# IN THE EAST AFRICAN COURT OF JUSTICE
## FIRST INSTANCE DIVISION
## AT ARUSHA
## TAXATION CAUSE No. 4 OF 2020

## (Arising from Reference No. 21 of 2019)

**YU SUNG CONSTRUCTION LIMITED…………………………………………………..APPLICANT**

**VERSUS**

**ATTORNEY GENERAL**
**OF THE REPUBLIC OF SOUTH SUDAN……………………………..…..………. RESPONDENT**

**RULING**

DATE: 04/02/2021

**YUFNALIS OKUBO – TAXING OFFICER**

This ruling is arising from a Bill of Costs filed by the Applicant herein arising from Reference Number 21 of 2019 where the Parties entered a Consent judgement and the Applicant was awarded costs. The Applicant herein is claiming a total of USD 14,892,784.7 as costs incurred in prosecuting Reference Number 21 of 2019. The claims against the Respondent the Attorney General of the Republic of South Sudan relates to instruction fees, drawings of pleadings, making application for interim Orders, attendances, reimbursement of actual expenses incurred by the applicant, to, wit, costs of filing the reference, travel and upkeep expenses between Kampala,

Nairobi and Arusha where the East African Court of Justice currently has its seat, perusals, drawing pleadings, service, making copies and VAT. The Applicants was represented jointly by Counsels' Semuyaba of Semuyaba. Iga and Company Advocates of Kampala Uganda and P.L.O Lumumba of Lumumba and Lumumba Advocates of Nairobi Kenya while the Respondent was represented by Mr. Biong Pieng Kor from the Attorney General's Office of the Republic of South Sudan.

The taxation cause was heard on 18/01/ 2021 and Prof, PLO Lumumba 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 the Court, 2019 save for instruction fees which is at the discretion of the Taxing master and the bill should be taxed as filed at USD 14,892,784.7 Of that amount, instruction fees which is item 2 the Applicant is claiming USD 10,000,000/= the rest being the other charges including disbursements.

In support of the claim of USD 10,000,000/= for instruction fees, Counsel for the applicant submitted that the amount involved in the claim was huge and the matter involved violations of the Treaty and the Common Market Protocol. The matter also involved good governance and the rule of law as the Respondents had failed to honor an obligation and a lot of time was spent in researching case law and precedents on the matter. The rest of the matters were drawn to scale and should be taxed as filed. He prayed that the bill to be taxed at USD 14,892,784.7.

In Response, Counsel for the Respondent Mr. Biong submitted that the bill was on the higher side and urged that the Court should award a reasonable figure. In his view a figure of USD 2 million dollars was sufficient to cover the costs.

I have considered the arguments for both the Applicant and the Respondents counsels and will start with disbursements which starts from item No. 55 to 61.

Rule 4 of the Third Schedule of the Rules of the Court, 2019 provides for disbursement. Specifically Rule 4(2) provides that Receipts for disbursement shall be produced to the taxing officer and copies served to the other party at least fourteen days (14) before taxation.

Rule 4(3) provides that no disbursement shall be allowed which has not been paid at the time of taxation. This was meant to avoid speculative costs of events that had not yet taken place at the time of taxation. I would also wish to refer to this Courts previous decisions on disbursements in ***Taxation Cause No.2 of 2012 ( Plaxeda Rugumba Vs Hon. AG of Rwanda), Taxation Cause No.1 of 2016 (James Alfred Koroso Vs AG of Kenya), 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 No5 of 2013, (Among Anita Vs Ag of Uganda), Taxactin Cause No. 1 of 2020 (Ismael Dabule and 1004 others Vs AG of Uganda)*** where the Court ruled that where there were no receipts then disbursements were not recoverable.

Under disbursement I will therefore allow item 55 for **USD 350**; disallow Item 56 for lack of supporting receipt; allow item 57 for **USD 50;**allow item 57 (meant to read 58) for USD **390;** allow item 58 at USD **360;**

disallow the second item 58 for lack of supporting receipts;

disallow item 59 as the Court does not charge filing fees;

disallow items 60 and 61 for lack of supporting receipts.

The total amount taxed and allowed for disbursements is therefore **USD 1,150** down from the claim of USD 3,460.0

**Subtotal for Disbursement USD 1,150**

Turning to the main bill and guided by the scales in the Third schedule I will tax as follows: -

Item 3 – USD 1000, Item 4 – USD 1000, Item 5 – USD 1,550, Item 6 – USD 1,240, Item 7 – USD 1000, Item 8 – USD 1,120, Item 9 – USD 10, Item 10 – USD 128, Item 11 – USD 64,

Item 12 – USD 0 for you cannot charge for perusing what you have drafted yourself, Item 13 – USD 0 as it's a repeat of item 9

Item 14 – USD 0 as it will be part of the instruction fees,

Item 15 – USD 0, for you cannot charge for amending pleadings where the mistake is your own,

Item 16 – USD 0, as it flows from item 15, Item 17 – USD 111, Item 18 – USD 111, Item 19 – USD 444, Item 20 - USD 100, Item 21 - USD 100, Item 22 – USD 100, Item 23 – USD 2000, Item 24 – USD 5, Item 25 – USD 20

Item 26 – USD 0 as there were no written submissions from the Respondents

Item 27 – USD 0 as you cannot charge for perusing your own application,

Item 28 – USD 70, Item 29 – USD 12, Item 30 – USD 30, Item 31 - USD 30,

Item 32 - USD 200, Item 33 - USD 120, Item 34 - USD 100 The sub total comes to **USD – 8,665**

For Court attendances from items 41 to 51 (reading 52) I will tax as at USD – 40 each, amounting to **USD 440**

Item 53 – USD 215, Item 54 – USD 0 as it's a repetition of item 52.

The sub totals for Court attendance is therefore taxed at **USD 556.**

Turning to Items 1 and 2, the Applicant seeks an amount of USD 11,811,800 inclusive of 18% VAT and one quarter of the instruction fees as getting up fees of USD 2,952,950. To that I will add item 14 which should be part of instruction fees to be a total claim of USD 11,911,800 as instruction fees.

Rules 9(2) of the Third Schedule of the Rules of Procedure, 2019 which provides for matters to be taken into account when assessing instruction fees. It provides: -

> *"the fees to be allowed for instructions to institute a suit or reference or to oppose a suit or 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"*

The above rule invites the Taxing Master to consider 8 issues namely

i) the amount involved in the Reference;
ii) its nature;
iii) importance and complexity;
iv) the interest of parties;
v) the other costs to be allowed;
vi) the general conduct of the proceedings;
vii) the person to bear the costs and;
viii) all other relevant circumstances.

In the EACJ Appellate Division Consolidated ***Taxation Reference Nos 1 and 2 of 2019 Secretary General Vs Rt. Hon. Margaret Zziwa arising from Taxation Cause No. 1 of 2019*** the appellate Division expounded on Article 9(2) noting that Indeed, Rule 9 (2) of the Third Schedule point to many universally accepted principles for the taxation of costs; but this list is not exhaustive and took the opportunity to more widely explore the question of universally accepted principles. The Appellate Division noted that there are many universal principles that can be used in the taxation of costs as below though the list is not exhaustive, it can be instructive.:-

a) the taxation of costs is an exercise of judicial discretion;

b) the taxation of costs can never be made an exact science or a matter of specialized accountancy;

c) the onus and or the burden to justify the costs in the bill of costs lies with the party to whom the costs have been awarded;

d) costs should take into account the amount involved in the matter;

e) costs should take into account the nature, importance and complexity of the matter;

f) costs should take into account the interest of the parties;

g) costs should take into account the general conduct of the proceedings;

h) costs should take into account the person to bear the costs and

i) that costs should not be "manifestly excessive" or "manifestly inadequate"

I now consider each and every principle as set out in Rule 9(2) of the Third Schedule: -

i) the amount involved in the Reference;

In the subject reference, the reference was a claim on a specific amount of USD 49,398, 473.91 as a result of violation of the Treaty for the Establishment of the East African Community and Common Marker Protocol. By history of EACJ that's the highest amount of a claim the court has ever entertained. Other matters being constant the costs may just be what the Court had never experienced before.

In **National Bank of Kenya Limited (As the Successor In Business of Kenya National Capital Corporation Limited "Kenyac") & another v Rachuonyo & Rachuonyo Advocates [2020] eKLR** at page 5, Majanja J states

> *"The substance of this reference concerns the assessment of instruction fees. The principle to be applied when assessing instruction fees in a suit are well settled. The Court of Appeal in the case of* ***Joreth Ltd v Kigano & Associates [2002] 1 EA 92*** *outlined the principle as follows:*
>
> *We would at this stage point out that the value of the subject matter of a suit for the purpose of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable, the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances ."*

In ***Peter Muthoka and Another v Ochieng and 3 Others*** **NRB CA Civil Appeal No. 328 of 2017 [2019] eKLR** the Court of Appeal expounded further on its decision in the ***Joreth Case*** **(Supra)** as follows:

> *It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the*

> *value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court*.
>
> *Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.*
>
> *It is only where the value of the subject matter is neither discernible nor determinable from the pleadings, the judgment or the settlement, as the case may be, that the taxing officer is permitted to use his discretion to assess instructions fees in accordance with what he considers just bearing in mind the various elements contained in the provision we are addressing. He does have discretion as to what he considers just but that discretion kicks in only after he has engaged with the proper basis as expressly and mandatorily provided: either the pleadings, the judgment or the settlement. He has no leeway to disregard the statutorily commanded starting point. And we think, with respect, that the starting point can only be one of the three. It is not open to the taxing officer to choose one or the other or to use them in combination, the provision being expressly disjunctive as opposed to conjunctive. It is also mandatory and not permissive.* [Emphasis mine).

Since this taxation was being done after the judgment, in line with the aforesaid decision, the first port of call in ascertaining the value of the subject matter shall be the judgment. In deed there is no dispute as to the value of the subject matter which is the same as what is in the pleadings and in the final Consent Order.

**In Misc. Appeal No.188 of 2013 High Court of Uganda Civil Division, In the matter of the Advocates Act CAP267 and in the matter of Advocates (Taxation of Costs, Appeals and Reference ) Regulations SI 267 – 5 and in the matter of Taxation Appeal between Manharlal Thakker V. Bahati Mont and Kibugo Enterprises**, Justice Stephen Musota stated that instruction fees should be based on the amount of work involved in preparing for the hearing, the difficulty and importance of the case and the amount involved and allowed a 10% instruction fees based on the value of the subject matter.

In another Ugandan case, the general principles of taxation were spelt out in the case of **Makumbi and another v Sole Electrics (U) Ltd [1990–1994] 1 EA 306.** That case involved a reference to a single

judge of the Supreme Court on the award of costs of the appeal. It was decided by honourable Justice Manyindo DCJ, JSC as he then was and sets out the general principles of taxation between pages 310 – 311 of the law report. In that case, the Taxing Master taxed the fees and disbursements, including the Commercial Transaction Levy at Uganda shillings 13,854,000/=. At pages 310 – 311 Manyindo DCJ JCS said:

> *"The principles governing taxation of costs by a Taxing Master are well settled. First, the instruction fee should cover the advocates' work, including taking instructions as well as other work necessary for presenting the case for trial or appeal, as the case may be. Second, there is no legal requirement for awarding the Appellant a higher brief fee than the Respondent, but it would be proper to award the Appellant's Counsel a slightly higher fee since he or she has the responsibility to advise his or her client to challenge the decision. Third, there is no mathematical or magic 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. For example, a lengthy or complicated case involving lengthy preparations and research will attract high fees.*
>
> *In a fourth, variable decree, the amount of the subject matter involved may have a bearing.*
>
> *Fifth, the Taxing Master has discretion in the matter of taxation but he must exercise the discretion judicially and not whimsically. Sixth, while a successful litigant should be fairly reimbursed the costs he has incurred, the Taxing Master owes it to the public to ensure that costs do not rise above a reasonable level so as to deny the poor access to Court.*
>
> *However, the level of remuneration must be such as to attract recruits to the profession. Seventh, so far as practicable there should be consistency in the awards made. (**See Raichand v Quarry Services of East Africa Limited and others [1972] EA 162, Nalumansi v Lule Supreme Court of Uganda civil application number 12 of 1992, Hashjam v Zanab [1957] EA***

***255 and Kabanda v Kananura Melvin Consulting Engineers Supreme Court civil application number 24 of 1993)"***

In the case of **Peter Muthoka & another v Ochieng & 3 others [2019] eKLR** Justice Makhandia, Kiage and Otieno Odek of the Court of Appeal of Kenya had this to say: "*We reiterate this Court's holding in* ***KIPKORIR TITOO & KIARA ADVOCATES -vs- DEPOSIT PROTECTION FUND BOARD*** *[2005]* ***eKLR;***

> ***"We have no doubt that if the taxing officer fails to apply the formula for assessing instructions fees or costs specified in schedule VI or fails to give due consideration to all relevant circumstances of the case particularly the matters specified in proviso (1) of schedule VIA, (1) that would be an error in principle. And if a Judge on reference from a taxing officer finds that the taxing officer has committed an error of principle the general practice is to remit the question of quantum for the decision of taxing officer. (See - D'Sonza Vs Ferrao (1960) EA 602. (See Devshi Dhanji Naran Patel (No.2) [1978] KLR 243."*** (*Our emphasis*)

ii) its nature;

The subject Reference involved violation of the Treaty for the establishment of the East African Community and the Common Market Protocol leading to colossal loss the subject amount of the claim. The applicant is a company registered in both Kenya and in the Republic of South Sudan. It's a liquidated sum claim. The reference involved cross border investments and movement of services across the borders and the responsibilities of a state where it had entered into a contract. In as much as the violations of the Treaty therein have been canvassed before, this case also hinged on the Common Market Protocol thus building on the jurisprudence on the EAC Common Market protocol.

iii) importance and complexity;

Importance, yes. To the applicant this is a matter that was very important considering the time it has taken to get to the current stage. On jurisprudential value the matter has not added any new knowledge on the interpretation and

applications of the East African law other than being amongst the first few cases dealing with violations of the Common Market Protocol. I have however noted the long period that has elapsed from the initial time when the claim was supposed to have been settled by the respondents. Complexity yes, the Court was being called upon to interpret Articles 27(2) of the Treaty and Articles 29(2) and 54(2) of the EAC Common Market Protocol on the enhanced jurisdiction of the Court with regard to the enforcement and enhancement of trade and resolutions and settlements of disputes for the protection of cross border investments. The Court was also being called upon to declare that where a public officer of a partner state fails to honor is or her obligation or duty, whether statutory or legal to a person for company from a different Partner State then the EACJ has the jurisdiction to enforce that obligation or duty expeditiously. The Court was also being called upon to declare the actions of the respondents a violation to Articles 6(d) and 7 (2) of the Treaty. I take note of the fact that no response was filed but when an application for judgement in default of response come for hearing the Respondent Counsel did appear and sought adjournment of 30 days to seek instructions to file the response which again they failed. The Applicants were ready to prosecute their application when an adjournment was granted. The matter was undefended and a consent was entered between the parties thus bringing the matter to a smooth conclusion. Complexity was therefore compromised by lack of a response both in the reference and the notice of motion application.

iv) the interest of parties;

This was a case involving a huge amount of money spanning over a period of time. The applicant's interest was hinged on the need to get his long overdue payment occasioned by failure of the respondent to meet their contractual obligations and where public officers commit to act but fail to act.

There being no Response to the reference nor a replying affidavit to the Notice of Motion, I find it difficult to place my hands on any noble interest of the Respondent.

V) The other Costs to be allowed

The other costs to be allowed include the Court attendances, disbursements, perusal, drawing and filing of the pleadings that are specifically provided for under the rules. I have already made a finding on the other costs above. The costs allowed under those heads are minimal and can hardly have a bearing on the amount of instruction fees to be allowed but shall nevertheless be taken into account

vi) The general conduct of the proceedings

A perusal of the record shows that the matter was undefended with only a single appearance where the respondents sought a 30 days extension of time to file a response that was eventually not filed and instead a consent was entered. The day the parties appeared the matter had been set down for hearing of a notice of motion by the applicant who were prepared and ready to proceed. In the case of **Republic V. Senior Principal Magistrate Mombasa and others, Ex- Parte Nicholas Katomu Peter Mombasa Misc. Civil Application (Judicial Review) No. 65 of 2013,** in considering the principle that costs follow the event, Court held that: -

> *" The Court must consider litigation as with other legal business is costly in terms of time, money, inconvenience and the opportunity costs while attending to the Court matter, and a party who by conduct causes another to seek relief in court or who courts intervention upon grounds that the court ultimately dismisses as unmeritorious must be ready to meet the costs incurred by the other party in seeking the courts intervention or in defending himself or protecting his interest in the subject matter."*

**In EACJ Ref No.1 of 2014 Alcon International V. Standard Chartred Bank of Uganda, Attorney General and Another** it was held: -

> *" the Taxing Officer will allow costs that have been reasonably incurred and Courts are enjoined to render equal justice to all as long as the award reflects the subject matter, the volume and magnitude of documentary evidence as well as the monumental research carried out*"

vii) The person to bear the costs

The person to bear the costs in this proceeding is the government of the Republic of South Sudan, a partner state of the Community which is the custodian of all public funds. The fact that the government of the Republic of South Sudan is the custodian of public funds is no reason not to award instruction fees of any magnitude so long as it is justified in the circumstances. Being the custodian of public funds, they have a duty to conduct themselves in a manner that will not cause a loss of public funds due to their negligence. But where they are negligence, they must also carry the burden of bearing costs. The actions leading to the proceedings by the applicant were done by officials of the government on behalf of the State. That must have a bearing on the amount of instruction fees to be awarded.

**In EACJ Appeal No 1 of 2009 (Appellate Division Taxation Reference) Attorney General of Kenya V Prof. Peter Any'ang Nyongo' and 10 others** the Court held: -

> *"…an officer should be impugned on the grounds public interest – in as much as payment by the Attorney General of such a hefty sum of money, would impinge on the welfare of the Public Treasury, into the Public Finance and adversely affect the taxpayers of Kenya. Though the matter of public "interest" or "public policy" was immensely ingenious and attractive, The Attorney General instead of lamenting about the payment of the suit costs should instead have been reflecting about the reasons and events that prompted the litigation…………………… A blanket view, to the effect that the use of the taxpayers money to pay legal costs constitutes public interest, needs weighty reflection and deep introspection for if such argument were stretched to its logical extreme, then Attorney Generals would never, ever, be condemned by the Courts of law into paying lawful damages, costs and similar expenses of litigation……………..the essential elements for consideration of the public interest was missing – namely there would be absolutely nothing "unlawful, or "immoral", or reprehensible about the Attorney General of Kenya paying litigation costs from the Public Treasury of the Republic. If anything, such payment would indeed rebound to the rule of law, in general and to the enforcement of Court Judgements, in particular –*

*both of which are the very essence on which any law abiding ship of state is anchored……"*

In the same case Hon. Justice Busingye Observed: -

> *"I would only add that if that "party in breach" is a Partner State within the East African Community, it would not only obey the rules but it would have to be seen, by all, to spare no effort to obey the rules if the Rule of Law in The Community is to achieve full and uniform respect."*

From the above, the public of South Sudan including the Respondent would be more interested in scrutinizing issues leading to the Consent Order and the award of costs than the quantum of those costs. They would be interested in issues such as why and how they ended up in this litigation, whether it was justifiable in the first place and unavoidable, why the reference was filed. Counsel for the Responded urged the court to consider the situation of the Country when offering his quantum of USD 2 million. But, as stated in the ***Anyang Nyongo case*** (supra), if that was to be followed then no costs would ever be awarded against any State.

viii) All other relevant circumstances

In taking into account all other relevant circumstances and matters I will consider what was stated in the Appellate Division of EACJ Consolidated ***Taxation Reference Nos 1 and 2 of 2019 Secretary General Vs Rt. Hon. Margaret Zziwa arising from Taxation Cause No. 1 of 2019*** (above) on the universal principles that can be used and particularly what was itemized in a-c that taxation of costs is an exercise of judicial discretion, that taxation of costs can never be made an exact science or a matter of specialized accountancy and finally that the onus and or the burden to justify costs in the bill of costs lies with the party to whom costs have been awarded. It is therefore my discretion and there is no scientific formula or accounting principles to guide me in awarding costs. I have looked at the whole bill as presented by the applicant and I am satisfied they have discharged the burden upon them in justifying the bill but the final decision still remains my discretion.

I have also considered what was stated by Spry V-P in the leading case of ***Premchard Raichand Ltd Vs Quarry Services of East Africa ltd and others (No3) EA***

***162, at 163 to 165*** and also summarized by Richard Kuloba in his book entitled ***Judicial hints on Civil Procedure, 2nd Edition***, pages 118 to 119 as follows:

a) *A successful litigant ought to be fairly reimbursed for the costs he has had to incur;*
b) *That costs should not be allowed to raise to such levels as to confine access to justice to the wealthy;*
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 the precise figure. Each case has to be decided on its own merits and circumstances;*

Rule 129(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 First Instance Division and Eight Schedule for the Appellate Division."*

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."*

Also Rule 11(2) in the Third Schedule provides that

> *"In taxing the costs of any dispute, or reference, the taxing officer shall disallow the costs of any matter improperly included in the record of an application, claim or reference or in any supplementary record of an application, claim or reference."*

I have considered both submissions from the Applicants and the Respondent and have also considered the authorities cited in support of each side

I have taken time to evaluate all the authorities cited and others not cited like ***Taxation Cause No. 1 of 2016 James Alfred Korosso Vs Attorney General of Kenya where instruction fees was taxed at USD 17,700, Taxation Cause No. 1 of 2013 Hon Sam Njuba Vs Hon. Sitenda Sebalu where instruction fees was taxed at USD 15,000, Taxation Cause No. 1 of 2014 Hon. Sitenda Sebalu Vs Secretary General of EAC where instruction fees was taxed at USD 9,000.0, Taxation Cause No. 5 of 2013 where instruction fees was taxed at USD 20,000. Taxation Cause No. 6 of 2008 Prof. Anyang Nyongo and 10 others Vs Ag of Kenya and 13 others where instruction fees was taxed at USD 1,300,000, Taxation Reference No.1 of 2019 Secretary General Vs RT. Hon Margret Zziwa, where instruction fees of USD 140,000 was awarded, Consolidated Taxation Reference No 1 & 2 of 2019 in the Appellate Division Secretary General Vs RT. Hon. Margaret ZzIwa where USD 149,000 was awarded as instruction fees.***

I have also referred to some cases from partner states jurisdictions that are persuasive and some cases from EACJ that are binding.

Each case must however be decided on its own merits. Much as the Court should bear in mind the fact that costs should not be a hindrance of the general public to access it or portray the image that courts are only for the well to do, we cannot ignore the fact that Courts are charged with responsibility to do justice. That includes awarding costs to a successful litigant so as to indemnify the litigant for the expenses he had to undergo, having been unjustly compelled either to initiate or to defend the case in court. If the Court fails to fully indemnify the litigant for all costs reasonably incurred in relation to the claim or defense then it shall have failed in discharging its function. This ruling has taken into consideration the need for balancing these two propositions.

I also considered the offer by the Respondent of **USD 2,000,000** which in my view is too low in the circumstances. The Respondents only reason for suggesting that figure was the situation in the Respondent Country. Much as the Court is alive to the happenings in all Partner states no specific reasonable reason was advanced

for the offer of **USD 2Million** dollars. I have also considered the percentage to be applied to the value of the subject matter with my discretion to increase or decrease.

Taking all matters stated above into account and in exercise of my judicial discretion, and following the guidance in case law I will apply an 11. % on the value of the subject matter and allow an instruction fees of **USD 5,433,832.13**

Since the parties appeared for a hearing of the notice of motion meaning there was work employed towards preparations of the suit, I will assess getting up fees at one quarter of the instruction fees at **USD 1,358,458.03** which gives a total of **USD 6,792,290.16**

To that I will add VAT of 18% USD **1,222,612.22.**

**Subtotal on instruction fees plus VAT is USD 8,014,902.38.**

In conclusion, I tax the bill at a total figure of **USD 8,025,382.38 (United States Eight Million, twenty-five thousand, three hundred Eighty-two, cents thirty-Eight.) computed as follows:**

instruction fees at **USD 5,433,832.13;**
getting up fees at **USD 1,358,458.03;**
**Sub total USD 6,792,290.16;**
**VAT @ 18% USD 1,222,612.22;**
**Sub total USD 8,014,902.38**

**Disbursements USD 1,150.0;**
**Court attendance USD 665.0;**
**Other charges USD 8,665 .0**
**TOTALS USD 8,025,382.38**

I so Tax.

Dated at Arusha this 4th day of February 2020

Delivered vis video conference

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**YUFNALIS OKUBO**
**TAXING OFFICER**