. [Emphasis is added].

The task of this Court now is to examine if the interpretation of the above provision accommodate even photocopies of receipts. As a taxing master, I decline to extend the meaning of the word “receipt” to include even the “photocopies” of the same. It is my view that the law recognizes only the receipts not photocopy (ies) of receipts. Whereas some of the items in the bill of costs were supported by admissible documentary evidence to show that they were costs incurred by the Applicant, others were supported by photocopies (uncertified copies), hence lacked “credibility”. Such claims (totaling USD 2,495) are those for travelling, meals and accommodation expenses for the Applicant when he came to Arusha to file various documents with the Court. They are shown in the bill of costs as items 14, 16-20, 22-25, and 27-30. In the absence of originals and certified copies there is no other way that this Court can satisfy itself that they were expenses which were incurred by the Applicant, and I tax them off accordingly.

Item No. 29 concerning communication expenses is also taxed off for the same reasons mentioned above as no receipt was produced or bills from the service provider were produced in court. This is not one such expenses the Court can take judicial notice in the absence of receipts.

I tax Item No. 30 concerning cost for filing bill of costs at **USD 15**. In this item, the Court takes judicial notice of the fact that filing fee was paid to the Court before the application could be admitted in Court. Seventh Schedule of the East African Court of Justice Rules of Procedure provide a fixed amount to be taxed for lodging a bill of cost for taxation to be USD 15. I tax the item at USD 15. In total I tax items 14-30 related to **Expenses and Disbursements at USD 1, 882 accordingly.**

The only remaining contentious matter is item No.1 that is “professional fees for receiving instructions.”

In this item, I will consider and also be guided by the Rules of the Court and findings from different case laws. Eighth Schedules of the Rules of the Court reads as follows:

“for the instruction to act for a Respondent where an appeal is subsequently instituted is USD 60”.

The learned Judge, R. O Kwach in ***Joreth Limited vs. Kigano & Associates*** Civil Appeal No.66 of 1999, Nairobi High Court Registry stated as follows:-

“... the taxing officer is entitled to use his discretion to asses such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of proceedings, any discretion by trial and all relevant circumstances”.

Also I am persuaded by the guidance to the taxing master as reflected in the case of ***Khatijabai Jiwa Hasham v. Zainabu daughter of Chamdu Nansi [1957] EA 255 at 257*** that:

“...that as a taxing officer, I have a duty to the public to see that costs do not rise above a reasonable level”.

The Applicant in this matter before me demanded USD 4,000,000 as indicated in the bill of costs. However, during the submission in court, Mr. Rwakafuuzi the Applicant advocate dramatically dropped the amount to USD 210,000. I am not sure whether that was oral amendment of the bill of costs as far as instruction fees in item No. 1 was concerned. Mr. Rwakafuuzi, the Counsel for Applicant argued that an Appeal was more complex than the Reference in the First Instance Division that is why he demanded more USD 10,000 than the amount demanded in the taxation cause in the First Instance Division in which he claimed USD 200,000 as instruction fees, again after dropping it from USD 2,000,000. The learned Counsel for the Applicant explained that the demanded amount was due to the complexity of the case. He argued that even though an Appeal was a bit shorter, but was more complex, and that they faced a Coram of five Justices. He further argued that an Appeal was something out of ordinary that required a lot of research and a lot of correspondences and as provided in the bill of cost.

Mr. Malala, Counsel for the Respondent, argued that on the issue of instruction fee the claim of USD 210,000 as instruction fees was still on the high end and arbitrary. He submitted that it intended to make the ordinary citizen suffer which is not the purpose of this Court. He further contends that the Court should not punish ordinary Rwandans. He prayed to the Court that a fee of USD 4,000 should be awarded to the Counsel of the Applicant. According to him an Appeal was not complex, because what was done by the Appellate Division was to confirm the decision of the Court in the first instance. Mr. Malala, the Counsel for the Respondent argued that the Counsel for the Applicant (Mr. Rwakafuuzi) did not do more work in appeal than that he did in the First Instance Court, that professional responsibility was ordinary. His view is supported by the fact that in Appeal the Applicant did not conduct extensive research and the high level analysis since the matter was extensively dealt in the First Instance Division.

With all due respect, I disagree with the argument advanced by Mr. Malala, Counsel for respondent that by awarding the amount of money claimed by the Applicant, this Court would be making the ordinary citizen of Rwanda suffer, which is contrary to the purpose for which this Court was established. It is my interpretation that Mr. Malala meant that this Court should take into consideration public interest of citizens of the Republic of Rwanda as it considers to award instruction fees to the Applicant. This Court in the case of *Attorney General of Kenya v.*

Prof. Anyang'nyong'o and ten (10) others, Appeal No. 1 of 2009 at pp 22-24 made it clear what public interest constitutes when it stated that:-

“...the use of taxpayers’ money to pay legal costs constitutes public interest...paying legal costs out of Consolidated Fund of the National Treasury is, of course, a matter of great interest to the public...the public would be interested more in scrutinizing issues leading to award of the costs, than merely the quantum of those costs.”

I also disagree with the argument made by the Applicant that the matter was a complex one that why it was handled by a Coram of five judges. On the selection of a coram the Proviso of **Rule 102** reads as follows:-

*Provided that having regard to the public importance of the matter **or** to any conflict **or other** complexity in the law applicable, the president or on application by any party, the Court may direct such matter to be heard and determined by a full bench of the Division. [Emphasis is added].*

In law, words “OR” and “OTHER” are construed disjunctively (**refer for example section 13 of the Interpretations of Laws Act, CAP 1 of Tanzania Laws**). It is my view that the matter can be handled by a coram of a full bench of the Division due to other considerations apart from complexity of the matter. Such other considerations would include for instance where the matter is of “public importance” the full bench may be invited to determine the matter.

Also it is my view that the complexity of the matter is also measured by the professional and legal responsibility undertaken, research involved, relevant documents needed for the case, and the novelty of the case in developing jurisprudence of this Court. It is against this background that I find a claim of USD 210,000 in item No. 1 of the Bill of Costs as being on the higher side. The scale provided is only USD 60. Taking into account the nature of the Appeal, interests of the parties, complexity and amount involved in the Appeal, I therefore, tax this particular item at **USD 10, 000**.

To conclude, I tax the bill of costs as follows: Instruction fee is taxed at **USD 10, 000**, plus VAT at 18% **USD 1, 800**, plus a total amount of USD 2, 422.66 awarded to cover costs for filing, perusals, photocopying, drawing of documents, and court attendances among others, making a grand total of **USD14, 222.66 (United States Dollars Fourteen Thousands Two Hundred Twenty Two Sixty Six Cents Only)**

I so tax.

Dated at Arusha this day of 2013

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PROF. DR. JOHN EUDES RUHANGISA

TAXING OFFICER