



IN THE EAST AFRICAN COURT OF JUSTICE



AT ARUSHA

TAXATION NO.2 OF 2012

(Reference No.8 of 2010)

(First Instance Division)

PLAXEDA RUGUMBA..... APPLICANT

VERSUS

THE ATTORNEY GENERAL OF THE REPUBLIC OF RWANDA..... RESPONDENT

RULING

3RD MAY, 2013.

PROF. DR. JOHN EUDES RUHANGISA, TAXING OFFICER

This is a bill of costs filed by Mr. Rwakafuuzi counsel for the Applicant, claiming a total sum of USD 5,231,956.76 including tax as costs incurred by the Applicant in the course of prosecuting Reference No. 8 of 2010. In these proceedings Mr. Rwakafuuzi appeared on behalf of the Applicant while Mr. Malala appeared for the Respondent. The genesis of this taxation goes to Reference No. 8 of 2010 which in its judgment the court decided in favor of the Applicant and awarded costs to the winning party who is the applicant herein. The claim against the Respondents herein relates to instruction fee, reimbursement for actual expenses incurred by the Applicant, particularly, costs for filing the bill of costs, for stationary, upkeep and for travel between Kampala and Arusha where the East African Court of Justice is located.

At the hearing of this taxation cause Items No. 3 to 5, 8 to 33, 39, 50, 62, 68, 74 and 76 of the bill of costs were not in dispute. The court shall therefore tax them accordingly as charged and award the applicant without any further discussion a total sum of **USD 6,061.16**, for the above mentioned and undisputed items.

The applicant was not able to produce receipts for items No 6 and 35 for sum of USD 79.33 and USD 411 respectively and they are accordingly taxed off. 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 at the time of taxation*. The applicant did not comply with this mandatory requirement of the law.

Items No. 2, 7, 34 to 38, 40, 42, 43, 45 , 46, 47, 48, 49, 51 to 55, 57, 58, 59, 60, 61 to 67, 69, 70, 71, 72, 73 and 75 were disputed mainly on the ground that they lacked the supporting documents such as receipts. I will proceed to consider the submission on items No. 2 , 7 , 34 to 38, 40, 42, 43, 45, 46, 47, 48, 49, 51 to 55, 57, 58, 59, 60, 61 to 67, 69, 70, 71, 72, 73 and 75 then come back to item No.1

Starting with Item No.2 herein regarding drawing of a reference (17 Folios), the respondent advocate did not strictly dispute this item. He only submitted that the folios were not 17 as the rules of this court provide that one folio is 100 words, and that when he calculated, he found that the reference was just five folios. He sought the guidance of the court and left it to the court to determine whether the folios so claimed by the applicant were 17. I agree with the counsel for Respondent that the Reference had no 17 folios but 6 folios, I therefore award USD 5 on item No. 2

On the item No 7 regarding the affidavit drawn by the Applicant, Mr. Malala was not contesting it but his objection was that it should not be taxed separately from the instruction fees. Mr. Malala submitted that this court should follow the rules and procedure, especially *rule 9(3) which states that the sum allowed under sub-rule 2 shall include all works necessarily and properly done in connection with the suit or the reference and not otherwise chargeable including attendance, correspondence, perusals and consulting authorities*. Mr. Malala prayed that the court in taxing the bill of costs should always consider costs for consulting authorities, perusals and attendance as components of instruction fee and should not tax such costs separately.

However, Mr. Rwakafuuzi the learned counsel for the Applicant submitted that the issue of perusal as disputed by Mr. Malala is provided for under the rules of procedure second schedule, rule 7 and rule 113(3). He submitted that perusal is presented as a claimable item. In other words it is separated from instruction fees. He also contended that attendance is claimed separately from fees. His argument was based on Rule 6 of the court rules of procedure on attendances, that the practice of this court has been to award fees for attendance and perusal separately according to the rules. He therefore prayed that the court finds various items as lawfully claimed and allow them accordingly.

Having considered submission by both counsel, It is my view that perusal of documents can only be on documents drawn by the opposite party and not document drawn by Applicant himself. For this reason I therefore tax off Item 7 which is perusal of a document drawn by the Applicant himself.

Items No. 34 to 40, 43, 45 to 49, 51 to 55, 57, 58, 59, 60, 61, 63, 64 to 67, 69 to 73, 75 and 76 are all disbursement which should be proved by production of receipts as required under Rule 4(2) of the second schedule taxation of costs which provide that *Receipt for the disbursements shall be produced to the taxing officer at the time of taxation.* Counsel for the Applicant produced photocopies of receipts to support his claim and said that after scanning the receipts he misplaced the original. Later counsel for the Respondent submitted that the rules are clear and if the Applicant had wanted to rely on the photocopied scanned receipts he should have certified them as true copies of the original or sworn an affidavit to that effect. Having considered the submission on items which relate to disbursement, I agree with counsel for the Respondent that original receipts ought to have been produced or an affidavit certifying that they were true copies of the original ought to have been sworn. I therefore find that the expenditures on those items except item No. 76 on fees for lodging the Bill of costs for taxation, were not proved and I tax them off accordingly.

On item No. 41, the applicant had photocopy of the hotel receipt for the costs of the items claimed and the respondent said that he was leaving it to the wisdom of the Court to award or not to award the claimed amount. With all due respect, much as the wisdom of the Court is always sought, I should state that this is not one of those issues that can solely be determined basing on the wisdom of the Court for the rules require production of the original receipts of the expenses

being claimed. In the absence of the original receipt I tax off the claimed costs in Item No. 41. In the same vein, I tax off the claims in items No. 39 and 56 as no original receipts were produced in court.

As regards Item 1 of the Bill, the Applicant claimed the sum of USD 2,000,000 plus 18% VAT and getting up fees under Rule 1 of the second schedule which provides that, *“in any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one- quarter of the instruction fee allowed on taxation”*, which he charged at USD 500,000. At the hearing counsel for the Applicant Mr. Rwakafuuzi reported to the court that before the taxation hearing commenced he had proposed to Mr. Malala counsel for the Respondent that he would be agreeable to an offer of USD 100,000 but Mr. Malala offered USD 5,000, which Mr. Rwakafuuzi refused. Mr. Rwakafuuzi went on to submit that this case was a complex case which was similar to Katabazi case which was previously handled by this court but the case which is subject of these proceedings was more complex because Counsel had to look into the Rwandan laws. He submitted that he was being reasonable when he proposed USD 100,000 to his colleague but he was no longer bound by that proposal and was claiming USD 2,000,000. He further submitted that he had considered other cases of the court including the Katabazi case that was complex. I asked counsel Rwakafuuzi why he had dropped from the initial claim of 2,000,000 to USD 100,000 and he replied that after looking at all authorities, he was humbled and realized that the court may not award USD 2,000,000 and that is why he proposed 100,000 and that he wanted to create some comradeship and friendship with the government of Rwanda.

In response to Mr. Rwakafuuzi's submission on item No. 1, Mr. Malala pointed out that Rule 9 of the courts Rules of procedure is very clear on the amount of money that need to be paid as instruction fees. He also submitted that the matter was not complex and that it involved only one Applicant and Respondent in contrast with the **Katabazi case** which involved 21 Applicants. He further submitted that the Rule gives the Taxing officer discretion to determine the amount of money which he thinks is reasonable and to them they would leave it to the wisdom of the court. He submitted that given the standards of this court and that counsel Rwakafuuzi is senior counsel USD5, 000 would be a fair price.

Having considered submissions on item No 1 by both counsel and in exercise of the Taxing Officer discretion in such matters, I hereby tax **item 1** at **USD 15,000** as instruction fees. It is my strong view that this amount is reasonable and just as the case subject of these taxation proceedings was not complex compared to Katabazi's case. In arriving at this finding I was also guided by the previous ruling of this court on taxation *Kenya port Authority v. Modern Holdings Ltd* where Arach Amoko, J had this to say, and I quote,

“..... the costs of doing business in this court should be as far as possible, kept to a level that is reasonable, affordable and that should not deter any citizen of East African from seeking justice from this court, and at the same time be proportionate for the purpose of remunerating the advocate”

In conclusion I tax the bill in the sum of USD 15,000 as instruction fees plus VAT 18%, which is, USD 2, 700 and one quarter of instruction fees USD 3,750 as getting up fees in accordance with the Courts Rules of Procedure. I also add the amount on items that were not disputed and were taxed in the sum of USD 3,351.59 and USD 5 taxed in Item number 2 which was disputed. I therefore tax the bill at a grand total in the sum of USD 24,801.59 (USD Twenty Four Thousand Eight Hundred and One Fifty Nine Cents Only) payable to the Applicant.

I so tax.

Dated at Arusha..... Day of.....2013

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PROF. DR. JOHN EUDES RUHANGISA

TAXING OFFICER