



**IN THE EAST AFRICAN COURT OF JUSTICE-FIRST INSTANCE DIVISION
AT ARUSHA
TAXATION CAUSE NUMBER 4 OF 2013**

(In Application No. 9 of 2010)

HON SITENDA SEBALU.....APPLICANT

VERSUS

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

RULING

DATE: 20TH MARCH 2015

GERALDINE UMUGWANEZA – TAXING OFFICER

This ruling is in respect of taxation of a bill of costs filed by the Applicant herein in Application No. 9 of 2012 The Secretary General of the East African Community Vs Hon. Sitenda Sebalu. The Bill is for a total sum of United States Dollars Three Hundred Seven Thousand Three Hundred Forty Nine and Four Cents (USD 307, 349.04) 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 Application No. 9 of 2012 had sought extension of time by the Court to file an appeal from the judgment of the Court delivered on 30th June 2011 in Reference No. 1 of 2010. The Application was heard on 22nd January 2013 and Ruling delivered on 14th February, 2013. The court in its ruling dismissed the application with costs to the Respondent.

At the taxation hearing Counsel for the Applicant and the Respondent in the Taxation Cause informed the Court that they had a meeting and that save for items 1 and 2, 11, 30, 31, 32, 41 they had agreed on several items in the Bill of Costs as drawn and others with adjustments. I will therefore proceed to tax the items agreed with and without adjustments then revert to the items in dispute where I will consider the submissions by counsels and give my ruling. Item 3 was agreed at **USD 26**, item 4 at **USD 17**, Item 5 at **USD 85**, Item 6 at **USD 18**, item 7 at **USD 60**, item 8 at **USD 60**, item 9 at **USD 150**, Item 10 at **USD 5**, item 12 at **USD 116**, item 13 at **USD 15**, Item 14 was **deleted by consent for being a duplication of item 8**, item 15 at **USD 751**, item 16 at **USD 100**, item 17 at **USD 400**, item 18 at **USD 751**, item 19 at **USD 100**, item 20 at **USD 400**, item 21 at **USD 751**, item 22 at **USD 100**, item 23 at **USD 400**, items 24 and 25 were **deleted by consent as they were not chargeable items**, item 26 at **USD 751**, item 27 at **USD 100**, item 28 at **USD 400**, item 29 at **USD 200**, item 33 at **USD 150**, items 34, 35 and 36 were **deleted by cosent because Bakiza did not travel to Arusha**, item 37 at **USD 30**, item 38 at **USD 751**, item 39 at **USD 100**, item 40 at **USD 400**.

I find that the above agreed items have been drawn according to the EACJ Rules of Procedure on taxation and are therefore allowed as agreed and taxed in the total sum of United States Dollars Seven Thousand Two Hundred Eighty Seven (**USD 7, 187**)

Having taxed the agreed items I now revert to the items that were in dispute and I will start with items 11, 30, 31, 32 and 41 then revert to 1 and 2 where there were lengthy submissions. With regard to item 11 whose particulars was “To settling issues, Drawing and compiling list of authorities” the respondent disputed the item and the Applicant submitted that since it is a chargeable item he leaves it to the discretion of the Court. The Scale of charges under the Third Schedule of the Courts Rules of Procedure do not cover settling issues neither do they cover compiling a list but provide for drawing of pleadings which is USD 3 for four folios or less. I

therefore rule that since the applicant herein had drawn one folio of a list of authorities and annexed copies of judgments the fee chargeable is **USD 3**. If he had wanted to charge for photocopying of the authorities attached to the list then he should have done so. Item 11 is therefore taxed in the sum of **USD 3**. Items 30, 31 and 32, which were in dispute, are taxed off on grounds that there were no receipts to support the disbursements. In arriving at this decision I am guided by *rule 4 of the second schedule of the rules of procedure which states that receipts for disbursement shall be produced to the taxing officer and copies served on the other party at least 14 days before the taxation*. The applicant did not comply with this mandatory requirement of the law. Item 41 is also taxed off for the same reason that there were no receipts and I am again guided by Rule 4 above.

On item 1 related to instruction fees charged at United States Dollars Two Hundred Thousand (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 professional fees to two counsel to defend an application for extension of time within which to file an appeal from the First Instance Division judgment delivered at Arusha on 30th June 2011 in Reference No. 01 of 2010; complexity of the matter; a matter involving careful merits of the Application; Reflecting on the facts and law raised in the application; 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 Returneing Officer and Another 1973 E.A 33**, and Judicial Hints on Civil Procedure Richard Kuloba 2nd 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 Application No. 9 of 2012 was simply consideration of an application for extension of time to lodge an Appeal out of time inter-parties and not a matter that brought forth consideration of new jurisprudential matters. He submitted that the Court in determining the application relied on established principles.

Mr. Kaahwa submitted that the Court exercise its discretion judiciously taking into account there was no difficulty in handling the application, that it was not complicated and that it was a straight forward application handled by the Court. 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 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 application, 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. The Court in its ruling in the application giving rise to this taxation ruled that it was premised on Rule 4 of the East African Court of Justice Rules of procedure which provides that:

“A Division of the Court may, for sufficient reason, extend the time limited by these Rules or by any decision of itself for doing of any act authorized or required by these Rules, whether before or after the expiration of such time and whether before or after the doing of the act, any reference in these Rules to any such time shall be construed as a reference such time as so extended”

The crucial issue was whether the applicant had shown sufficient reason to justify the exercise of the Court’s discretion in his favour or not. The burden lied squarely on the applicant to place before the Court the material upon which the discretion was to be exercised. The Court in its ruling dated 14th February 2014 observed as follows:

“The Respondent opposes the application for the reasons he has set out in his 23-paragraph affidavit in reply dated 15th August, 2012. We find the affidavit, with due respect to the Respondent, unnecessarily lengthy, argumentative and convulated, but what we have deduced from it, as its main thrust is simply, that the Applicant has not adduced sufficient evidence to justify the grant of the order sought and that it should be denied”

The above observation by the court shows that the Applicant herein who was the Respondent in the application only needed to show that the Applicant had not adduced sufficient evidence and therefore the matter was not very complex as submitted in this taxation. The Court also observed that the Rule 4 has been the subject of interpretation in several applications in its jurisdiction and the position is now settled. This therefore shows that this was not a new issue. The Court also observed that the Respondent relied on the same authorities relied on by Mr. Kaahwa and only added a few others including the case of Ondieki v Samuel Mageto Civil Appeal No. Nai. 248 of 2003. This again shows that the Applicant herein did not do much research.

Having considered the submissions and authorities of both counsel and having considered observation made by the Judges of this Court in their ruling of 14th February, 2014, I am in agreement with counsel for the Respondent herein that the application was not complex, there was no immense interest placed in the outcome of the application and, it was not of much importance to the public.

