



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



(Coram: Mary Stella Arach-Amoko, DPJ; John Mkwawa J; Faustin Ntezilyayo J.)

TAXATION REFERENCE NO.03 OF 2013

**[Arising from Taxation Cause No.1 of 2012 arising out of Reference No.6 of
2011 and Application No.6 of 2011]**

- 1. DEMOCRATIC PARTY**
- 2. MUKASA FRED MBIDDE**

.....**APPLICANTS**

VERSUS

**THE ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA SUED IN
REPRESENTATIVE CAPACITY**

..... **RESPONDENT**

13TH DAY OF SEPTEMBER, 2013

RULING

1. Introduction

The Applicants in the instant matter, namely, **Democratic Party** and **Mukasa Fred Mbidde** (who are the First and the Second Applicants, respectively) brought this Notice of Motion dated 14th day 2013 under Articles 6(d), 7, 8, 23, 27, 30, 33 and 38 of the Treaty for the Establishment of the East African Community (hereinafter referred to as “the Treaty”) Rules 1(2), 17, 111, 112, 113 and 114 of the East African Court of Justice Rules of Procedure Rules – 2013 (hereinafter referred to as “the Rules”) and Article 38 of the Statute of the International Court of Justice and the Vienna Convention of the Law of Treaties, 1969.

It can be gleaned from the record of these proceedings that the First Applicant is a political party in Uganda which has been registered under the Political Parties and Organizations Act, 2005. On the other hand, the Second Applicant is an advocate of the Courts of Judicature in Uganda, a member and a legal advisor of the First Applicant.

Both Applicants have been before the Taxing Officer and before us been represented by Mr. Justin Semuyaba.

The Attorney General of the Republic of Uganda is the Respondent in the instant Reference. He has been sued in his representative capacity. The case for the latter was advocated upon by Mr. Phillip Mwaka, a Principal State Attorney.

2. Background

The Applicants, as is evident from their Notice of Motion, are gravely aggrieved by the Ruling of the Taxing Officer dated 3rd May, 2013, in **Taxation Cause No.1 of 2012** arising out of **Reference No.6 of 2011** and **Application No.6 of 2011**, where the learned Taxing Officer awarded the Applicants USD\$ 51, 556 as taxed costs.

The grounds for their Application, as set out in the aforesaid notice of Motion are as follows:

- (a) That the Taxing officer's total award of USD15,000 plus 18% VAT USD2,700 as instruction fees in **TAXATION CAUSE NO.1 OF 2012 ARISING OUT OF REFERENCE NO.6 OF 2011 AND APPLICATION NO.6 OF 2011** is in contravention of Rule 9(1) of the Taxation of Costs under the 2nd Schedule of the East African Court of Justice Rules of Procedure and it be set aside;
- (b) The Award is not commensurate with any international practice in awarding fees and it is indicative of error in principle;
- (c) That the Taxing Order to disallow the instruction fees, getting up fees for preparing for trial of the Reference and the Application and Affidavits in support of the same separately and for both the Reference and interlocutory Application for a Certificate of Urgency and temporary injunction in respect of the First and Second Applicants as pleaded in items 1, 2, 3, 4, 9 and 10 be set aside as they are allowable under the Rules;

- (d) That the assessment by the learned Registrar of the East African Court of Justice of **USD15,000** plus **18% VAT USD2,700** as instruction fees in **TAXATION CAUSE NO.1 OF 2012 ARISING OUT OF REFERENCE NO.6 OF 2011 AND APPLICATION NO.6 OF 2011** was manifestly inadequate in all the circumstances as to amount to a misdirection in law by the Taxing Officer.
- (e) The Taxing Officer failed to calculate the basic instruction fees on the basis of the nature and importance and the complexity of the case, the general conduct of the proceedings and the person to bear the costs and all other circumstances;
- (f) That the learned Registrar of the East African Court of Justice having found that this case was peculiar and important and considering its complexity, time taken in research, preparing and settling all necessary pleadings particularly Certificate of Urgency, Notice of Motion Application, to preparing for hearing of the Application, having regard to incidental processes, the number and length of documents perused, photocopied, exhibits for perusal and bundles of authorities, to travelling to Arusha, Tanzania, the Reference and Applications and obtaining orders, to preparing for inter-parties Scheduling Conference and hearing, preparing appropriate responses and dispatching them, and responding to various correspondences as a result of which first, a temporary injunction was granted and later, a permanent injunction as prayed for by the Applicants, his award of **USD15,000** plus **18% VAT USD2,700** as instruction fees in **TAXATION CAUSE NO.1 OF 2012 ARISING OUT OF REFERENCE NO.6 OF 2011**

AND APPLICATION NO.6 OF 2011 was manifestly inadequate in all the circumstances and was low and unreasonable;

(g) That the learned Registrar of the East African Court of Justice as the Taxing Officer erred in law when he refused to recognize that this case was akin to the Kenyan case of **Professor Anyang' Nyong'o & Others vs A.G. Kenya and Others Reference No.1 of 2006** and all the interlocutory applications for Certificate of Urgency and injunction and final Orders to make new rules of elections in Kenya and the subsequent Appeal/Reference to Taxation of Costs wherein **USD2,033,164.99** was taxed and awarded and confirmed on Appeal/Reference which ought to have guided him as a precedent on Taxations of Costs on a matter of a similar nature;

(h) That the learned Registrar of the East African Court of Justice as the Taxing Officer erred in law when he disallowed the instruction fees, getting up fees for preparing for trial plus VAT under items 1, 2, 3, 4, 9 and 10 of the First and Second Applicants' Bill of Costs for the main **Reference No.6 of 2011** and the Application for a Certificate of Urgency and a temporary injunction to restrain and prohibit the East African Legislative Assembly and the Attorney General of Uganda and the Parliament of Uganda from conducting and carrying out any elections, assembling, convening, recognizing, administering Oath of Office or otherwise howsoever presiding over or participating in the election of the representatives of Uganda and recognizing of any names of nominees as duly nominated and elected to the East African Legislative Assembly until the Rules 11(1) and Appendix B r3, 10, 11 of the Rules of Procedure of the Parliament of Uganda 2006 which

were going to be used by the Parliament of Uganda in the elections of the members of the East African Legislative Assembly were amended by the Parliament of Uganda when they are separate Parties;

- (i) That the Taxing Order to disallow the costs of drawing up the Reference and Application and Affidavits in support of the same separately and for both the Reference and interlocutory Application for a Certificate of Urgency and temporary injunction pleaded in items 13 and 24 be set aside as they are allowable under the Rules;
- (j) That the Taxing Order to disallow the costs of perusing the Reference and Application and Affidavits in support of the same under items 17, 26, 44, 57 and 58, respectively of the Applicants' Bill of Costs, be set aside as they are allowable under the Rules;
- (k) That the Taxing Order to disallow the costs for attending to witnesses **Fred Mbidde, Hon. Medad Segona** and **Hon. Susan Namaganda** who swore the accompanying affidavits as pleaded under items 27 of the Bill of Costs, be set aside as they are allowable under the Rules;
- (l) That the Taxing Order to disallow the costs for attending the Attorney General's Chambers to serve written submissions pleaded under items 52, 60 and 61 of the Bill of Costs, be set aside as they are allowable under the Rules;
- (m) That the Taxing Order to disallow the costs for commissioning and notarization of documents pleaded in items 115, 116, 117 and 118 of the Bill of Costs, be set aside as they are allowable under the Rules;

(n) The Taxing Officer failed to consider the submissions of Counsel for the Applicant and took into account irrelevant matters and failed to consider the legal principles in reaching his decision and there was no legal basis for the award in the items complained about in this Reference and the Applicant has no complaint against the items properly taxed and not mentioned in this Reference.

It was proposed to ask this Court for the following orders:

- (a) The Ruling of the Registrar dated 3rd May 2013 be set aside and items No. 1, 2, 3, 4, 9 and 10 as instruction fees in the Applicants' Bill of Costs, be taxed as pleaded by the Applicants or as may be ordered by this Court.

- (b) The Taxing Officer's total award of USD 15,000 PLUS 18% VAT of USD 2,700 as instruction fees in **Taxation Cause No. 1 of 2012** arising from **Reference no. 6 of 2011** and **Application No. 6 of 2011**, is in contravention of Rule 9(1) on taxation of costs under the 2nd schedule to the EACJ Rules of Procedure and it should be set aside.

- (c) The Taxing Order to disallow the costs of drawing up the Reference and the Application; and the affidavits in support of the same separately; and for both the Reference and interlocutory application for a Certificate of Urgency and temporary injunction pleaded in items 13 and 24 be set aside.

- (d) The Taxing Order to disallow the cost of perusing the Reference and the Application and affidavits in support of the same under items 17,26,44,57 and 58, respectively of the Bill of Costs, be set aside.

- (e) The Taxing Order to disallow the costs for attending to witnesses Fred Mbidde, Hon. Medad Segona and Hon. Susan Namaganda as witnesses, who swore affidavits, be set aside.
- (f) The Taxing Order to disallow the costs for attending the Attorney General's Chambers to serve written submissions pleaded under item 52, 60, 61, of the Bill of Costs, be set aside.
- (g) The Taxing Order to disallow the costs of commissioning and notarization of documents pleaded in items 115,116,117 and 118 of the Bill of Costs be set aside.
- (h) The items properly taxed and not mentioned in this Reference be upheld and maintained.
- (i) The Court determines the matter as the justice of the case requires.
- (j) The Respondent pays the costs of the Taxation and of this Reference.

3. Submissions

The complaints, as can be summarized from the supporting Affidavits and from the learned Counsel's submissions in which he took us through the relevant items of the Applicants' Bill of Costs were as follows:

Learned Counsel contended that the Taxing Officer, having found that the Reference that gave rise to the instant proceedings was peculiar, important, and considering its complexity, the time taken for researching, preparing and settling all necessary pleadings particularly for the Certificate of Urgency,

Notice of Motion, preparing for the application and incidental expenses, the number and length of documents perused, photocopied, exhibits for perusal, bundles of authorities and Counsel travelling to Arusha to present the Reference and Applications and obtain the orders, the total award of **USD.15,000** plus **18%** VAT and USD2,700 as instruction fee was not commensurate with any international practice and awarding fees and that it was manifestly inadequate and indicative of error in principle.

Counsel further contended that the Taxing Officer erred in law when he refused to recognize that this case was akin to the case of **Professor Anyang' Nyong'o & Others vs A.G Kenya and Others Reference No.1 of 2006** where an award of **USD2,033,164.99** on instruction fees was awarded and confirmed on Appeal. Mr. Semuyaba vigorously argued that separate fees for the Application and the Reference were prayed for in their Bill of Costs, and that they ought to have been allowed as was the case of **Professor Anyang' Nyong'o** (supra). It is Counsel's submission that the Taxing Officer in the impugned Ruling was wrong to refuse the instant Applicant separate fees or costs for the Application and the Reference.

Consequently, it is his submission and prayer that the Taxing Officer's Order to disallow the getting up fees for preparing for trial of the Reference and interlocutory Application for a Certificate of Urgency as well as a temporary injunction as set out in items 1, 2, 3, 4, 9 and 10 of the Bill of Costs, be set aside as they are allowable under the Rules.

In sum, it is Mr. Semuyaba's contention that had the Taxing Officer carefully considered his submissions, avoided taking into account irrelevant matters and

had he addressed his mind to the well established legal principles in taxation, he would have granted the Applicants' prayers as presented to him.

The second limb of complaint is that the Taxing Officer had erred in not allowing the costs of drawing up the Reference and Applications as set out in items 13 and 24 of the Applicants' Bill of Costs. It is Mr. Semuyaba's contention that under the Rules, he was entitled to be paid the fees for the perusal of the documents, and preparation of Affidavits.

In the third limb of complaint, Counsel submitted that the Taxing Officer ought not to have disallowed the costs for perusing the documents drawn by himself as presented under items 17, 26, 44, 57 and 58, respectively, of the Applicants' Bill of Costs. Mr. Semuyaba also attacked the finding and holding that items 57 and 58 come under the items covered under instructions fees. He thus prayed that the costs be allowed as provided under the Rules of the Court.

In the fourth limb, Mr. Semuyaba submitted that the Taxing Officer had erred in finding and holding that he did not attend to witnesses, namely, Mr. Mbidde, Hon. Medard Segona and Hon. Susan Namaganda, who swore accompanying Affidavits as set out under item 27 of the Bill of Costs.

He attacked the Taxing Officer for finding and holding that the said item could not be allowed as there were no witnesses called to give evidence in the Court and that the evidence was only by way of Affidavit.

Regarding the fifth limb of his complaint, Counsel submitted that the Taxing Officer had erred in not allowing costs for attending to the Attorney General's

Chambers to serve written submissions as set out under items 52, 60 and 61 of the Bill of Costs.

Mr. Semuyaba contented that the Taxing Officer was wrong in finding that service of Court documents by the Applicant as set out under item 52 of the Applicants' Bill of Costs could not be charged under attendances. He also faulted the Taxing Officer's holding that items 60 and 61 are related to service of documents whereas they were documents under attendances.

He thus, prayed that this Court should set aside the Taxing Officer's Order in respect of those items and allow them as provided under the Rules.

Lastly, Mr. Semuyaba came up at arms with the Taxing Officer who disallowed his costs for commissioning and notarization of documents as pleaded in items 115, 116, 117 and 118 of the Bill of Costs, though there was evidence in support of these claims.

Learned Counsel for the Respondent Mr. Phillip Mwaka, in his submissions which also find full support in the Affidavits in reply sworn by Elisha Bafirawala, a Senior State Attorney in the Chambers of the Attorney General of Uganda that was filed on 17th June, 2013, strongly supported the Taxing Officer's Ruling which gave rise to the instant matter. In other words, he opposed the Applicants' Application. If we may put Mr. Mwaka's arguments in a nutshell, they are as follows:

Firstly, that out of the nine prayers sought by the Applicants, they were granted only one prayer.

Secondly, that the Rules that gave rise to the **Reference No.6 of 2011** and **Application No.6 of 2011** were amended in time and the elections of the EALA Members were consequently carried out in time.

Mr. Mwaka further submitted that, whatever fears the Court might have had and expressed in its Ruling were allayed by the execution of those elections in a timely fashion.

Thirdly, that although the Taxing Officer in his Ruling clearly stated that items 3 and 4 were not properly dated, he still proceeded to award the getting up fees. In light of the foregoing, Counsel forcefully submitted that the Applicants cannot be heard to claim that they were denied getting up fees.

Fourthly, that he is in agreement with the Taxing Officer that items 9 and 10 are repetitive. As the items in question, strictly speaking, are instructions fees and as the Taxing Officer had considered them in his Ruling, the Applicants' assertion that the Taxing Officer disallowed them is unsustainable.

Fifthly, that the Applicants in items 17 and 26 were claiming for perusal of documents which in actual fact are their own documents. Counsel contended that the Taxing Officer was in those circumstances correct in disallowing those items as any claim for perusal should be a claim for documents other than his own.

Sixthly, as regards item 44, the Taxing Officer cannot be faulted for disallowing it as the Bill regarding item 44 was not clearly drawn. The

learned Counsel further argued that item 44 talks of exhibits, but does not go far to show what they were.

Seventhly, the Taxing Officer was correct in disallowing items 57 and 58 as the documents in question originated from the Applicants themselves.

Eighthly, items 60 and 61 were disallowed because they were mischaracterized as Court attendances. It is his argument that, not unlike in item 52 of the Bill of Costs, they were simply service of documents; hence, one cannot by any stretch of imagination call them Court attendances.

Ninthly, Items 115 and 119 were disallowed because commissioning and notarization should always be done by a qualified person and under no circumstances they should be done by a Counsel, as it is improper for a Counsel to commission and notarize his or her own documents. Counsel further, argued that in the matter before, the Taxing Officer, the receipts in question originated from Mr. Semuyaba's Law Firm and not from the actual firm that is purported to have notarized the documents in question. Counsel concluded by saying that there was no evidence or proof of items 115 to 119.

Tenthly, It was Mr. Mwaka's further contention that the Taxing Officer's Award of **USD17,700** cannot in any way be faulted. Counsel argued forcefully, that the aforesaid amount was awarded as the consolidated sum which covered the Reference itself, the Applications and even the getting up fees. It is the learned Counsel's contention that in law, there

is nothing wrong with the Taxing Officer's act of consolidating those amounts. He further argued that in the event the Court is of the view that it was wrong to consolidate them he strongly urged the Court to separate this amount in the case for the Reference and for the Application, but of course without altering the figure of **USD17,700**.

Mr. Mwaka forcefully argued that the award of **USD17,700** was absolutely reasonable and in conformity with the principles followed by this Court inter-alia in the following cases:

(a) Kenya Ports Authority vs Modern Holdings Ltd – Taxation Reference No.4 of 2010 which followed the principles enunciated in the case of Premcharnd Raichand & Anor vs Quarry Services of E.A. Ltd & Others. Steel Construction Petroleum Engineering (E.A) Limited vs Uganda Sugar Factory (1970) E.A Ltd.

(b) The Attorney General of Kenya vs Prof. Peter Anyang' Nyong' & Others Taxation Reference No.5 of 2010 arising from Taxation **Cause No.2 of 2010** which, inter-alia followed the decision in Bank of Uganda vs Banco Arabi Espaniol – Application No.2 of 1999 of the Supreme Court of Uganda.

Eleventhly, it is Mr. Mwaka's contention, in furtherance of the Respondent's case, that the instant matter is distinguishable from that of Prof. Peter Anyang' Nyong'o – Taxation Case No.6 of 2008 and also EACJ's Appeal No.1 of 2002 in that, at the time the case of Prof. Peter Anyang' Nyong'o was filed and decided, the elections had already taken

place and that the effect of that decision had more or less put into doubt the outcome of that election. Counsel further contended that in the Reference that gave birth to these proceedings, the election in Uganda for EALA Members had not yet taken place.

It is his stance, therefore, that the Taxing Officer cannot be faulted for having disregarded the Anyang' Nyongo's case (supra) when he was taxing the Applicants' Bill of Costs.

Lastly, but not the least, Mr. Mwaka in furtherance of his stance on the issue of instruction fees pointed out that all factors considered in the matter pursued by the instant Applicants were in fact Public Interest Litigation. It is on the basis of the foregoing that Mr. Mwaka contends that the Taxing Officer's award on instruction fees cannot, by any stretch of imagination, be faulted.

4. The Law

The instant matter was instituted on behalf of the Applicants by virtue of Rule 114 which reads:

“Any person who is dissatisfied with the decision of the taxing officer may within fourteen (14) days apply by way of a reference on taxation for any matter to be referred to a bench of three (3) judges whose decision shall be final”.

5. General Principles

We are not travelling in a virgin land in the legal field. The general principles governing taxation orders are well settled. It was propounded by Spry V-P, in

the leading case of, **Premchand Raichand Ltd and Another vs Quarry Services of East Africa Ltd and Others (No. 3) [1972] EA 162, at 163 to 165** and Richard Kuloba summarized it very appositely in his book entitled **Judicial Hints on Civil Procedure 2nd Edition, pages 118 to 119** referred to us by Mr Semuyaba. The principles are the following:

- a. That costs be not allowed to rise to such level as to confine access to courts to the wealthy;
- b. A successful litigant ought to be fairly reimbursed for the costs he has had to incur;
- c. That the general level of remuneration of advocates must be such as to attract recruits to the profession; and
- d. That as far as practicable, there should be consistency in the awards made.
- e. That there is no mathematical formula to be used by the taxing master to arrive at a precise figure. Each case has to be decided on its own merit and circumstances.
- f. The taxing officer has discretion in the matter of taxation but he must exercise the discretion judicially, not whimsically.
- g. The court will only interfere when the award of the taxing officer is so high or so low as to amount an injustice to one party.

The principles were followed by this Court in **Kenya Ports Authority vs Modern Holdings Ltd – Reference No.4 of 2010 and the Attorney General of Kenya vs Peter Anyang Nyong’o & Others – Reference No.5 of 2010**, to name a few cases.

With the afore-stated principles in mind, we shall now consider the grounds raised by the Applicants in this Reference.

Détermination

We have carefully considered the submissions of the Parties and would humbly opine as follows:

Firstly, regarding the submissions by both Counsel in respect of items related to instruction fees, we find that the Taxing Officer was guided by Rule 9(1) of the Second Schedule of the Rules.

According to Rule 9(1):

“The fee to be allowed for instructions to make, support or oppose any Application should be the sum that the Taxing Officer should consider reasonable but not less than USD100”.

Mr. Semuyaba has urged us to walk in the foot prints of our predecessors, in the case of **Prof. Peter Anyang’ Nyong’o** (supra). Here, we are in full agreement with Mr. Mwaka and the findings and conclusions by the Taxing Officer that the instant case is not at all on all fours with the Anyang’ Nyong’o’s case. In a nutshell, it differs in the following ways:

One, in the Anyang’ Nyong’o case the elections had already been conducted under the impugned rules, but in this particular case, they had not.

Two, the Anyang’ Nyong’o case was the first of its kind and was more complex than the instant one. This is even evident by the battery of

lawyers representing the Parties, including the Attorney General of Kenya who appeared in person before this Court.

Three, the Anyang' Nyong'o case had eleven Applicants who were representing various political parties and six Respondents, while in this particular case, we had one Political Party and its Legal Advisor.

Four, instruction fees in the Anyang' Nyong'o case were not charged separately for the eleven applicants as has been the case in the instant taxation. As is evident from the record, in the latter case, fees were charged for all the Applicants together and it included instruction fees for all the interlocutory Applications in the Reference at **USD3,740,900.30** but the Taxing Officer taxed it down to **USD1,300,00**.

In view of all the foregoing, we find and hold that the Taxing Officer considered all the factors that did exist in the case before him and acted judiciously. Further to that, he considered the legal principles which were in his view relevant to the matter before him. These included inter alia, the time spent, and that cost of doing business in this Court should be affordable to East Africans. Besides, the allegation that the Taxing Officer took into account irrelevant matters and failed to consider the legal principles in arriving at his decision, is not substantiated or supported by any evidence, to say the least.

It is on the basis of the foregoing that we are of the settled view that there are no sufficient grounds to warrant this Court to interfere with the decisions of the Taxing Officer in respect of items related to instruction fees. [See: Taxation Reference Nos.4 and 5 of 2010 (supra)].

Equally important is the complaint regarding getting up fees. The record shows that the learned Taxing Officer dealt with this item in the last part of the ruling where he clearly stated that:

“I award getting up fees at one quarter of the instruction fees as provided under Rule 2 of the taxation schedule and not one third as claimed by the applicant. The getting up fees is taxed at USD \$ 3, 750 and this covers items 3 and 4.”

Rule 2 referred to reads as follows:

“2. Fees for getting up or preparing for trial 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”. (Underlining is supplied for emphasis).

It is abundantly clear from the foregoing that the Taxing Officer awarded the getting up fees in accordance with Rule 2.

Grounds (a) to (h) in respect to items 1, 2,3,4,9 and, 10 therefore, fail.

Secondly, we embark on the complaint in ground (i) which is in respect of items 13 and 24 of Bill of Costs as filed by the Applicants. Both items 13 and 24 were in respect of preparing affidavits of Fred Mukasa Mbidde.

The Taxing Officer had in his Ruling disallowed items 13 and 24 because Counsel for the Applicants was not entitled to charge for perusing documents

drawn by himself and that they actually fall under the ambit of instruction fees as per the Rules of this Court.

We are in full agreement with the Taxing Officer's observations and are in agreement with the position taken by him in respect of perusal of documents. It is also our candid view that perusal of documents can only be of documents drawn by the opposite party, and not documents drawn by the Applicants' themselves.

Thirdly, we now move to the Applicant's complaint underground (j) which is in respect of items 17, 26, 44, 57 and 58 as presented in the Applicants' Bill of Costs.

As we have demonstrated in our summary of his submissions, it is evident that learned Counsel for the Applicants had argued very ingeniously both before the Taxing Officer and before this Court, in his endeavour to show that the Taxing Officer had acted injudiciously and hence urges this Court's interference with the exercise of the Taxing Officer's discretion.

Item No.17, as is evident from the Applicants' Bill of Costs, is in respect of ***"perusing affidavits in reply of JULIOUS TANGUS ROTICH AND HON. PETER NYOMBI for the first and second respondent respectively."***

At page 5 of his ruling, it is indicated by the learned Taxing Officer that ***"item 17 is taxed at USD90"***. This item was actually allowed, the complaint is therefore baseless.

Item No.26, as is apparent from the presented Applicants' Bill of Costs, is in respect of perusal of a bundle of annexures (182 folios) on 18/12/2010.

Here, the Taxing Officer taxed it off for the same reasons he had advanced in item 13 (supra). Again, we agree with him for the same reason.

As regards item 44, the Taxing Officer taxed it off on the grounds that it does not state where the exhibits were annexed to. It was for perusing exhibits for the Respondents. We agree with him because the Applicants' Counsel had to state with clarity the documents to which the exhibits were purportedly annexed in order for the Taxing Officer to award the costs.

The next items that we shall consider are Nos. 57 and 58. Both of them were in respect of perusal of the Applicants' own documents. Here, the Taxing Officer taxed them off as they were the Applicants' own documents, and that, in his view perusals and attendances are always granted as components of instruction fees. This is also correct in our view.

Under ground (k), item No.27 was disallowed by the Taxing Officer on the ground that the evidence relied on by the Court was that of the filed affidavits in support of the claim and not from oral evidence. It was for attending to witnesses, namely, Fred Mukasa Mbidde, Hon. Medad Segona and Hon. Susan Namaganda to take minutes of evidence. This is borne out by the evidence on Court record. Indeed, there was no oral evidence.

In sum, we hereby uphold the Taxing Officer's decision in respect of items Nos. 17, 26, 27, 44, 57 and 58 of the presented Bill of Costs.

Let us now revert to the complaint under ground (l) in respect of items 52, 60 and 61 of the Applicants' Bill of costs. Having considered submissions by both the learned Counsel in respect of the aforestated items , we do not hesitate to say that we are again at one with Mr. Mwaka.

It may not be out of place to observe that Mr. Semuyaba's line of argument in support of the aforestated items is faulty. Firstly, item No.52 was in respect of service of written submissions by the Applicants' Counsel at the Attorney General's Chambers in Kampala, which as the Taxing Officer rightly observed cannot be charged under attendances. Secondly, items 60 and 61 were for service of written submissions in rejoinder by Applicants' Counsel on the Respondents at the Court premises in Arusha and Attorney General's Chambers in Kampala, respectively. The Taxing Officer ruled that they were mischaracterized as Court attendances, when in actual fact what happened on the ground was service of documents.

Here, we are in total agreement with his conclusion because under Rules 6 and 8, attendance and service are charged separately.

We come to the complaint in ground (m) regarding items 115 to 118 of the Bill of Costs. These items were for commissioning and notarising an Application for Certificate of Urgency, application for interim order, for the Reference and affidavits in rejoinder. The Taxing Officer disallowed all of them because Counsel for the Applicant had produced payment vouchers from his law firm and not receipts as required by the Rules. Under Rule 4(2) of the 3rd Schedule ***"Receipts for the disbursements shall be produced to the Taxing Officers and copies served to the other party at least fourteen (14) days before taxation"***.

It is on the basis of the foregoing that this ground of complaint, with all due respect to Mr. Semuyaba, also fails.

7. Conclusion

In the premises and for the reasons given, we find no reason to interfere with the decisions of the Taxing Officer. We accordingly, disallow the Reference. However, having regard to the fact that the matter that gave rise to the instant Reference was basically public interest litigation, we deem it appropriate that Parties bear their own costs.

It is so ordered.

Dated, Delivered and Signed at Arusha this 13th day of September, 2013

.....
MARY STELLA ARACH-AMOKO
DEPUTY PRINCIPAL JUDGE

.....
JOHN MKWAWA
JUDGE

.....
FAUSTIN NTEZILYAYO
JUDGE