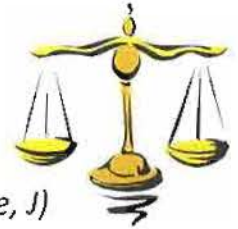




IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA
FIRST INSTANCE DIVISION



(Coram: Monica K. Mugenyi, PJ; Fakihi A. Jundu, J & Audace Ngiye, J)

TAXATION REFERENCE NO. 3 OF 2016

(Arising from Taxation Cause No.3 of 2015 arising out of Claim No. 1 of 2012)

ANGELLA AMUDO APPLICANT

VERSUS

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

4th July, 2017

RULING OF THE COURT

A. INTRODUCTION

1. Before this Court for determination is a notice of motion dated 18th November 2016. The Applicant, Mrs. Angella Amudo, applied to this Court under Rules 114, 84(1), 84(2) and 85(1) of the East African Court of Justice Rules of Procedure 2013 (hereinafter referred to as "the Rules") for orders that:

a) The Taxation Ruling made by the learned Taxing Officer on 9th November 2016, awarding costs to the Secretary General of the East African Community, the Respondent in Taxation Cause No. 3 of 2015: The Secretary General of the East African Community Vs Angella Amudo be set aside;

b) Costs of this Taxation Reference be paid by the Respondent.

2. The grounds for the Application are set in the said Notice of Motion as follows: -

a) The learned Taxing Officer erred in law when he awarded costs for perusals, drawing, filing documents in Court and service, which the Secretary General is not entitled to;

b) The learned Taxing Officer erred in law when he awarded costs in Application No. 15 of 2012 when it was filed separately and heard independently from Claim No. 1 of 2012 and the Secretary General lost; and

c) The learned Taxing Officer erred in law when he awarded photocopying costs when the sums are not supported by

receipts to have been spent or incurred by anyone or paid by anybody.

3. Before the Taxing Officer and before this Court, the Applicant represented herself while the Respondent was represented by Mr. Stephen Agaba.

B. BACKGROUND

4. The Applicant was the unsuccessful party in **Appeal No. 4 of 2014**. The Appeal was dismissed in its entirety with full costs in the Appellate Division and in the First Instance Division. The Respondent then filed a Bill of costs which the Registrar taxed and allowed at USD 4,605.
5. However, the Applicant was dissatisfied with the Taxation Ruling and filed the present Taxation Reference.

C. CASE FOR THE APPLICANT

6. The Applicant's case as set out in the aforesaid Notice of Motion is that the learned Taxing Officer erred in law when he found that the Respondent is entitled to costs for perusals, drawings, filing documents in court, service and photocopying.
7. The Applicant further pleaded that the East African Community (hereinafter referred to as "**the Community**") is a Public Institution and the Counsel to the Community is a Public Officer mandated by the Treaty and Court Rules to represent the Community in Court and he therefore cannot bill the Community for fees for representing it.

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D. CASE FOR THE RESPONDENT

8. By way of rebuttal, the Respondent filed an Affidavit in Reply on 2nd December 2016 where he strongly supports the Taxing Officer's Ruling from which this Reference arises.
9. The Respondent pleads that, in the instant case, the Secretary General as any other party is entitled to the costs as awarded by the Court and that the Applicant's averment that the Respondent is not entitled to the costs for perusals, drawing, filing documents in court and service does not arise as there is nothing in the law that prohibits any party from claiming such costs.

E. COURT'S DETERMINATION

10. In light of the Parties' respective positions, the issues for Court's determination were framed as follows:

- i) ***Whether the learned Taxing Officer erred in law when he awarded the Secretary General costs for perusals, drawing, filing documents in Court and service;***
- ii) ***Whether the learned Taxing Officer erred in law when he awarded the Secretary General costs in Application No. 15 of 2012; and***
- iii) ***Whether the learned Taxing Officer erred in law when he awarded the Secretary General photocopying costs.***

11. However, the Applicant raised a Preliminary Objection in her oral submissions arguing that there is no Affidavit in Reply properly before the Court as envisaged by the Rules. We will proceed to determine that objection first.

12. The Applicant pointed out that the signature appended on the Affidavit in Reply does not reveal the identity of its holder. In addition, it appears that the person who signed it is different from the deponent, Hon. Jessica Eriyo, the Deputy Secretary General in Charge of Finance and Administration. In her view, the said Affidavit is incurably defective for non-compliance with requirements of the law that govern affidavits.
13. In response, Mr. Steven Agaba admitted that it was the Deputy Secretary General in charge of Productive and Social Sectors who signed on behalf of the Deponent. He stated that the Secretary General in charge of Finance and Administration is the one that deputises for the Secretary General in respect of matters to do with Finance and Administration of the Community, and if she is not on her desk, she also delegates her authority to any other Deputy Secretary General.
14. Having carefully considered the submissions of both Parties on the Preliminary Objection, we agree with the Applicant that a party who submits evidence in the form of affidavit must do so in the proper, authenticated form. And this Court should not permit admission of documents that do not strictly comply with procedural rules. In the instant case, the applicable rule is Rule 21(5) read together with the Second Schedule of the Rules, which provide for simple and expeditious manner of instituting an affidavit such as this one. Rule 21(5) of the Rules provides that:

“Every formal application to the First Instance Division shall be supported by one or more affidavits of the applicant or of

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some other person or persons having knowledge of the facts, in accordance with Form 3 of the Second Schedule.

15. Form 3 of the Second Schedule provides for how an affidavit filed before this Court should be made and the conditions it should comply with.
16. Applying the above cited rules, it appears that an affidavit must be signed by the deponent, or his name must appear therein as the person who took the oath.
17. In **Perkins vs. Crittenden, 462 S.W. 2d 565, 567-68 (Tex. 1970)**, it was held that *"an affidavit" is a "statement in writing of fact or facts signed by the party making it, sworn to before an officer authorized to administer oaths ..."*
18. It is also important to consider the specific elements a statement must satisfy in order for it to constitute an affidavit upon which courts will rely. The proffered statement must satisfy three essential elements: *"(1) a written oath embodying the facts as sworn to by the affiant; (2) the signature of the affiant; and (3) the attestation by an officer authorized to administer the oath that the affidavit was actually sworn by the affiant before the officer"*. See **3 Am. Jur. 2d Affidavits § 8 (2008)**. We are most persuaded by this restatement of the law on affidavits from the Journal of American Jurisprudence.
19. It therefore follows that, the Affidavit in Reply herein was neither signed by the affiant nor is there evidence that it was sworn in the presence of a Commissioner for Oaths. Needless to state, an affidavit that does not conform with the Rules of Procedure cannot be relied

on by the Court. We accordingly strike out the impugned affidavit from the Court's record.

20. We now revert to issues that are in contention before this Court.

ISSUE 1: Whether the learned Taxing Officer erred in law when he awarded the Secretary General costs for perusals, drawing, filing documents in Court and service:

21. On the above issue, it is the Applicant's case that the Taxing Officer erred in allowing costs for perusals, drawing, filing documents in Court and service to the Secretary General.

22. The point taken is that the Counsel to the Community (CTC) is not paid any fee like private practitioners for doing what he is employed by the Community to do, but earns a salary for the work he does as provided *inter alia* under Article 37(2) of the Treaty for the Establishment of the East African Community (hereinafter referred to as the "**Treaty**") and Rule 17(2) of the Rules.

23. Generally, this Court does not interfere with the decision of the Taxing Officer on a question of fact or amount but only where the Taxing Officer has not had reasonably sufficient material before him or has not taken into account matters that he should have considered. See Kenya Ports Authority vs. Modern Holding Ltd, Taxation Reference No.4 of 2010; Democratic Party & Mukasa Fred Mbidde vs. The Attorney General of the Republic of Uganda, Taxation Reference No.03 of 2013 and The Inspector General of Government vs. Godfrey Magezi, Taxation Reference No.1 of 2016. Of course, it would be an error of principle to take into account irrelevant factors or omit to consider relevant factors either.

24. In her oral submission, the Applicant further contended that the Taxing Officer applied a wrong principle in determination of costs awardable where upon he considered the Respondent Office as if it were a private practitioner entitled to fees and costs for items that flow from it. He thus failed to appreciate that the Respondent was a public institution and the Counsel to the Community and all the legal officers that represent it are public officers who earn salaries for performing their general duty, not fees or costs as is the case with private practitioners.
25. It was also the Applicant's submission that this error of principle on the part of the Taxing Officer resulted into an award of costs for perusals, drawing, filing documents in Court and service which were never incurred by the Respondent.
26. She relied on the case of Zuberi vs. The Returning Officer and Another (1973), EA 33, High Court of Tanzania, Civil Case No. 10 of 1970 where it was held that State Officers are not entitled to instruction fees as they are doing their general duties that they are employed to do and earn a salary for.
27. In response to the above contentions, Mr. Agaba pointed out that the learned Taxing Officer correctly applied the provisions of the Third Schedule of the Rules to award costs to the Respondent. He strongly argued that the Secretary General like any other party is entitled to the costs as awarded by the Court, and as such, if the Applicant was aggrieved by the Court's decision, she should have challenged it in accordance with the Rules.
28. He also contended that the Applicant's averment that the Respondent is not entitled to the costs for perusals, drawing, filing

documents in Court and service does not arise as there is nothing in law that prohibits any party from claiming such costs. He however conceded that instruction fees were neither claimed nor awarded.

29. We have considered the able submissions of both Parties, as well as the authorities provided. The relevant guiding principles relating to taxation are enshrined under Rule 113 and the Third Schedule of the Rules, specifically Rule 11(1) of the Third Schedule of the Rules which reads as follows:

***“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...
“***

30. In this context, costs, charges and disbursements are expenses incurred by a party to an action before this Court and if the Respondent had incurred no costs in this case, then none could be awarded.

31. Quite clearly in this matter, it is not contested that, pursuant to Article 2(1) and 3(1) of the Treaty, the Community is a public institution that has in its service the office of the CTC as established by Article 66(2)(c) of the Treaty; or that under Article 69(1) of the Treaty the Counsel to the Community is the Principal Legal Advisor to the Community delineated by Article 37(2) of the Treaty and Rule 17(2) of the Rules to appear before Court in any matter in which the Community or any of its institution is a party. It follows then that by virtue of being in the service of the Community, the CTC is a public officer who is not paid fees for doing his work but earns a salary for the work he does as provided under Article 69(3) & (4) of The Treaty.

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32. Consequently, in defending this Claim, Mr. Agaba was entitled to peruse and draw documents, file documents in Court and ensure service thereof as part of his normal duties as required of the Office of the CTC. Mr. Agaba did concede that in the Bill of Costs as filed, the Respondent did not and cannot claim instructions fees in observation of a well-established principle that it did not and does not pay anything like fees or costs to the Counsel to the Community for performing his general duties but earns a salary for so doing.

33. Similarly, on the basis of the same principle, the Respondent cannot claim costs for perusals, drawing, filing documents in Court and service. We take it to be settled law that perusals, drawing, filing documents in Court and service fees, like instruction fees, are meant to compensate a party for expenses incurred for the attainment of justice.

34. The case of Inspector General of Government vs. Godfrey Magezi (supra) is quite instructive in this regard. This Court held:

"Although state attorneys are entitled to practice as advocates, they are public officers who are paid salaries to represent the Government in Court, as part of their normal duties. As a matter of fact, indeed, the Applicant did not pay any fees to state attorneys who represented him in the instant matter."

The learned judges further held:

"In a nutshell, we are of the view that the Taxing Officer, when exercising her discretion upon certain materials placed before her ... did not misdirect herself nor did she apply any wrong

principle in denying the Attorney General of the Republic of Uganda instruction fees and fees for perusals, drawings and service.”

35. We thus readily find that the Respondent was not entitled to costs for perusals, drawing, filing documents in Court and service, and that they should be disallowed as prayed and be taxed off.

ISSUE 2: Whether the learned Taxing Officer erred in law when he awarded the Secretary General costs in Application No.15 of 2012:

36. On the above issue, it was submitted by the Applicant that costs in Application No.15 of 2012 were improperly included in the Bill of Costs in that it was filed separately, heard independently from the Claim No.1 of 2012 and a Ruling was delivered on 2nd May 2013 where the Respondent in this case lost.

37. In support of her stand, the Applicant relied on the principle in Taxation Cause No 001 of 2014, Hon. Sitenda Sebalu vs. Secretary General of the East African Community where this Court decided to tax off, an item, from the main Reference for the simple reason that it was taxed separately in a Bill filed in the Application.

38. The Applicant also took issue with the consistency in decisions of this Court which was breached by the Taxing Officer.

39. In response to the above, the Respondent argued that Application No.15 of 2012 arose from Claim No.1 of 2012, and therefore when the Court awarded costs for that Claim, all the applications that had been heard in the process were also to be considered during the taxation process.

40. We are unable to agree with the argument raised by the Applicant in her submissions that **Application No.15 of 2012** should be taxed separately when the Court never said so in its Order. Indeed, it was held as follows:

“As to costs let the same abide the outcome of Claim No. 1 of 2012.”

41. We considered the authority referred to us by the Applicant but find that it was concerned with a Court decision where costs were granted to the successful party. We therefore find that this authority does not help in the instant matter. However, the issue here is a matter that is clearly sorted out by Rule 111(1) of the Rules stating the general rule that costs follow the event. In addition, the Appellate Division made an order for the Applicant, in this case, to bear costs in the Appellate Division and in the First Instance Division.

42. Therefore, our holding on issue No.1 with regard to costs for perusals, drawing, filing documents in Court and service notwithstanding, the second issue must be answered in negative.

ISSUE 3: Whether the learned Taxing Officer erred in law when he awarded the Secretary General photocopying costs:

43. The submission of the Applicant on this point was that the Taxing Officer erroneously awarded the Respondent photocopying costs when no receipts were provided to prove that the expenditure of the photocopying sums was actually incurred.

44. Conversely, Mr. Agaba strongly opposed this submission. He argued that the Respondent was never awarded costs by the Taxing Officer that relate to photocopying. The costs were awarded to the drawing of

documents and copies per folio as per item 3(i) and item 4(a) of the Third Schedule of the Rules. It was further submitted by him that no costs were awarded for items which had no receipt.

45. With tremendous respect for the Applicant, we find that this issue was not supported by any evidence. Indeed, the Applicant failed to show any part of the Taxing Officer's Ruling where costs were awarded for photocopying. We agree with the Respondent that what were awarded were costs relating to copies. But, even in that case, no evidence was tendered in Court to show that the Taxing Officer awarded costs for items that did not have receipts.

46. Consequently, we are inclined to find that we cannot interfere with the Taxing Officer's decision in the absence of proof that he followed a wrong principle. This issue therefore fails.

F. CONCLUSION

47. In the result, we order that a review of the Respondent's Bill of Costs as regards perusals, drawing, filing documents in Court and service, in both the Appellate and First Instance Divisions, be conducted before another Taxing Officer.

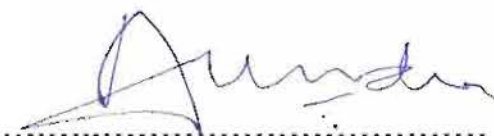
48. Regarding costs, Rule 111 of the Rules provides that costs shall follow the event. The Rules also grants this Court discretion to determine whether any Party is entitled to costs. In the circumstances, noting that the Applicant has succeeded in two out of three contested issues, our decision is that the Applicant shall have 2/3 of the costs of this Taxation Reference.

49. It is so ordered.

Dated and delivered at Arusha this 4th day of July 2017.



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Hon. Lady Justice Monica Mugenyi
PRINCIPAL JUDGE



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Hon. Justice Fakihi A. Jundu
JUDGE



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Hon. Justice Audace Ngiye
JUDGE