



**IN THE EAST AFRICAN COURT OF JUSTICE-FIRST INSTANCE DIVISION  
AT ARUSHA  
TAXATION CAUSE NO 1 OF 2017**

***(ARISING FROM APPLICATION NO. 9 OF 2016)  
(ARISING FROM REFERENCE NO. 10 OF 2913)***

**UNION TRADE CENTER (UTC) LTD.....APPLICANT/CLAIMANT**

**VERSUS**

- 1. SUCCESSION MAKUZA DESIRE**
- 2. SUCCESSION NKURUNZINZA GERALD**
- 3. NGO FERRO THARCISSE.....RESPONDEDNT/INTERVENERS**

**RULING**

DATE: 14/08/2018

**YUFNALIS OKUBO – TAXING OFFICER**

This ruling is arising from a Bill of costs filed by the applicant/claimant herein arising from Application No. 9 of 2016 that was dismissed in favor of the applicant /claimant with costs leading to this taxation.

The Applicants Bill of Cost is for a total sum of US Dollars Ninety Eight Thousand, Five hundred and Three (USD 98,503) to cover instruction fees, perusals, drafting's, making copies and attendances, drawing application and all related

work. In this taxation the applicant was represented by Mr. Isaac Bakayana while Mr. William Ernest Kivuyo held brief for Ms. Molly Rigamba for the Respondents.

The background of this application is that the Respondents herein filed Application number 9 of 2016 seeking leave to be allowed to join the suit as interveners under Article 40 of the Treaty for the Establishment of East African Community and Rule 36 of EACJ Rules of Procedure 2013. At the conclusion of the application hearing the Application was dismissed with costs to the Claimant /Applicant herein leading to the current taxation cause.

The taxation came for hearing on the 2<sup>nd</sup> of August 2018, and there being no consent on any of the items for taxation between the parties the matter had to proceed.

The applicant/ claimant submitted that the bill filed for **USD 95,040.0** had been drawn based on the Rules of the Court and should be taxed as drawn. Counsel contended that this was based on the value of the subject matter that was estimated at a value of USD 10 Million, a private property that was being whittled away. He relied on Rule 9(4) of the Schedule of the Rules of this Court.

Counsel for the Applicant/Claimant sought to rely on the decision of the taxation in the case of ***The Attorney General of Kenya Vs Prof Peter Anyan'g Nyong'o*** where the Court awarded USD 250,000.0 as instruction fees. He also referred to the case of ***Among Anita Vs The Attorney General of Uganda (Taxation cause no.5 of 2013)*** where the Court granted USD 20,000.0 as instruction fees.

The Respondents Counsel opposed the instruction fees on the grounds that it was exorbitant and only sought leave for interveners to join the suit.

Rule 9(2) of the Third Schedule that provides:

*"the fees to be allowed for instructions 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 parties, the other*



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

I also refer to the case of *Joreth limited versus Kigano and Associates (2002) 1 EA 92* where Justice R.O.Kwach said:

*’.....the taxing officer is entitled to use his discretion to assess such instruction fees as he considers just, taking into account amongst other matters, the nature of the cause or matters, the nature and importance of the subject matter, the interest of the parties, the general conduct of the proceedings, any directions by the trial judge and other relevant circumstances”.*

With due respect to Counsel for the Applicant/Claimant the case of *The Attorney General of Kenya Vs Prof Peter Anyan’g Nyong’o (Taxation cause no.5 of 2010)* where the Court awarded USD 250,000.0 is not of any assistance to him and must be differentiated. The award of USD 250,000.0 was on the finality of the reference where the winning party was awarded costs. The instance case is about costs of an application. Reference to that case will be useful at the conclusion of the main reference if decided in favor of the Applicant where costs can then be based on the value of the subject matter. The subject matter herein was an interlocutory application for interveners to join a suit. The complexity of the application cannot be compared with the complexity of the cases he has referred which costs were awarded on finality. USD 250,000.0 as costs was not awarded for an interim application.

With that in mind and in exercise of my discretion taking all matters into account including the time taken for the hearing I would allow instruction fees of **USD 9,000.0** only for item No 1.

On item 2 for perusals of 40 folios I allow **USD 200.0** under rule 7(a) of the scales of charges of the third schedule. *Taxation cause No. 2 of 2012 Plaxeda Rugumba Versus the Hon. Attorney General of Rwanda* is very clear on perusals.

On item 3 which should be under Rule 6(f) of the scales of charges of the third schedule one hour would be charged at USD 6.0. I would allow 4 hours of consultations to be taxed at **USD 24.0**.

Item 4 has been mixed up when it should have been separated in different rows for drafting the claimants affidavit under Rule 3 of the scales of charges, making copies under Rule 4 of the scales of charges, attending to the registry to file the same under Rule 6(f) of the scales of charges, and service under Rule 8 of the scales of Charges. Having mixed them up it becomes extremely difficult to know how the sum of USD 161.0 was arrived at. Service is charged per kilometer and it's the responsibility of the applicant to show the kilometers covered to effect service thus leading to the charge he may be requesting. That was not done. I would therefore only allow **USD 30.0**.

Item 5 is about attending to a Commissioner for Oaths to commission an affidavit in reply. In his submissions Counsel for the applicant mentions 9 copies and making copies of the authorities. It is from there he gets the figure of USD 20. The Bill only mentions attendance for commissioning. Something seems to be missing which Counsel was trying to fill at the hearing. I will tax off USD 10.0 and allow only **USD 10.0**.

Item 6 is equally mixed up when it should have been separated to ascertain how USD 217 was arrived at. The same arguments I have used above on Item 4 applies here. Counsel should assist the Court in separating every item but not to leave the Court to try and dig on how he arrived at the figure of USD 217. In the circumstances I will allow **USD 100.0**.

I will treat Items 7 and 8 together both brought under Rules 6(d) and 7(a) of the scales of charges respectively. Both are correctly charged and I will allow them at **USD 40.0** and **USD 5.0** respectively.

Item 9, like items 6 and 4 has equally been mixed up thus making it difficult to ascertain how USD 77 was arrived at. As stated above separate rows should have been made under Rules 3,4,6(b) and 8 of the scales of Charges of the third



schedule. In the absence of that it is not clear how the applicant got his figures. I would only allow **USD 35.0** under item 9.

Item 10 is allowed at **USD 20.0** as charged as per Rule 6(b) of the scales of charges.

I will treat items 11 to 16 together all of them being for disbursements.

This court has severally pronounced itself on the issue of disbursement in *Taxation cause No.2 of 2012 (Plaxeda Rugumba Vs Hon. Ag of Rwanda)*, *Taxation cause No. 1 of 2013 (Hon. Sam Njuba Vs Hon. Sitenda Sebalu)*, *Taxation cause no 4 of 2013(Hon. Sitenda Sebalu Vs Secretary General of EAC)*, *Taxation cause no 5 of 2013 (Among Anita Vs Hon Attorney General of Uganda)*.

Rule 4 (2) of the Third Schedule of the Courts Rules of procedure provides that

*“Receipts for the disbursement shall be produced to the taxing officer and copies served to the other party.....”*

Counsel for the Applicant indeed acknowledged those decisions and decided not to pursue disbursements and its all taxed off.

The respondent objected to the taxation on almost every item. I have considered a number of authorities that are useful in determining and guiding this process. These includes the EACJs Rules of Procedure 2013, *Taxation cause number 5 of 2010 arising from taxation cause no. 2 of 2010 Hon. Attorney General Versus Prof. Peter Anyang Nyongo and others*, *Taxation cause No. 4 of 2010, Kenya Ports Authority Versus Modern Holdings*, *Taxation cause No. 2 of 2012 Plaxeda Rugumba Versus the Hon. Attorney General of Rwanda*.

I have also taken the liberty to look at other similar decisions of this court and particularly the rulings delivered in *Taxation cause No. 4 of 2013 Hon. Sitenda Sebalu versus the Secretary General of the East African Community*, *Taxation cause No.1 of 2013 Hon. Sam Njuba versus Hon. Sitenda Sebalu*, *Taxation cause No. 5 of 2013 Among Anita Versus Hon Attorney General of the Republic of Uganda* and *Taxation cause No. 1 of 2015 Inspector General of the Government of Uganda versus Godfrey Magezi*.

I have carefully considered submissions of both parties. In Taxation Reference No. 4 of 2010 *Kenya Ports Authority Versus Modern Holdings Limited* Justice Arach Amoko stated on page 9:

*"The bottom line in my judgment is that the costs of doing business in the Court should as far as possible be kept to a level that is reasonable, affordable and should not deter any citizen of East Africa from seeking justice but at the same time it must be proportionate for the purpose of remunerating the Advocate".*

The above quotation was also applied in Taxation cause no 5 of 2010 between the *Attorney General of Kenya versus Prof. Peter Anyang Nyong'o* and others.

In the Third Schedule of the EACJ Rules of Procedure 2013, Rule 11 (1) provides that:

*"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, over caution, negligence or mistake or by payment of special charges or expenses to witness or other persons or by other unusual expenses".*

The subject matter of the taxation was an interlocutory application with nothing to do with the value of the subject property in the reference.

In exercise of my discretion and taking all the matters into account and the authorities cited I find the sum of **USD 9,000** to be a reasonable amount for instruction fees of an application. To that I will add 18%VAT amounting to **USD 1,620**. I have been guided by the nature of the application, its importance and level of complexity, the interest of the parties, the general conduct of the proceedings, the person to bear the costs and all other relevant circumstances.

**Item 1 –9,000, Item 2 – 200, Item 3 – 24, Item 4 – 30,**



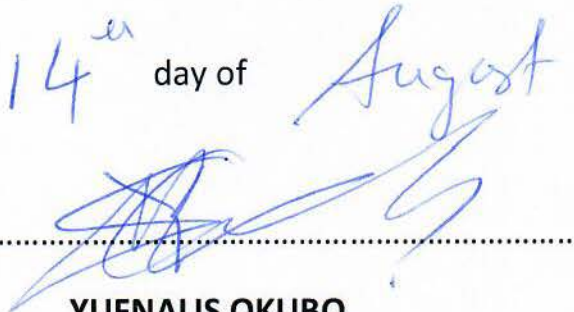
Item 5, – 10, Item 6 –100, Item 7 – 40, Item 8 – 5, Item 9 –35, Item 10 – 20, Item 11 – 0, Item 12 – 0, Item 13 –0, Item 14 – 0, Item 15 –0, Item 16 –0.

**Grand total USD 11,084.0**

In conclusion I tax the bill at a grand total of **USD 11,084.0 (United States Dollars Eleven thousand and eighty four)** computed as follows: instruction fees is taxed at **USD 10,620.0** inclusive of **18% VAT**, and **USD 464.0** awarded for all the other items to cover among other things attendance perusal and drawings.

I so tax.

Dated at Arusha this 14<sup>th</sup> day of August 2018



**YUFNALIS OKUBO  
TAXING OFFICER**