

1 November 2007

Taxation No. 1 of 2006

EAST AFRICAN COURT OF JUSTICE

CALLIST ANDREW MWATELA & 2 OTHERS

v.

EAST AFRICAN COMMUNITY

RULING

BEFORE: TAXING OFFICER: Dr. John Eudes Ruhangisa

Citation: Callist Andrew Mwatela v. East African Community, Tax. No. 1, Ruling
(EACJ, Nov.1, 2007)

Represented APPLICANTS: Prof. F. Ssempebwa; Mr. Ogallo; Mr. Marando; Mr. Kaggwa
By: and Mrs. Bagalaaliwo

RESPONDENT: Mr. Wilbert Kaahwa

DR. J. E. RUHANGISA, TAXING OFFICER

[1] In this bill of costs filed by Mr. Dan Ogalo learned Counsel for the applicant, a total of USD 23,076 is claimed as costs incurred by the applicants in the course of conducting the suit, namely Reference No. 1 of 2005. The claims leveled against the Judgment debtor, East African Community basically relate to reimbursement for actual expenses incurred by the applicants, to wit, costs for filing the reference and bill of costs USD 510, stationery USD 400, travel and upkeep expenses USD 22,076. Indeed the bill of costs attempted to comply with the Court order for costs that the bill of costs by the applicant and the taxing officer should limit the taxation thereof to those disbursements. However, the bill of costs was not properly structured; it lacked details and in some parts confusing as receipts (documentary evidence) in support of claims, were muddled. The receipts attached to the bill of costs did not refer to any specific item that they meant to support. It was just a bunch of receipts, some charged in US Dollars and others in Tanzanian Shillings, all left to the Court to decide which receipt belonged to which item.

[2] Mr. Wilbert Kaahwa, Counsel to the Community represented the respondent in opposing various items of the application. Mr. Kaahwa had also represented the Respondent during hearing of the main reference.

[3] This application has taken a long time to conclude due to the tight schedule the Court was operating from and also due to non appearance of applicants when the application came

forhearing on 3rd May 2007. The Court, due to non appearance of applicants, adjourned and fixed 16th July 2007 a hearing date. Before the application came for hearing on 16th July 2007, the Court received a letter from the EAC Secretariat signed by Mr. Wilbert Kaahwa, Counsel to the Community which letter was also signed and acceded to by Mr. Dan Ogalo counsel for the Respondent. The letter which was amended twice, the last one being that of 27th September 2007, would appear to have made the taxation exercise easy as it expressed the Respondent's concerns on some of the items in the bill of costs which concerns were totally conceded to by the applicants. However, reality on the ground show that, every work was left to the taxing officer to deal with the nitty-gritty including to determine the rate of exchange for those bills which were in Tanzanian Shillings.

[4] Since the respondent did not identify any specific item requiring the Court's determination of the rate of exchange nor did he dispute the rate of exchange applied by the applicant, the Court goes along with the figures presented by the applicant in Us Dollar denomination. Be it as it may, I take that letter to represent a bill of costs that was consented to by both parties. It is this particular element of consent by both parties that would have made the work of the Taxing Master an easy one. For avoidance of doubt and for ease of reference let me reproduce verbatim here below the content of the said letter.

"Reference is made to the notice of taxation in the above-mentioned matter which was fixed for taxation on 16th July, 2007.

Much as I find Applicants' Bill of Costs confined to disbursements as ordered by the Honourable Court in its judgment, I am not able to state that the bill is not out of dispute. To this extent I and the Counsel for the Applicants have discussed the matter and agreed that we indicate those disbursements which you will take into account in taxing the Bill. This is with a view to saving on time and expediting your taxation process.

On this basis I wish to point out the following matters.

1.0 Supporting Documentation

Some of the alleged expenses are not supported by documentary evidence. However, in respect of the items in which the advocates attended Court and therefore met expenses of travel and accommodation award should be made since the Court records show presence in Arusha even though there is no documentary evidence. That notwithstanding, I comment as follows:

(a) The US\$ 23,076 in the Bill does not tally with the aggregate amounts shown on the attachment:

(b) The exchange rates used with respect to the Tanzania Shilling and Kenyan Shilling vis-à-vis the US Dollar in respect of the various expenses incurred on different dates is not indicated and is left to Court to determine;

(c) Whereas accommodation rates incurred on 12th June, 2005, 22nd June, 2006 and 7th August 2006 by the Applicants' Counsel are indicated at US\$ 100 in the Bill, the attached invoices from the hotels above, actual expenditure to have been US\$ 60 in respect of each Counsel.

2.0 Unclear Items

(a) the US\$ 1,320 expenses for the "Kilimanjaro Arusha" item on 22nd June, 2006 is unclear and on the high side;

(b) the US\$ 1,330 item for attendance of two Counsel to tax the bill of Costs does not arise because on 3rd May 2006 when the matter came up none of the Applicants' Counsel were in Court.

3.0 Bases

With regard to the costs of certain items, Your Worship is requested to use a standard basis

to allow only reasonable amounts/amounts reasonably incurred. In this regard, I dispute the costs on wine (on 7th August, 2006, 9th August, 2006 and 18 August, 2006).

The purpose of this communication is to apprise you as above and guide you accordingly in taxation of the Bill. With this development Counsel for both parties requested that the formal hearing on taxation fixed for 16th July 2007 be put off and taxation be done by Your Worship in our absence.

This letter supersedes all our previous correspondence on this matter.”

[5] The above statements were followed by Mr. Kaahwa’s signature together with Mr. Ogallo’s signature, and the latter’s signature was preceded by the following words of Mr. Ogallo: “I concede to the above”, meaning that Mr. Ogallo was totally in agreement with Mr. Kaahwa’s concerns and that he wanted the Court tax the bill of costs to the extent consented and or objected to by Mr. Kaahwa. The Court therefore has to evaluate Mr. Kaahwa’s submission as consented to by Mr. Ogallo and determine the extent to which the bill of costs has to be allowed.

[6] As Mr. Kaahwa rightly pointed out indeed the US\$ 23,076 in the Bill does not tally with the aggregate amounts shown on the attachment and there was no single documentary evidence (air tickets) filed by the applicants in support of the travel claim. This glaring weakness on the part of the applicant’s claim was conceded to by Mr. Ogallo who apparently raised no objection for taxing off such claims by the Court except where Court records show that they were present in Arusha. The only documentary evidence that the applicant was able to produce, relate to accommodation and subsistence/up keep while in Arusha. It is against this background that the bill of costs is taxed accordingly.

[7] I find the sum of USD 510 in items 1 and 6 to be a genuine claim as it was the actual expense incurred by the applicant in filing the reference and the bill of costs respectively and I tax the claim to that amount. The Amount of USD 3,450 in item 2 relating to travel by 4 Counsel to Nairobi for a consultative meeting is taxed off for want of evidence in support of the claim.

[8] I have perused the Court proceedings for 15th - 16th June 2007 and found that three counsel and 1st applicant attended the scheduling conference. The disbursements claimed in item 3 are therefore taxed to the tune of USD 3,844. In arriving at this figure I have taken into consideration the fact that the US\$ 1,320 expenses for the “Kilimanjaro Arusha” as claimed in item 3 (22nd June, 2006) is on the high side even by simple arithmetic. I am made to understand that the claim in that item represents the costs for hire of Taxi from Kilimanjaro to Arusha and then to Kilimanjaro by three Counsel which is usually USD 50 per trip. This means $USD\ 50 \times 3 \times 2 = 300$. It is against this background that on this particular item the amount of USD 1,020 is therefore taxed off and only USD 300 is taxed as reasonable costs.

[9] It is also on record that at different times when the case came for hearing on 8th – 17th August, 2007, the applicants were represented by a battery of lawyers namely Prof. F. Ssempebwa, Mr. Ogallo, Mr. Marando, Mr. Kaggwa and Mrs. Bagalaaliwo. This gives credence to the claim for attendance costs covering transport, accommodation and up keep as per item 4 of the bill of costs. I find the amount in item 5 to be reasonable and tax it as presented save for the sum of USD 89 (Tshs 101,000/=) being cost of wine and beer which I find to be unnecessary expense that was unnecessarily incurred and therefore tax it off.

[10] Also the claim of US\$ 1,330 for attendance of two Counsel to tax the bill of Costs does not arise because on 3rd May 2006 when the matter came for taxation none of the Applicants' Counsel were in Court such that the matter was adjourned for hearing on 16th July 2007. This amount of USD 1,330 is therefore taxed off.

[11] Indeed the accommodation costs incurred on 12th June, 2005, 22nd June, 2006 and 7th August 2006 by the Applicants' Counsel are indicated in the Bill at the rate of US\$ 100 per day. However, the attached invoices from the hotel indicate that the actual expenditure for accommodation was at the rate of USD 60 per night in respect of each Counsel. This Court therefore goes by the rate as supported by receipts/invoice issued by the hotels indicating that the accommodation rate per night was USD 60. For purpose of this application, accommodation costs where applicable are respectively taxed at the rate of USD 60 per night.

[12] In total this bill is taxed at USD 13,337 (US Dollars Thirteen Thousand Three Hundred Thirty Seven) only.

I so tax

Dated at Arusha this day of 2007

1st November 2007

DR. JOHN EUDES RUHANGISA
TAXING OFFICER