



**IN THE EAST AFRICAN COURT OF JUSTICE-FIRST INSTANCE DIVISION**

**AT ARUSHA**

**TAXATION CAUSE NUMBER 1 OF 2013  
(Originating from Reference No. 1 of 2010)**

**HON. SAM NJUBA.....APPLICANT**

**Versus**

**HON. SITENDA SEBALU.....RESPONDENT**

**RULING**

**DATE: 20<sup>TH</sup> MARCH, 2015**

**PROF. JOHN EUDES RUHANGISA, TAXING OFFICER**

This ruling is in respect of a bill of costs filed by the Applicant herein who featured as the Third Respondent in Reference No. 1 of 2010. The Court in its judgment in Reference No. 1 of 2010 dated 30<sup>th</sup> June, 2011 struck off the 3<sup>rd</sup> and 4<sup>th</sup> Respondent, that is, Hon. Sam Njuba the Applicant herein and Electoral Commission of Uganda. The Court directed that the Applicant in the Reference, who is the Respondent in this taxation pay the 3<sup>rd</sup> and 4<sup>th</sup> Respondents costs. The Applicant in the Reference who is also the respondent in this taxation was as well awarded costs to be paid by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the Reference, whose bill was filed and taxed by the Registrar.

Having given the background I now go to the substance of the bill itself. The Bill in Taxation Cause No. 1 of 2013 filed by Hon. Sam Njuba represented by Victoria Advocates and Legal Consultants is for the total sum of USD\$ 127,785.

At the hearing of this bill of costs on 29<sup>th</sup> August 2013 I made a preliminary ruling consolidating this matter with other two taxations against the same respondent herein as one and ordered that each Applicant makes his submissions and thereafter the Respondent could respond once to all the submissions instead of responding after every submission by the applicant on each bill. This directive was made to facilitate a quick hearing and for one ruling to be delivered in the consolidated matter.

After hearing the three bills of costs together and the matter pending for delivery of ruling, counsels for the Applicant and Respondent in Taxations No. 2 and 3 filed consent on 28<sup>th</sup> January, 2014 settling the two bills of costs and I will therefore exclude them in this ruling.

Mr. Komakech, counsel representing the Applicant, submitted that the bill was drawn in total compliance with the Third Schedule of the Rules of Procedure that apply to taxation and that it is the fairest bill the court has ever looked at. Counsel submitted that item 2 to 33 were in total compliance with the rules that govern taxation but with regard to disbursements he submitted that he had a problem as he did not have receipts which is a requirement under Rule 4(2) the Third Schedule of the Rules of Procedure that states "Receipts for the disbursements shall be produced to the taxing officer and copies served to the other party at least fourteen (14) days before the taxation" and Rule 4(3) that states "No disbursements shall be allowed which has not been paid at the time of taxation". His reasons were that he had been consulting Mr. Ogalo, who had been handling this matter, for one week prior to the taxation date to avail him receipts so that he could have them filed and served upon the Respondent but he was so busy in the Constitutional Petition No. 21 and 16 in Uganda Constitutional Court and as a result of that he was unable to get a single document to support his claim for disbursements. Counsel sought an adjournment so that he can have the receipts produced in court and that he could concede to costs for the adjournment. He requested the court to allow him time to avail them latest by Tuesday the following week and that if he could not be allowed to avail them; he would leave the issues in the discretion of the court.

Mr. Semuyaba for the Respondent objected to the application for adjournment for reasons that the Rules require that once the taxation has begun the receipts must be produced and that they had also tried discussing the matter the previous evening and in the morning before the taxation hearing commenced when counsel for the Applicant admitted that there were no receipts. He therefore did not know where the receipts would come from if they had not been around for the last six months since the bill was filed. He argued that an adjournment would not be of any effect.

With regard to Item 1 on instruction fees Mr. Komakech submitted that the instruction fees were determined in this case when the Registrar taxed the bill of costs filed by the Respondent herein as against the Attorney General of Uganda and the Secretary General of the East African Community. He also argued that instruction fees are not determined by whether a matter has gone for a full trial or whether a matter has been dismissed prematurely, and that instruction fees are determined, first of all, at the time when counsel takes instructions in his office. He further submitted that the court really looked at the issues to determine what would be appropriate fees when it was taxing the bill in *Hon. Sitenda Sebalu Versus the Secretary General of the East African Community and the Attorney General of the Republic of Uganda*. He prayed that the Registrar uses the set down principles of taxation and tax the bill accordingly.

Mr Semuyaba for the Respondent in his response submitted that items numbers 1 to 17 on disbursements be disallowed because they were not receipted and that the court had ruled in Taxation No. 5 of 2008 *James Katabazi & 21 Others Versus Secretary General of the East African Community and The Attorney General of Uganda* and in Taxation Cause No. 1 of 2006 *Calist Andrew Mwatela & 2 Others Versus East African Community* that disbursements will not be allowed if receipts are not there. He submitted that Mr. Ogalo who was involved in those two cases should have known the practice. With regard to items 1 to 32 he submitted that they were not fair and that the numbers of folios in items 2 to 7 on perusals are not correct as they had not been charged in accordance with Rule 7. He argued that the applicant is not specific about what he meant by folios and that the word “folio” as far as the Rules are concerned refers to number of words and not just estimation as counsel has put it. With regard to items 8 to 11 he submitted that the fee claimed is not in commensurate to what drawings are as provided under Rule 3. On items 12 to 30 Mr. Semuyaba reiterated his earlier submission on perusal and argued that counsel

should have been specific about the number of folios in order to justify the claim that he was making. He had no objection to Items number 31 and 32.

With regard to Item 1 on instruction fees Mr. Semuyaba submitted that it was unreasonable and unfair. He argued that the order of the Court in that particular case was that the Reference against Hon. Sam Njuba was struck out and that he was relying on a wide range of authorities that he had filed that define the difference between striking out a matter and dismissing a matter. He submitted that in this case the case was not dismissed and therefore the applicant could not justify the subject matter to be worth USD\$ 100,000. He referred to the decision in Taxation Reference No. 4 of 2010 *Kenya Ports Authority versus Modern Holdings Limited* where similar reasons were given for striking out the main reference and the Honorable Judge ruled that a fair fee should be USD\$ 15,000. He brought to the attention of the court that he had informed counsel for the applicant that his client was ready to concede to USD\$10,000 as instruction fees and further submitted that the Court taxes and allows the instruction fees to be USD\$10,000.

Mr. Komakech in his rejoinder reiterated his earlier submission that this is the fairest bill that has been brought to this court and in total compliance of the rules of this court. He also distinguished the ruling in the Modern Holdings case and stated that the ruling was in respect of a Taxation Reference that arose from the taxation of a bill in another Taxation Reference that had been dismissed with costs and not out of the substantive Reference that gave rise to that matter. He submitted that that is why the her Lordship, in her decision, said that for the purpose of consistency you cannot give an award in an application to be over and above the main suit itself and so she reduced it to USD\$15,000. He said that in this particular case it was the main case that all the lawyers prepared the proceedings, all paper work done, the matter came up for hearing and it is at this stage of hearing that the third and fourth respondents were struck out. He informed the court that he had told the counsel for the respondent that he could concede USD\$35,000 and not go beyond that. He finally concluded by praying that the Registrar uses the set down principle of taxation and taxes the bill accordingly.

I will begin by taxing Items 2 to 32 on drawings, makings of copies and perusals. I will then tax disbursements that are numbered from item 1 to 17 of the bill then finally revert back to item 1 on instruction fees. Before I begin taxing Items 2 to 32 I will deal with the issue of what folios mean by referring to Rule 1 of the Third Schedule on Taxation of Costs which provides that:

“In this Schedule, a folio means one hundred words, and a single figure or group of figures up to seven shall count as one word”.

It may not be practicable to count the number of words in a document for example of 100 pages to determine the number of folios but the folios can be approximately determined by counting the number of words in one page and if it is an average of 200 hundred words per page as in the Reference herein then that will be 2 folios per page, which you multiply by the number of pages in the document to get the total number of folios. Having considered submissions on Items 2 to 32 and the way of calculating folios above, I will proceed to tax them as provided by the rules. The Applicant has claimed a total sum of USD\$ 1,210 in Items 2 to 7 for perusal of Notice of Motion, supported by an Affidavit and Annexures thereto. I have looked at the document which is 87 pages with an average of 200 words per page making it two folios per page and if multiplied by two makes a total of 174 folios. Rule 7 on Scale of Charges provides for USD\$ 5 per folio, which if multiplied by 174 makes a total of USD\$ 870. I therefore tax **items 2, 3, 4, 5, 6 and 7** in the **total sum of USD\$ 870. Item 8** for drawing of Response is taxed at **USD\$ 3** as per Rule 3 under Scale of Charges Third Schedule which provides USD\$3 for four folios or less. **Item 9** is also taxed at **USD\$ 3. Items 10 and 11** are taxed as claimed which is a **total sum of USD\$ 8. Items 12 to 28** on perusal of Applicants Written Submissions, List of Authorities and copies of authorities annexed thereto are taxed in the total sum of **USD\$ 2,740** using the same criteria above of 200 words per page and having looked at the document that has 274 pages making a total of 548 folios multiplied by USD\$5. **Items 29 and 30** are taxed as drawn in the total sum of **USD\$ 79. Items 31 and 32** were not objected to and I tax them as drawn in the total sum of **USD\$ 70**. The grand total amount for items 2 to 32 is therefore taxed at **USD\$ 3,773**.

On disbursements itemized as items 1 to 17 I have considered submissions by both counsels and in view of the fact that I made a ruling against an application to adjourn the taxation on disbursements, I will proceed to rule that in the absence of receipts to prove the disbursements claimed, all the items on disbursements are hereby disallowed and taxed off accordingly.

I now revert to item 1 on instruction fees where the Applicant herein is claiming a sum of USD\$100,000. Rule 9(2) of the Third Schedule on Taxation of Cost of Court Rules provide that:

“The fee to be allowed for instruction to institute a suit or a reference or to oppose a suit or a reference shall be such sum as the taxing officer shall consider reasonable, having regard to the amount involved in the reference, its nature, importance and complexity, the

interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the person to bear the costs and all other relevant circumstances”.

The Applicant herein who was the 3<sup>rd</sup> Respondent was sued as nominal respondent together with the 4<sup>th</sup> Respondent in the Reference giving rise to this taxation. He was represented by M/s Victoria Advocates and Legal Consultants and he opposed the reference by filing his response, written submissions, a list of authorities and made oral submissions at the hearing. The matter was heard substantively and a final decision made where the 3<sup>rd</sup> and 4<sup>th</sup> Respondents were struck off. The matter was not concluded at a preliminary stage. Being a nominal respondent leads me to the principle of the interest of parties mentioned in Rule 9(2).

The actual respondents were the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who had to do more research and aggressively oppose the reference. The award of USD\$ 65,000 as instruction fees to the Applicant in the reference against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents jointly and severally cannot be the same award to one nominal respondent who was struck off the record. Taking into consideration that the respondent herein in his submissions was ready to concede to USD\$10,000 as instruction fees while the applicant concedes to USD\$35,000, I have considered what is reasonable, having regard to the amount involved in the reference, its nature, importance and complexity, the interest of the parties and the other costs to be allowed as against the Respondent in the other two taxations, the general conduct of the proceedings the person to bear the costs and all relevant circumstances and tax item 1 on instruction fees at the sum of **USD\$ 15,000** inclusive of VAT. The bill is therefore taxed in the sum of USD\$ 15,000 plus USD\$ 3,773 earlier awarded above making a grand total of **USD\$ 18,773**.

In conclusion the bill of costs in *Taxation Cause Number 1 of 2013 Hon. Sam Njuba Vs Hon. Sitenda Sebalu* is taxed at **USD \$ 18, 773** (United States Dollars Eighteen Thousand Seven Hundred and Seventy Three) Only. All taxed amount include VAT

I so tax.

Dated at Arusha this 20<sup>th</sup> day of March, 2015

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**PROF. JOHN EUDES RUHANGISA**  
**TAXING OFFICER**