



**IN THE EAST AFRICAN COURT OF JUSTICE-FIRST INSTANCE DIVISION
AT ARUSHA
TAXATION CAUSE NOS. 1 OF 2015**

(Arising from Reference No. 5 of 2013)

THE INSPECTOR GENERAL OF GOVERNMENT.....APPLICANT

VERSUS

GODFREY MAGEZI.....RESPONDENT

RULING

DATE:

GERALDINE UMUGWANEZA – TAXING OFFICER

This ruling is in respect of taxation of a bill of costs filed by the Applicants herein in Reference Number 5 of 2013 and Consolidated Application Nos. 8 and 9 of 2012 Quality Chemicals Industries Ltd and National Medical Stores vs. Godfrey Magezi. The Bill is for a total sum of United States Dollars, Two Hundred and Four Thousand Five Hundred and Thirty One and Thirty Three Cents (USD 204, 532.33) including among others instruction fees, attendances and disbursements in the Application. The Applicant in this taxation was represented by Mr. George Kalemera, Ms. Arinaitwe Goreti and Mr. Ojambo Bichachi all State Attorneys from the Attorney General's Chambers while the Respondent was represented by Mr. Mohamed Mbabazi Advocate of Nyanzi, Kiboneka & Mbabazi Advocates.

The background of this bill of costs is that the Applicant and four others had been wrongly impleaded as Interested Parties in Reference No. 5 of 2013. After the Interested Parties had been served and filed their Responses, the Applicant in the Reference amended his Reference and served the Interested Parties with Notices of Withdrawal. The Inspector General of Government was one of those wrongly impleaded as Interested Party and had through the Attorney General of Uganda filed its Response to the Reference. Two of the wrongly impleaded parties, that is, M/s Quality Chemical Industries Ltd and M/s National Medical Stores filed applications that were consolidated as Consolidated Application No. 8 and 9 of 2014. The Inspector General of Government was by leave of the Court allowed to participate in the proceedings of the two consolidated applications. The two applications were filed under Rules 51(2), 21 (1) and (5) of the Rules of this Court. In summary their argument was that the withdrawal/discontinuance of the matter against them was without an agreement in writing of terms of such withdrawal and in particular terms as to costs. It was on that basis and having regard to other costs that they had incurred in the process that they were pursuing their entitled costs. They argued that they were entitled to costs as provided under Rule 111 (i) of the Rules of this Court, which unequivocally states that costs follow the event, unless the Court for good reasons orders otherwise. The Court in its ruling dated and delivered on 19th June 2014 held that the Applicants in the application as well as the IGG were entitled to costs as prayed from the date of the order until payment in full and also condemned the Respondent to pay costs of the application.

In the application the representation was:

- (i) Mr. Peter Kauma, holding brief for Mr. Justin Semuyaba for the First Applicant;
- (ii) Messrs.' Peter Kauma and Kiryowa Kiwanuka appeared for the Second Applicant;
- (iii) Mr. George Kalemera advocate for the Attorney General of the Republic of Uganda and also the Inspector-General of Government and;
- (iv) Mr. Mohammed Mbabazi and Ms. Amnest Nayasheki appeared for the Respondent.

At the beginning of the hearing of this taxation cause, Mr. Kalemera, Counsel for the Applicant informed the Court that they had had a meeting with the Respondent's Counsel Mr. Mohammed Mbabazi and agreed on disbursements under items 21, 22, 24 and 26 to 31 at a total fee of United

States Dollars Five Thousand (USD 5,000) as payable by the Respondent to the Applicant. Mr. Mbabazi confirmed that that is what they had agreed and further informed the Court that what was in contention were items 1 to 20 and item 23 related to instruction fees, perusals, drawings and service, a position that Mr. Kalemera confirmed was correct.

There being no dispute on items 21, 22, 24 and 26 to 31, I therefore allowed and tax them in the total sum of **United States Dollars Five Thousand (USD 5,000)** only. Having taxed the agreed items, I now revert to those items that are in dispute.

Mr. Mbabazi in his submissions on items that were in contention argued that the Inspector General of Government was and actually continues to be represented by the Attorney General who is not entitled to instruction fees. That the Attorney General is a public office constitutionally mandated in Uganda to represent public offices and the IGG is one of them. He argued that the Attorney General and State Attorneys being public officers doing public duty get salaries and not instruction fees as is the case for private practitioners. He further argued that a public officer cannot bill an organization or institution which he or she is representing. As to perusals, drawing and service, Mr. Mbabazi argued that they flow from instruction fees and because they are not entitled to instruction fees then they cannot charge for perusals, drawings and service. He did not file any authorities to support his argument but relied on a ruling of this court in Taxation Cause No. 2 of 2013 involving the Electoral Commission of Uganda and Hon. Sitenda Sebalu.

Mr Mbabazi further submitted that if he is overruled on his objection to instruction fees being charged, the instruction fees charged at United States Dollars One Hundred and Eighty Six Thousand Eight Hundred and Sixty (USD 186,860.40) based on the subject of United States Dollars Seventeen Million Eight Hundred Twenty Six Thousand and Thirty Eight and Ninety Four Cents (USD 17,826,038.94) should not be awarded because the subject matter were declarations under Article 5, 6 and 7 of the Treaty for the Establishment of the East African Community and his client was not seeking the recovery of the amount. That the allegations of breach of principles of good governance, rule of law and accountability cannot be quantified and it is at the discretion of the Court to award what is reasonable. He also asked the Court to take note that wrongly impleaded party was not involved in the hearing of the matter because the

matter against him did not take off because he had been dropped although he had already filed his response through the Attorney General.

Mr. Kalemera, in his response, submitted that the bill before the Court had been drawn strictly in accordance with the East African Court of Justice Rules of Procedure and that a lot of work was expended in making a Response to the Reference in line with both the position of the Attorney General and the Inspectorate of Government jointly. In regard to the argument that the Attorney General is not entitled to instruction fees he submitted that counsel for the Respondent had not produced any authority to support that argument and maintained that they are entitled to instruction fees and had the Court wanted otherwise it would have clearly put in the rules that instruction fees shall only be awarded to private practitioners.

Mr. Kalemera referred the Court to Article 7(1)(f) of the Treaty of the Establishment of the East African Community that provides that *“the principles that shall govern the practical achievement of the objectives of the Community shall include equitable distribution of benefits accruing or to be derived from the operations of the Community and measures to address economic imbalances that may arise from such operations”* and stated that the Court is enjoined to promote equitable distribution of resources in the sense that if Mr. Magezi who was the unsuccessful party had succeeded they would be enjoined to pay him instruction fees as a result of that win. That Mr. Magezi having lost and disadvantaged cannot refuse to pay instruction fees on the ground that the manner in which the Inspectorate of Government through the Office of Attorney General through the consolidated fund of Uganda facilitates his lawyers is slightly different from private practitioners.

Mr. Kalemera also referred the Court to the Government Proceedings Act of Uganda Section 15, Chapter 77 which provides that *“in any Civil proceedings or arbitrations to which the Government is a party, the costs of and incidental to the proceedings shall be awarded in the same manner and on the same principles as in the case between private persons and the Court or Arbitrator shall have the power to make an order for the payment of these cost”* and argued that they are looked at on the equal footing in the event of win where they benefit from costs and in the event of a loss do pay costs. He also relied on the ruling in ***Taxation Cause No. 3 of 2010 Clerk of the National Assembly vs Professor Anyang Nyongo*** and urged the Court to maintain

consistency in its award of instruction fees where different states are successful. He submitted that contrary to the argument by the Respondent there is no requirement for production of receipts for payment of instruction as evidence to justify a claim for instruction fees. He prayed that the authority Electoral Commission that Counsel for the Respondent had relied on be disregarded because it does not in any way address the issue before me.

With regard to instruction fees sought on the basis of the subject matter of seventeen million Mr. Kalemera asked the taxing officer to refer to both the original and amended references and will find that they clearly show that the subject matter is seventeen million and therefore the Applicant is entitled to the fee claimed. Also in support of his submission he said that this was a reasonable fee relied on the case of Attorney General of Kenya Vs Professor Peter Anyang Nyongo Taxation Reference No. 5 of 2010 where the Court held *"The bottom line is that the cost of doing business in the Court should be as far as possible 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."* He concluded by urging the Court to find that the office of the Attorney General of Uganda are entitled to instruction fees based on the subject matter of Seventeen Million Dollars and therefore entitled to fees claimed in items 1 to 20 and item 23.

Having considered the bill of costs lodged on 17th April 2015 and submissions by both counsels in relation to the items in dispute, I will begin with taxing Item 1 which is related to instruction fees and in doing so I will have to make a determination on whether or not the Attorney General who represented the Applicant herein is entitled to Instruction fees.

Under Section XIX of the East African Court Justice Rules of Procedure in relation to costs, Rule 111(1) provides that "costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order". The costs referred to in this rule are costs incurred by the party in the conduct of the court proceedings. The Court by its ruling dated 19th June 2014 awarded costs to the Applicant herein as provided under Rule 111(1). Rule 112(1) provides that the Court may assess the costs or directs that the costs be taxed, and any order in which the amount is not assessed, it shall operate as a direction that the costs be taxed. In this particular

case the costs were not assessed and as such a bill of costs has been brought before me for taxation.

Counsel for the Applicant has relied on the Government Proceedings Act Cap 77 Section 15 which provides that costs and incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between private persons. In my view the court did exactly that when it delivered its ruling on 19th June 2014 by awarding costs to the Attorney General under Rule 111(1) of the EACJ Rules of Procedure. That step has been passed and what remains now for determination is what costs are awardable to the Attorney General.

Following the court's ruling it is now the role of the taxing officer to tax the costs as directed under Rule 112(1), a mandate she gets from Rule 113(1) which provides that *"the Registrar shall be a taxing officer with power to tax costs of or arising out of any claim or reference as between parties"*. In taxing the costs the Taxing Officer is guided by Rule 113(3) that provides *"the costs shall be taxed in accordance with the Rules and scale set out in the Third Schedule for the First Instance 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 witnesses or other persons or by other unusual expenses"*. This rule gives the taxing officer discretion to allow costs where it appears to him or her to have been reasonably incurred but disallow where it appears the costs are unusual expenses. Rule 11(2) also mandates the taxing officer to disallow the costs of any matter improperly included in the record of a suit or reference or in any supplementary record of a suit or reference.

Having allowed disbursement as agreed by the parties above, I now under Rule 11(2) consider the issue whether the costs awarded by the court to the applicant include instruction fees paid or payable to the Attorney General of the Republic of Uganda for representing the Inspector General of Government.

The Respondent in rebutting the argument on entitlement to instruction fees relied on a ruling of this court although he did not provide a copy but cited *Consolidated Taxation Cause No. 2 & 3 of 2013 Electoral Commission of Uganda Vs The Attorney General of Uganda* and argued that the taxing officer in that matter almost dealt with the issue on whether the Attorney General was entitled to instruction fees. I have looked at that ruling and do not agree with him. In that matter the taxing officer recorded a consent between the Applicant and the Respondent that the Bills of Costs in Taxation Cause No. 2 and 3 of 2013 are amicably settled at **USD 12, 000** and the Respondents shall pay the Applicant in the Taxation Causes **USD 12, 000** as full and final settlement of ALL the claims of costs. Although the Applicant in this case had claimed instruction fees in this matter the taxing officer did not make a finding on this issue because after the hearing and before he could deliver his ruling the parties filed a consent in court and the taxing officer recorded the said consent. I therefore find that this authority does not help in the instant matter. I have also read the other authorities provided by the Applicant and find that they are not able to aid me to come up with a determination on this issue of instruction fees payable to a public officer.

The Attorney General is defined in the Black's Law Dictionary as the chief law officer of a state responsible for advising the government on legal matters and representing it in litigation . One of the functions of the Attorney General of Uganda under Chapter 7 Article 119(c) of the Constitution of the Republic of Uganda is "*to represent the Government in Courts or any other legal proceedings to which the Government is a party*". The duties and/or functions discharged by the Attorney General as outlined in the Constitution of Uganda are of public interest and he is paid a salary out of a consolidated fund that is clearly provided by the public. The Attorney General is therefore a public officer and is not paid any fees in doing his job but earns a salary for the job he does. The Applicant herein has not tendered in court any evidence that the Attorney General was paid instruction fees or had demanded any instruction fees from the Inspector General of Government who he was representing in this case. The Attorney General was performing his general duties as required of him under the Constitution of Uganda and therefore could not have claimed any fees from the Inspector General of Government.

In **Zuberi v Returning Officer and Another** [1970] EA 33 a Tanzania High Court Civil Case No. 10 of 1970 the judge dealt with the issue of whether a state attorney can charge instruction fees.

The judge held as follows:

“The question arises whether instruction fees are included in the order of court when it awarded costs to the respondent who in the present bill of costs is a returning officer and not the successful candidate. Mr. Kirita submitted that it does not while Mr. Lubuva said it does. It is a fact that neither of the respondents paid any fees to the State Attorney who represented them at the hearing of the petition, who again is paid salary by the Republic and he represented the Attorney General and normally represents the Attorney General in court. If it is so, can the respondent get any instruction fees? Is the Attorney General or the Republic entitled to instruction fees amounting to Shs. 2,000/- when in fact this sum is not shown to have been spent by anyone or paid by anyone to anybody? I refer to para. 585 of Halsbury’s Law of England, 3rd ed. Vol. 14, on page 320. It says:

*“The Director of Public Prosecutions and his assistant or representatives are to be paid such allowances as the Treasury may approve for expenses for the purposes of Part III of the Representation of the Peoples Act 1949 **other than his general duties** of making inquiries into corrupt or illegal practices which he is informed have occurred and of instituting prosecutions which appear to be required. The **costs incurred** in defraying the expenses of the Director of Public Prosecutions incurred for this purpose including remuneration of his representatives are in the first instance to be paid by the Treasury”*

The operative words have been underlined by me which are “expenses” “other than his general duties” and “costs incurred”. The word “expenses” suggest money actually spent and not “instruction fees”. As for “other than his general duties” are not instructions to the state attorney who is a representative of the Attorney General to defend the petition and conduct the hearing of the petition a part of his general duties, as a state attorney? The words “costs incurred” would mean money actually spent and not instruction fees..... ”

“For these reasons though the petition was dismissed with costs this order for costs does not and cannot include instruction fees as claimed by the respondent. The taxing master erred in law when he awarded the sum of Shs. 2000/- claimed by the respondent towards instruction fees”

The above case supports the argument that actually a state officer is not entitled to instruction fees. I agree with the reasoning in *Zuberi v Returning Officer and Another* [1970] EA 33 a Tanzania High Court Civil Case No. 10 of 1970, and, I find that the Attorney General and all the state attorneys in his office are state officers doing the general duties that they are employed to do and earn a salary for the work they do therefore he is not entitled to instruction fees. I also find that the award of costs by the Court did not include instruction fees as claimed by the Applicant herein.

Having found as above that the Attorney General is not entitled to instruction fees, I hereby tax off the entire amount charged under item 1 and also tax off items 2 to 20 and 23 on ground that they all flow from instruction fees as provided under Rule 9(3) of the Third Schedule on the on Taxation.

In conclusion the bill is taxed in the total sum of **United States Dollars Five Thousand (USD 5000)** only being the amount that had been agreed between the parties to cover disbursements incurred by the Applicant in the taxation

I so tax.

Dated at Arusha this 26th day of May 2016



GERALDINE UMUGWANEZA
TAXING OFFICER