



**IN THE EAST AFRICAN COURT OF JUSTICE-FIRST INSTANCE DIVISION  
AT ARUSHA  
TAXATION CAUSE NUMBER 1 OF 2014**

**(In Reference No. 8 of 2012)**

**HON SITENDA SEBALU.....APPLICANT**

**VERSUS**

**THE SECRETARY GENERAL OF EAST AFRICAN COMMUNITY.....RESPONDENT**

**RULING**

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

**GERALDINE UMUGWANEZA – TAXING OFFICER**

This ruling on taxation emanates from the Court Order in Reference No. 8 of 2012 Hon. Sitenda Sebalu Vs. the Secretary General of the East African Community whereby the applicant herein was awarded costs. The applicant filed a Bill for a total sum of United States Dollars Two Hundred Ninety Seven Thousand and Six (USD 297, 006.00) for among others instruction fees, attendances and disbursements in the Application. The Applicant in this taxation was represented by Mr. Justin Semuyaba of M/s Semuyaba, Iga & Co. Advocates and holding brief for M/s Bakiza & Co. Advocates while the Respondent was represented by Mr. Wilbert Kaahwa Counsel to the Community.

The background of this bill of costs is that the Applicant in Reference No. 8 of 2012 sought the implementation of a judgment in Reference No. 1 of 2010 that was in his favour and in Taxation Cause No. 1 of 2011 for taxed costs payable by the Respondent. The Applicant in the Reference giving rise to this Taxation Cause contended that the failure by the Council of Ministers/Sectoral Committee on Legal and Judicial Affairs to implement the judgment of the Court in **Reference No. 1 of 2010** and to pay the costs awarded in **Taxation Cause No. 1 of 2011**, was an infringement of Articles 7(2),(8)(1)(c), 13,14,15,16,20,21,22,23,27(1),30,38 and 44 of the Treaty.

At the taxation hearing on 7<sup>th</sup> October, 2014 counsel for the Applicant and counsel for the Respondent informed the Court that they had a meeting and agreed on some items save for items 1 and 2 which both Counsels made oral submission on and items 32 to 65 where there was a dispute on receipts. Both Counsels also agreed on items 11, 21, 22 and 28 subject to clarification by the Taxing Officer from the record on the dates of attendance. Counsel for the Respondent, in objecting to items 32 to 65 argued that he had been served only with a few invoices and electronic tickets, which cannot be used as proof of disbursements as required under Rule 4 of the Third Schedule that receipts be produced. Both counsel agreed that items 25, 26, 66 to 74 be deleted from the Bill of Costs and the same were deleted by consent. I will therefore begin by taxing those items that were agreed upon then revert to those that were agreed upon subject to clarification and finally those that were in dispute.

The Items that were agreed on with or without adjustments are as follows: Item 3 at **USD 26**, item 4 at **USD 17**, Item 5 at **USD 85**, Item 6 at **USD 18**, item 7 at **USD 17**, item 8 at **USD 26**, item 9 at **USD 10**, Item 10 at **USD 10**, item 12 at **USD 10**, item 13 at **USD 5**, Item 14 at **USD 5**, item 15 at **USD 5**, item 16 at **USD 5**, item 17 at **USD 5**, item 18 at **USD 5**, item 19 at **USD 5**, item 20 at **USD 5**, item 23 at **USD 100**, items 24 at **USD 5**, item 27 at **USD 16**, item 29 at **USD 15**, item 30 at **USD 30**, items 31 at **USD 30**.

The above agreed items are therefore allowed as agreed and taxed in the total sum of United States Dollars Four Hundred and Fifty Five (**USD 455**)

Having taxed the agreed items I now revert to the items that were agreed upon by the Respondent but subject to clarification by the Taxing Officer from the court record on the dates of attendances. The particular of Item 11 were attendance by two counsels on 23<sup>rd</sup> August, 2013 and I confirm that that is the date the matter came up for oral submissions. Item 11 is therefore allowed and taxed at **USD 60**. Item 21 is for attendance on 22<sup>nd</sup> January, 2014 by two counsel and I have confirmed from the records that there was no hearing in this Reference on 22<sup>nd</sup> January, 2014 but there was a hearing in an application arising from this Reference which has been taxed separately in a bill filed in the application. Item 21 is therefore taxed off. Item 22 is for attendance 14<sup>th</sup> February, 2014 by two counsel for a ruling. Again this was a ruling in the Application and I also tax this item off. Item 28 on attendance for ruling which I confirm that is the day when judgment in the Reference was delivered and I therefore allow the item. Item 28 is therefore taxed at **USD 60**. The items that were agreed upon subject to confirmation by the Taxing Officer are therefore taxed in a total sum of **USD 120**

I now revert to items that were in contention for grounds of non-availability of receipts, that is, items 32 to 65. Counsel for the Respondent vehemently objected to these items arguing that what he had been served with was invoices and electronic tickets but not receipts. At the hearing Mr. Semuyaba attempted to show Mr. Kaahwa the receipts related to the items but Mr. Kaahwa declined and said “I do not want to be shown things at this point in time. Let me indicate what was served on me and which corresponds with what he is talking about”. Following protracted arguments I ruled on this contentious subject and allowed Mr. Semuyaba to produce original documents in court in support of the disbursements under items 32 to 65. I will use my discretion to verify the receipts.

I also have this to say on my decision to allow the receipts produced in Court at the hearing. This is a Court of Justice that will not dwell much on technicalities taking into consideration that the time frame for filing and serving receipts was introduced in the new Rules to facilitate smooth taxation process of Bills. The time frame of 14 days included in Rule 4 of the current Rules of Procedure was basically to allow the Registrar and the Respondent time to scrutinize the receipts in advance before the taxation. Although the Applicant has failed to strictly comply with Rule 4,

I deem it just to use my discretion and consider the receipts produced in Court on the day of taxation. I also use my discretion under Rule 11(1) that provides “On taxation the taxing officer shall allow such costs, charges and disbursements as shall appear to him or her to have been reasonably incurred for the attainment of justice but no costs shall be allowed which appear to the taxing officer to have been incurred through overpayment, extravagance, overcaution, negligence or mistake or by payment of special charges or expenses to witnesses or other persons or by other unusual expenses”. Mr. Kaahwa submitted that on these particular items the court should be guided by the Rules that he had cited. I will therefore proceed to tax each item while counterchecking the receipts in support and where there is no genuine receipt or no receipt at all I will tax off the item, where there is a receipt I will tax the item accordingly.

Items 32, 33, 34, 35, 36 and 37 are expenditures for travel and subsistence to Arusha by two counsel on 2<sup>nd</sup> June 2012 to demand payment from the Secretary General of the East African Community who refused to pay and the Applicant filed the Application and back to Kampala on 9<sup>th</sup> June. I have perused the Court record and established that the Reference was filed on 28<sup>th</sup> June 2012. Any expenses incurred before the filing of the Reference should have been included as a claim in the Reference and should not be charged by the Applicant herein in the Bill that has been filed in the Reference. For these reasons **I accordingly tax off items 32 to 37.**

Items 38, 39 and 40 are expenditures for travel to Arusha on 7<sup>th</sup> March 2013 to file an Affidavit in Response and departure on 10<sup>th</sup> March, 2013. The Court record does not show any filing between 7<sup>th</sup> and 10<sup>th</sup> March, 2013. The only filing was on 5<sup>th</sup> March, 2013 of a Supplementary Affidavit in Support of the Application that was done in Kampala sub-registry. **I therefore tax off items 38 to 40.**

Items 41, 42 and 43 are expenditures for travel to Arusha on 31<sup>st</sup> January, 2013 to attend a scheduling conference and back to Kampala on 13<sup>th</sup> February, 2013. I have confirmed from the court record that the Reference came up for Scheduling Conference on 5<sup>th</sup> February, 2013. Counsel also produced a receipt Number 417 being payment of USD 751 to Malaika Advetures for his air ticket and also attached the air ticket No. 0312889940473. I therefore allow and tax

item 41 for the travel at **USD 751**. He also produced receipts in support of item 42 for the airport transfer which I have verified. I therefore tax item **42 at USD 100**. Item 43 is for 4 days accommodation at USD 800 which I find no justification for because Counsel can only arrive a day before the hearing and travel back on the third day. Although the Applicant has provided receipts in support of this expenditure I find no justification for the four days claimed. I therefore tax down the item **43 to USD 400**. **Items 41 to 43 are therefore taxed in the total sum of USD 1,251**.

Items 44, 45 and 46 are expenditures for travel to Arusha on 1<sup>st</sup> May, 2014 to file written submission and back to Kampala on 4<sup>th</sup> May, 2013. I have confirmed from the record that the Applicant filed his Written Submissions on 2<sup>nd</sup> May, 2013 at 10:30 a.m. I have also verified the receipt of payment of USD 752 to Malaika Adventures for air ticket. I therefore allow and tax item **44 at USD 751**. I have also verified receipt for airport transfer and tax item **45 at USD 100**. Item 46 is for accommodation for 3 days and for reasons given elsewhere above I allow only 2 days and tax item **46 at USD 400**. **Items 44 to 46 are therefore taxed in the total sum of USD 1, 251**.

Item 47 for photocopying authorities and whose receipt I have verified is allowed and taxed in the sum of **USD 273**. **Items 48 and 49 are taxed off** for reason that there is no court fee chargeable for filing authorities and affidavits neither was a receipt produced for these expenditures. Item 50 on photocopy of annexures to affidavit in reply is also taxed off because there was no affidavit in reply filed in the Reference. **Items 47 to 50 are therefore taxed in the total sum of USD 273**.

Items 51 to 56 are expenditures for two counsel to arusha to attend the hearing on 23<sup>rd</sup> August 2013 and back to Kampala. For these items I have verified the air ticket receipts for USD 751 each paid to Satguru travel & tours services co. and airport transfers at USD 100 each. I have also verified the receipts for accommodation for 3 nights at USD 600 each which I will tax down to USD 400 each for reasons stated elsewhere above. **Items 51 to 56 are therefore taxed in the total sum of USD 2,502**.

Item 57 to 62 are for travel by two counsel to Arusha and accommodation when the matter came up for delivery of judgment and travel back to Kampala. I have perused the receipts and confirm that items 57 and 60 of payment for air ticket at USD 751 each have been proved; item 58 and 61 on airport transfer at USD 100 each has also been proved. Although receipts have been produced for item 59 for accommodation charged at USD 1800 for nine nights and item 62 at USD 600 for 3 nights, I tax them down to USD 400 each for 2 nights for reasons stated elsewhere herein above. **Items 57 to 62 are therefore taxed in the total sum of USD 2,502.**

Items 63 to 65 are for travel to Arusha to file the bill of costs, accommodation and back to Kampala. The item does not indicate the dates when the applicant travelled to Arusha and back to Kampala. I have perused the court record and established that the bill was filed in Arusha on 14<sup>th</sup> August 2014. The Applicant has not furnished the court with receipts in support of these items and for this reason I tax the items off.

Counsel for the Applicant deleted items 66 to 74 for reasons that Mr. Bakiza who had been included in those items had not traveled for the taxation in Arusha. He however prayed that the Court uses its discretion in allowing the days costs whose receipts he furnished the Court with. My Kaahwa had no objection to the deletion of the items. Having verified the receipts that Mr. Semuyaba produced regarding his travel to Arusha for the taxation I award the sum of USD 751 for the air ticket, USD 100 for airport transfer and USD 400 for accommodation. In total I award **USD 1,251** for attendance at the taxation.

Items 32 to 74 that were in dispute are therefore taxed in the total sum of USD 9,030. Before I revert to items 1 and 2 on instruction fees I hereby compute the total of all the items except items 1 and 2. Item 3 to 31 I taxed them in the total sum of USD 565 and therefore in addition to items 32 to 74 that I have taxed at USD 9,030 the **total amount taxed for items 3 to 74 is USD 9, 595.**

I now revert to items 1 and 2. On item 1 related to instruction fees charged at United States Dollars Ten Million (USD 200, 000) Mr. Semuyaba for the Applicant referred the Court to

particulars of the item in the Bill that justify the fees charged, which particulars included among others instruction fees to two counsel to institute Reference No. 8 of 2013 against the Respondent for declarations and orders as outlined in the background referred to in the beginning of this ruling; complexity of the matter; a matter involving careful merits of the Reference; Reflecting on the facts and law raised in the Reference; importance of the matter; Taking into consideration the huge professional responsibility, research undertaken and the entire circumstances of the case. Counsel prayed that the Court be guided by Rule 9 of the Third Schedule of the taxation of the East African Court of Justice Rules of Procedure that provides:

*“(1) The fee to be allowed for instruction to make, support or oppose any application shall be such sum as the taxing officer shall consider reasonable but shall not be less than US\$ 100.*

*(2) The fee to be allowed for instruction to institute a suit or a reference or to oppose a suit or 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 parties, the other costs to be allowed, the general conduct of the proceedings, the person to bear the costs and all other relevant circumstances.*

*(3).....*

*(4).....”*

Mr. Semuyaba in his submission that the court should maintain the consistency of its awards by looking at the nature and importance of the matter, he relied on the cases of **James Katabazi & 21 Others Vs The Secretary General of the East African Community Taxation No. 5 of 2008**, **Calist Mwatela & 2 Others Vs The East African Community Taxation Cause No. 1 of 2006**, **Prof Anyang Nyongo and others Vs The Attorney General of the Republic of Kenya Taxation No. 2 of 2010**, **Modern Holdings East African Ltd Vs Kenya Ports Authority Taxation Cause No. 1 of 2010**, **The Attorney General of the Republic of Kenya Vs Prof. Anyang Nyongo & 10 Others Appeal No. 1 of 2009**, **Attorney General of Kenya Vs Prof.. Anyang Nyongo & Others Taxation Cause No. 2 of 2010** and **Kenya Ports Authority Vs Modern Holdings Ltd Taxation Reference No. 4 of 2010**. Mr. Semuyaba submitted that:

“This Court would award instruction fees within the region of USD 65, 000. So, much as we may have filed a bill of USD 200,000, I would submit that that is on the high end, but this court should be guided by the taxations that have been done in matters of this nature before us”.

As regards getting up fee in item 2, he submitted that the Court be guided by Rule 2(1) of the Second Schedule and tax it a quarter of the instructions fees awarded. When I sought clarification from Mr. Semuyaba on whether he was bringing down the instruction fees from USD 200,000 TO USD 65,000, He answered “I would say that if you are considering whether that amount is excessive, too low or too high, you be guided by the previous taxation. The taxation precedence that I have read oscillates between those amounts and they do not seem to be going above USD 65, 000. Just for guidance. Mr. Semuyaba also relied on the cases of **Paul K. Ssemowogerere & Zachary Olum Vs. Attorney General Civil Application No. 5 of 2001**, **Zachary Olum & Another Vs Attorney General Civil Application No. 1/2004** and **Zuberi V Returning Officer and Another 1973 E.A 33**, and Judicial Hints on Civil Procedure Richard Kuloba 2<sup>nd</sup> Edition Law Africa. Finally, Mr. Semuyaba submitted that the Taxing Officer awards VAT on the fee that she may allow.

Mr. Wilbert Kaahwa in his response opposed the Applicants submissions related to Items 1 and 2, and invited the Court to take into consideration the matter that was before the Court contrary to the Applicants submissions that the matter which was in Reference No. 1 of 2010 should be considered. Counsel argued that what was before the Court in Reference No. 8 of 2012 was that Hon. Sitenda Sebalu was seeking an enforcement of judgment in Reference No. 1 of 2010. That he was trying to get the costs paid.

Mr. Kaahwa submitted that the Court exercise its discretion judiciously taking into account there was no difficulty in handling the Reference, that it was not complicated and that it was a straight forward case handled by the Court. He referred the Court to the case of **Plaxeda Rugumba Vs The Attorney General of the Republic of Rwanda** where in taxing the bill of costs the taxing officer noted that where there are matters which are obvious and which are not complex, the taxation has to take that into account. Counsel relied on the case of **Baldan Vs R. MC, Baldan Vs R. Mohamed Osman, 1969 EA528** and a list of Odunga’s judgments. He also cited retired justice

Kuloba's Judicial Hints on Civil Procedure that the Taxing Officer will exercise his discretion when taxing instruction fees. He also quoted Muller, the Code of Procedure that that the discretion must be exercised on fixed principles, that is according to the rules of reason and justice, not According to private opinion, or benevolence, or even sympathy, nor arbitrarily and capriciously. He argued that the authorities he cited indicate principles laid out in Premchand Limited and Another Vs Quarry Services of EA Limited 1972 EA 162 and that the award must be reasonable basing on the guiding principles as established in the cases he cited. He submitted that the Court is not a venue for seeking unquestionable enrichment.

Mr. Kaahwa finally concluded by submitting that taking into account what transpired in the Reference, its nature, lack of complexity, there being no immense interest placed in the outcome of the application and, it not being important to the public, he was of the opinion that the amount of USD\$5,000 should be reasonable. He also submitted that for item 2 the Applicant be awarded a quarter of USD\$5,000 which comes to USD\$ 1,250.

I have considered all submissions and authorities by both Counsel on item 1 and 2 related to instruction fees and have the following to say. I have read the file and observed that the main complaint in the case was that the Respondent had failed to comply with the Courts order. The issue in contention in the matter was whether the Respondent was in contempt of a court order. The Court held that to prove contempt, the complainant must prove four elements of contempt, namely: 1) the existence of a lawful order; 2) the potential contemnor's knowledge of the order; 3) the potential contemnor's ability to comply; and 4) the potential contemnor's failure to comply. I find that the Applicant did not have much difficulty in arguing the above elements of contempt. In fact the Respondent did not dispute that the judgment had not been implemented and also agreed that the Draft Protocol had been revised by the Council of Ministers. There was also no dispute that the taxed costs awarded by the Registrar were still outstanding. The Court also dismissed the argument that the Respondent intended to appeal the judgment and held that in the absence of an order for stay a court order must be obeyed. From the foregoing it is evident that this was not a very complex matter.

Having considered the submissions and authorities of both counsel and having considered observation made by the Judges of this Court in their judgment, I am in agreement with counsel

