



**IN THE EAST AFRICAN COURT OF JUSTICE-APPELLATE DIVISION
AT ARUSHA
(FIRST INSTANCE DIVISION)**

**TAXATION CAUSE No. 1 OF 2019
(Arising from Reference No. 17 of 2014)**

RT. HON. MARGARET ZZIWA.....APPLICANT

VERSUS

SECRETARY GENERAL

OF THE EAST AFRICAN COMMUNITY.....RESPONDENT

RULING

DATE: 4/06/2019

YUFNALIS OKUBO – TAXING OFFICER

This ruling is arising from a Bill of costs filed by the Applicant herein arising from a Reference Number 17 of 2014 where the Applicant was awarded costs. In this application the Applicant Rt. Hon. Margaret Zziwa claims a total of USD 862,055 as costs incurred in conducting the suit namely Reference no.17 of 2014. The claims leveled against the Respondent the Secretary General of the Community relates to instruction fees, reimbursement of actual expenses incurred by the applicant, to wit, costs of filing the reference, travel and upkeep expenses between Kampala and

Arusha where the East African Court of Justice currently has its seat, perusals, drawings, making copies and drawing pleadings. The Applicants was represented by Kampala Associates Advocates and Semuyaba, Iga and Company Advocates while the Respondent was represented by Dr. Kafumbe the Counsel to the Community (CTC).

Mr Justin Semuyaba for the applicant submitted that the bill was filed according to the scales as provided in the Third Schedule of the East African Court of Justice Rules of Procedure 2013.

as should be taxed as filed.

The CTC Dr. Kafumbe for the Respondent opposed the Bill as too excessive and not drawn in accordance with the scales as provided. He took issue particularly with the instruction fees which was awarded by the Appellate Division for two Counsels as excessive and unwarranted. He asserted that the fees charged was excessive and recommended a fee of USD 3,000.0.

Rule 113(3) of the EACJ Rules of Procedure provides:

"the costs shall be taxed in accordance with the rules and scales set out in the Third Schedule for the....."

In the rules for taxation set out in the Third Schedule, 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."

At this stage may I also refer to 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”

In the case of Joreth limited versus Kigano and Associates (2002) 1 EA 92 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”.

I will come back to the issue of instruction fees towards the end.

The CTC for the responded generally contends that the charges are excessive and out of proportion. He takes issues with receipts for disbursement. He however made no efforts to pinpoint which receipts he is doubting other than saying they need to be verified. On other issues he concedes but largely fails to convince why he disputes other disbursements that are supported by the receipts. I am accordingly guided by Rule 4(2) of the Third Schedule of the Rules of Procedure which provides that:

” Receipts for disbursement shall be produced to the Taxing officer and copies served to the other party at least fourteen (14) days before the taxing”

and Rule 4(3) provides that:

“No disbursement shall be allowed which has not been paid at the time of taxation”.

Counsel for the Respondent the CTC also took issues with the number of folios as not having been determined. Rule 1 of the Third Schedule on Taxation of costs provides:

“In this schedule, a folio means one hundred words and a single figure or group of figures up to seven shall count as one word”.

It may be very difficult and not practicable to count the number of words in a document when dealing with so many pages so as to arrive at the number of folios. To move forward the same can approximately be determined by counting the number of words in one or two pages and if for instance it is an average of 200 words per page then it will be 2 folios per page. This may then be multiplied by the number of pages to get the total number of the folios. I will be guided by these process.

Another issue raised by the respondents was the number of the parties and therefore the number of the parties entitled to claim costs. At all material times the applicant has been known to be one Hon. Dr. Margaret Zziwa but some costs are claimed for herself and her husband Captain Edward Babu. Counsel for the applicant contends that the events leading to the filing of the subject reference were so traumatizing to the Applicant and that at one point she even had to be admitted in Hospital. She was so affected that she needed assistance and someone to be on her side all the time and she found that could only be done effectively by her husband Captain Edward Babu.

I indeed sympathize with the situation the applicant found herself and the trauma she suffered leading to the filing of the subject reference. The rules are however clear and costs are awarded to the winning party in a suit. Captain Babu was doing that which is expected of him as a husband. He took vows to stand by the applicant for better or for worse without expecting anything in return. This was one such "for worse" situation and he was expected to stand by her side throughout as he indeed did. It would not be prudent to load that cost to the Responded noting that there was no limit as to how many other people would have stood by her. The situation would however have been different had she hired a paid nurse to take care of her out of the trauma she had suffered and linked the trauma to her removal from office. This reference was also not about the injuries sustained which would otherwise have been payable.

I wish also to point out that costs were ordered from date of filing and not from the date of amendment of the pleadings. Amendment of pleadings are done on existing pleadings and the date of amendment cannot be the effective date of the

subject suit. It is clear that the date of amendment was only used as the start date for calculating the special damages of a reference that was already in existence. Other unrelated matters were brought into this taxation like the initial references filed and withdrawn. I will totally disregard those matters as I proceed to tax.

I will now proceed to tax the bill but will deal with items no 1 and 7 at the end.

I will start from item 2 which I will tax at **USD 59,**

Item 3 I will tax at **USD 236,**

Item 4 I will tax at **USD 80,**

Item 5 I will tax at **USD 12,**

Item 6 I will tax at **USD 48,**

Item 8 I will tax at **USD 1800,**

Item 9 I will tax at **USD 43,**

Item 10 I will tax at **USD 172,**

Item 11 I will tax at **USD 95,**

Item 12 I will tax at **USD 30,**

Item 13 I will tax at **USD 29,**

Item 14 I will tax at **USD 116**

Item 15 is admitted by the respondents and I will tax as drawn at **USD 56.**

Item 16 I will also tax it as drawn and basing on my earlier clarifications on what is a folio at **USD 224.**

On item 17, the CTC appears to be confusing issues as what was being perused is the Respondents Response to the amended Statement of Reference. I will tax that item at **USD 16** excluding Affidavit in support of the amended statement of Reference.

Item 18 is admitted and having considered it I will tax it at **USD 22.**

Item 19 is drawing as provided in the schedule for costs and making folios thereof. Whether joint or not costs were awarded at the end of the day. I will award **USD 31.**

Item 20 is making copies and not disbursement. This is provided in the scales and I will tax it as drawn at **USD 124.**

Items 21 and 22 is not a question of receipts as this is not disbursement but drawings as provided in the scales of charges. I have taken the trouble to go through the trial file and found that indeed the drawing was done and copies were done though not as charged.

I will tax item 21 at **USD 914,**
and item 22 at **USD 1895,**

Item 23 it is not disbursement being claimed but drawing the Applicants submissions. What is being claimed in item 24, 25, and 26 is also not disbursement. Having considered them and perused the original file I will tax item 23 at **USD 98,**

Item 24 at **USD 392,**

Item 25 at **USD 1, 946,**

Items 26 as drawn at **USD 1,125**

Item 27 which is admitted at **USD 66**

Item 28 will also be taxes as drawn at **USD 264.**

Item 29 upon perusing the trial file it was not the applicants' application as claimed by the CTC but the respondents' preliminary objection and the respondents were therefore entitled to peruse and charge for the perusal.

Item 29 I will therefore tax as drawn at **USD 310,**

Item 30 and 31 follow from item 29 and I will tax as drawn;

Item 30 I will tax **USD 19,**

Item 31 I will tax at **USD 76**

Items 32 to 36 are admitted and having considered them and perused the trial file I will tax as drawn.

Item 32 I will tax at **USD 22,**

Item 33 I will tax at **USD 88,**

Item 34 I will tax at **USD 6,**

Item 35 I will tax at **USD 24,**

Item 36 I will tax at **USD 80.**

Item 37 it is clear it was the respondents certificate of urgency. Having gone through the trial file the certificate of urgency, notice of motion and affidavit in support was in fact from the CTCs office and the applicants herein were entitled to peruse and I will tax as filed.

Item 37 I will tax at **USD 155,**

Item 38 I will tax at **USD 6,**

Item 39 I will tax at **USD 24,**

Item 40 I will tax at **USD 437,**

Item 41 I will tax at **USD 1053**

The list of authorities were filed in different volumes being in items 42, 44, and 46. Item 42 is arising out of item 41 where the applicant herein who was the respondent also drew his list of authorities in response to the Respondents list of authorities in item 41. They also drew other list of authorities to support the reference as in item 46. The CTC stated in his submissions he would like to look at the receipts for all the expenses incurred. At this stage we are not dealing with disbursements but drawings. In any case he had ample time to look at the receipts neither did he raise an issue of late service of the documents. Having looked at the trial file and the folios therein I will tax follows:

Item 42 I will tax at **USD 1066,**

Item 43 I will tax at **USD 2035,**

Item 44 I will tax at **USD 2,137,**

Item 45 I will tax at **USD 1985,**

Item 46 I will tax **USD 363,**
Item 47 I will tax at **USD 1,448,**
Item 48 I will tax at **USD 60,**

Items 49 and 50 going forward up to item 57 deals with correspondence and some are out-rightly admitted and I will tax as follows:

Item 49 **USD 1.5,**
Item 50 **USD 1.5,**
Items 51-54 are not contested and I will tax as drawn:
Item 51 I will tax at **USD 1.5,**
Items 52 I will tax as **USD 50,**
Item 53 I will tax at **USD 840,**
Item 54 I will tax at **USD 6**
Item 55 I will tax at **USD 31**

Item 56 and 57 are the current attendance and when they will come to take the ruling. They are accordingly allowed to charge for those activities.

Item 56 I will tax at **USD 20,**
Item 57 I will tax at **USD 20.**

Items 58 to 82 relates to attendances. It proved a heavy task going through the trial file in a bid to verify the attendances but never the less the same had to be done. I have noted that what was charged under item 58 is the minimum provided in the scales of charges.

Item 58 I will tax at **USD 20,**
Item 59 I will tax at **USD 100,**
Item 60 I will tax at **USD 100.**

Item 61, 63, and 64 what was charged is the minimum provided irrespective of the number of Counsels present. I see no value in the respondents' argument that one Counsel would have sufficed. Note also that costs were awarded for two Counsels

and the figure herein has not been doubled (See the Scale of Charges, costs of proceedings A 1h(vii) under the second proviso at page 85)

I will tax item 61 at **USD 20.**

Item 62 I will tax at **USD 100**

Item 63 I will tax at **USD 20,**

Item 64 I will tax at **USD 20.**

Items 65 to 68 were all attendances by two counsels before a five judge bench for hearing. The cost of attendance for hearing is USD 40 for half day and USD 50 for a full day as set out under Rule 6(d) on page 88 of the Third Schedule. The Appellate Division gave costs for two Counsels and I will tax with that guidance in mind. Some of the items were indeed not contested by the respondent.

Item 65 I will tax at **USD 80**

Item 66 I will tax at **USD 80**

Item 67 I will tax at **USD 80**

Item 68 I will tax at **USD 80**

Item 69 I will tax at **USD 40**

Item 70 I will tax **USD 40**

Item 71 I will tax at **USD 80**

Item 72 I will tax at **USD 80**

Items 73 to 82 were also attendances before the Court while others were to file documents in the registry and also they were not contested by the respondents.

Item 73 I will tax at **USD 80**

Item 74 I will tax at **USD 80**

Item 75 I will tax at **USD 80**

Item 76 I will tax at **USD 40**

Item 77 I will tax at **USD 80**

Item 78 I will tax at **USD 80**

Item 79 I will tax at **USD 20.**

Item 80 I will tax at **USD 20.**

Item 81 I will tax at **USD 80 and**

Item 82 I will tax at **USD 40.**

Items 84 to 193 relate to disbursement. This is the actual expense incurred now being claimed for reimbursement and which must be supported by actual original receipt as proof of payment. Bundles of receipts were indeed filed in originals and copies served on the respondents before the hearing date. Putting each receipt on the specific item was a very tedious exercise that took a lot of the Courts time. Nonetheless and considering the interests in this case, a lot of caution was put in examining the receipts to verify the dates as compared to the activities on the trial file.

Rule 4(2) of the Third Schedule of the Rules of Procedure provides that:

“Receipts for disbursement shall be produced to the taxing officer and copies served to the other party at least 14 days before the taxation”

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), Taxation cause no 1 of 2016(James Alfred Korosso Vs AG of Kenya) among others.***

Where there are no receipts there is no otherwise other than to disallow those costs. It is also under this head that I addressed myself earlier as to how many parties or which party should be entitled to claim costs. This is also grounded on Rule 11(1) of the Third Schedule.

Having taken all that into account I will now proceed to tax as follows:

Item 84 I will tax at1,360

Item 85 I will tax at.....100

Item 86 I will tax at half at680

Item 87 I will tax at..... 100

Item 88 I will tax it off at.....0

Item 89 I will tax at.....810 as those are the receipts I could verify
 Item 90 I will tax at.....435 as those are the receipts I could find
 Item 91 I will tax at.....1,340
 Item 92 I will tax at.....100
 Item 93 I will tax at.....,.....670
 Item 94 I will tax at.....100
 Item 95 I will tax at.....490
 Item 96 I will tax at.....425
 Item 97 I will tax at.....1,360
 Item 98 I will tax at.....100
 Item 99 I will tax at.....675
 Item 100 I will tax at.....100
 Item 101 I will tax at.....890
 Item 102 I will tax at.....445
 Item 103 I will tax at1,040
 Item 104 I will tax at.....100
 Item 105 I will tax at.....520
 Item 106 I will tax at.....100
 Item 107 I will tax.....900
 Item 108 I will tax at.....450
 Item 109 I will tax at.....1,160
 Item 110 I will tax at.....100
 Item 111 I will tax at.....580
 Item 112 I will tax at.....100
 Item 113 I will tax at.....920
 Item 114 I will tax at.....435
 Item 115 I will tax at.....1,150
 Item 116 I will tax at.....100
 Item 117 I will tax at.....575
 Item 118 I will tax at.....100
 Item 119 I will tax at.....960
 Item 120 I will tax at.....495
 Item 121 I will tax at.....1,040

Item 122 I will tax.....	100
Item 123 I will tax at.....	520
Item 124 I will tax at.....	100
Item 125 I will tax at.....	960
Item 126 I will tax at.....	495
Item 127 I will tax at.....	1,160
Item 128 I will tax at.....	100
Item 129 I will tax at.....	580
Item 130 I will tax at.....	100
Item 131 I will tax at.....	1,020
Item 132 I will tax at.....	495
Item 133 I will tax at.....	1,160
Item 134 I will tax at.....	100
Item 135 I will tax at.....	580
Item 136 I will tax at.....	100
Item 137 I will tax at.....	1,040
Item 138 I will tax at.....	495
Item 139 I will tax at.....	1,340
Item 140 I will tax at.....	100
Item 141 I will tax at.....	670
Item 142 I will tax at.....	100
Item 143 I will tax at.....	1,080
Item 144 I will tax at.....	990
Item 145 I will tax at.....	1,160
Item 146 I will tax at.....	100
Item 147 I will tax at.....	580
Item 147 I will tax at.....	100
Item 148 I will tax at.....	1,780
Item 149 I will tax	485
Item 150 I will tax at.....	1,280
Item 151 I will tax at	100
Item 152 I will tax at.....	580
Item 153 I will tax at.....	100

Item 154 I will tax at.....	3,000
Item 154 I will tax at.....	625
Item 155 I will tax at.....	1,280
Item 156 I will tax at.....	0
Item 157 I will tax at.....	0
Item 158 I will tax at.....	0
Item 159 I will tax at.....	100
Item 160 I will tax at.....	0
Item 161 I will tax at.....	0
Item 162 I will tax at.....	1,100
Item 163 I will tax at.....	530
Item 164 I will tax at.....	1,160
Item 165 I will tax at.....	100
Item 166 I will tax at.....	580
Item 167 I will tax at.....	100
Item 168 I will tax at.....	620
Item 169 I will tax at.....	445
Item 170 I will tax at.....	1,440
Item 171 I will tax at.....	100
Item 172 I will tax at.....	720
Item 173 I will tax at.....	100
Item 174 I will tax at.....	620
Item 175 I will tax at.....	445
Item 176 I will tax at.....	1,340
Item 177 I will tax at.....	100
Item 178 I will tax at.....	670
Item 179 I will tax at.....	100
Item 180 I will tax at.....	620
Item 181 I will tax at.....	0
Item 182 I will tax at.....	1,340
Item 183 I will tax at	100
Item 184 I will tax at.....	890
Item 185 I will tax at.....	100

Item 186 I will tax at.....	620
Item 187 I will tax at.....	890
Item 188 I will tax at.....	1,340
Item 189 I will tax at.....	100
Item 190 I will tax at.....	620
Item 191 I will tax at.....	0
Item 192 I will tax at.....	0
Item 193 I will tax at.....	0

Item 191, 192 and 193 I have taxed the whole amount off as it seems to be a round figure with no receipts that can be linked to that activity.

TOTAL FOR DISBURSEMENTS USD 62,568

I now turn back to instruction fees. The Applicant have filed a bill of USD 500,000 plus VAT at 18% which covers instructions fees for two Counsel as ordered by the appellate Division. The Appellate Division ordered for a Certificate of Costs of two Counsel. He seeks the Court to apply Rule 7(2) found on page 85 of the Rules of the Court that:

“in any case in which a certificate of more than one Advocate has been given by the Court, the instruction fees allowed on taxation as between the party and party shall be increased by one third and other charges shall be doubled where requisite”

The applicant therefore requests this court to take into consideration the above provision as the Appellate Division ordered a certificate for two Counsel.

Counsel for the Respondent contends that an instruction fees of USD 500,000 is excessive and unreasonable. That this is not a matter that created novelty of Jurisprudence of the Community. He further notes that the case had only one issue for determination and that is whether the Assembly had followed the rules and the provisions of the Treaty to remove the speaker. He refers to Taxation Cause No 5 of 2008 of James Katabazi and 21 others Vs SG of EAC and AG Uganda where the bill was taxed at USD 70,185. He also refers to Taxation Cause No. 1 of 2006 Calist

Mwatela and 2 Others Vs SG East African Community where the bill was taxed at USD 13,000. In Taxation Cause No.6 of 2008 arising from Reference Number 1 of 2006 Prof. Peter Anyang Nyong'o and 11 others Vs AG Kenya the bill was taxed at USD 2 million. He goes further to differentiate the Anyang Nyong'o case with the current one that it was a very difficult one touching on members of EALA from Kenya who were to be sworn in; there were 21 parties involved; included several applications and motions; a lot of documentary evidence, a lot of time spent and an injunction issued. The Reference alone gave birth to 9 other applications, 5 intervener applications and 2 applications for the Judges to recuse themselves. That the current matter cannot be compared to the Anyang Nyong'o case which was historical and led to the amendments of the Treaty giving birth to the Appellate Division of the Court and other amendments of the Treaty and for that reason the total taxed bill of USD 2 million was reasonable. Counsel therefore proposes an instruction fees of USD 3,000.0.

Counsel for the Respondent also refers to a number of cases that spell out the principles to be followed in awarding costs like in the case of Premchand Raichand Limited Vs Quarry Services (1972) Limited East African Law Reports Page 162 that says a successful litigant ought to be fairly reimbursed for the costs he has incurred in the case. He further referred to the case of Industrial and Commercial Remedy cooperation Vs Okaki (1977) Kenya Law Reports paged 101 where the Court held that:

“no costs should be allowed which appear to the taxing officer to have been incurred by mistakes or through negligence”

Finally, Counsel for the respondent reiterates that an instruction fees of USD 3,000 per Counsel would suffice to make a total of USD 6,000.

In response, Counsel for the applicant referred the Court to Reference No. 17 of 2014, Appeal No. 2 of 2017 and Appeal No. 7 of 2015 where the subject matter was the removal of the Honorable Speaker of EALA. That the litigation conducted was intended to cure the abuse of the law that was meted to the Applicant, the violation of the Treaty and the EALA Regulations and other provisions of the international law.

Counsel also submitted that in terms of the jurisprudence of the EACJ it was the first case of its kind, a case involving defending the rights of the Applicant. He also referred to the case of Prof Anyang' Nyong'o Vs AG of Kenya and urged the Court to consider the volume and magnitude of the documentary evidence, the urgency of the brief, the absence of jurisprudence of the subject matter in the region, the importance of the case, the authorities and everything that was laid before the Court. Those guides should be viewed in conjunction with Rule 9 of the Third Schedule of the Rules of Procedure on Taxation of this Court. That the Court has to look at the nature of the case, the importance of the case, the interest of the parties, the time spent on the case and the various aspects which were of great importance to the applicant.

Counsel also submitted that in the whole world this was the only case where a Speaker of an International Legislative Assembly was thrown out in that manner, her name soiled and she was so traumatized by the whole event. The Reference took a considerable long time, it was complex with authorities from outside the region from the EU and Nigeria. That Counsel had to do research, expend huge magnitude of professional responsibility and it is not a simple matter as Counsel for the Respondent wants the Court to believe.

I have carefully considered the arguments advanced by both parties. I have taken time to go through the authorities cited by the parties and compared with the taxation at hand. This is one case that took a lot of time having started in December 2014, amended in February 2015 stayed for an appeal to be preferred on an interim matter in November 2015 and finally judgement issued in the first instance in February 2017.

Counsel for the Respondent referred to some cases but only in relation to the amount awarded in the bill without considering the subject matters involved and therefore different weights to be accorded.

I can only look at this case in comparison or in reference to the case on Prof Anyang' Nyong'o. The Reference in Anyang' Nyong'o involved prospective members of EALA that were yet to be admitted or be sworn in as EALA members.(emphasis mine)

The current Reference in question involved the removal of the sitting Speaker of a Regional Legislative Assembly who is the face of the Assembly and the spokesperson of the Assembly in whose absence there is no validly constituted Assembly. This was a weighty matter.

It is in this case that for the first time the Court considered matters of producing documents from EALA whether the referred documents can only be produced with leave or consent of EALA or not and whether upon production they can be subjected to scrutiny.

It is also in this case that for the first time the Clerk of the Assembly had to be summoned to produce proceedings of the Assembly but not without some legal tussle that went all the way to appeal.

It is in this case that for the first time the East African Court of Justice awarded monetary damages to a winning litigant.

All the above were ground breaking precedents and development of a new jurisprudence in the region with far reaching ramifications.

I have carefully considered submissions of both parties and especially the authorities by the Applicant that were very useful. 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.*

Rule 11 (1) of the Third Schedule 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".

It is also important at this stage to refer to 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 Kiqano 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".

Rule 9(2) gives me discretion to allow costs where it appears to me to have been reasonably incurred and to disallow where it appears to be an unreasonable expense. I have looked at the authorities cited to oppose the instruction fees and the arguments from both sides in support of their respective positions. It is clear the Applicant is entitled to instruction fees and the Respondent indeed does agree to that but not to the amount claimed.

Having taken all matters into consideration I would allow a sum of **USD USD 251,312.58** (Two hundred thousand Three hundred and twelve, cents fifty eight US Dollars) as reasonable fees for instructions. To that I will add getting up fees of ¼

of the instruction fees being **USD 62,828.15 (Sixty two thousand, eight hundred twenty eight cents fifteen dollars)** I will also add 18% VAT on instruction fees which will amount to **USD 45,236.26** (Forty five thousand, two hundred thirty six cents twenty six dollars). In doing so I have been guided by the nature of the subject matter, complexity, the interest of the parties, the general conduct of the proceedings, the party that will ultimately bear the costs and the relevant authorities submitted.

The Taxation is therefore summarized as hereunder

Item 1.....USD 251,312.58
VAT 18%..... USD 45,236.26.
Item 7 ¼ Getting up fees..... USD 62,828.15
Items 2 to 57..... .USD. 24,872.50
Items 58 to 82USD. 9, 460
Items 84 to 193.....USD 61,477
TOTALS.....USD 455,186.50

In conclusion, I tax the bill at a total figure of **USD 455,186.50 (United States Dollars Four Hundred Fifty-Five thousand, one hundred eighty-six and cents fifty). computed as follows:** instruction fees at **USD 296,548.84** inclusive of **18%VAT** and **USD 158,637.66** awarded for all other items to cover among others attendance, perusals, drawings, copying and disbursements.

I so tax.

Dated at Arusha this th 4 day of June 2019



YUFNALIS OKUBO