

Counsel for the respondent submitted that item 1 and 2 of part A of the respondent's bill of costs should be expunged. He addressed court on items 3 to 7. On item 3, the respondent argued that drawings are allowed under the rules. The amount should be allowed at Shs. 300,000. Item 4, counsel argued that the amount should be sustained. On item 5 the respondent submitted that Shs. 800,000 should be allowed as presented in the bill of costs. He contended further submitted that item 6 and 7 should be sustained and whatever amount allowed should be VAT inclusive.

The respondent further submitted it incurred certain disbursements in prosecuting this application as shown on part B of the respondent's bill of costs. Counsel for the respondent informed court that items 5 is expunged from the bill. The respondent argued that the amounts indicated on item 1 to 4 should be allowed as presented and cited the case of *National Insurance Corporation v Pelican Air Services* Court of Appeal Civil Appeal No. 15 of 2003 the court noted that:

“...The correct approach to be adopted by the taxing officer would be the exercise of an intricate balancing act whereby the taxing officer has to mentally weigh the diverse general principles applicable, which are sometimes against one another, in order to arrive at the reasonable fees. Thus while the taxing officer has to keep in mind that the successful party has to be reimbursed expenses reasonably incurred due to litigation and that advocate's remuneration should be at such level as to attract recruits into the profession he or she has to balance that with his/her duty to the public not to allow costs to be so hiked that the courts would remain only accessible to the wealthy...”

In reply, the applicant submitted that item 3 should be reduced from Shs. 300,000 to Shs. 100,000. Item 4 should be struck off, item 5 we are agreeable to only 3 attendances and Item 6 and 7 should be removed from the bill of costs. The applicant contended that part B of the bill is not drawn in accordance with law. The items are not dated. The applicant argued that the amounts claimed are excessive considering the fact that the case was concluded at the preliminary objection. Counsel for the applicant argued that court should give a minimum award.

In rejoinder, counsel for the respondent submitted that before the bill of costs, we had four attendances and after we have made four appearances including the date for the ruling. The amounts stated are correct and should not be reduced. The respondent further submitted that this court should put into consideration inflation and location of the respondent in awarding costs.

I have listened to the arguments of both parties and this is the ruling. On 21st July 2022, the tribunal ruled the preliminary objection in favor of the respondent with costs. As required under the rules, the respondent prepared a bill of costs. The bill was structured in two parts that is A and B. A pre-taxation meeting of advocates was conducted and parties failed to agree. Counsel for the respondent informed court that item 1 and 2 of part A and item 5 of part B of the bill of costs should be expunged off the bill.

The following Items were left for courts determination that is item 3, 4, 5, 6 and 7 of part A and part B items 1, 2, 3 and 4.

It is a well-established principle of law that costs of any action, cause or matter shall follow the event unless court for good cause orders otherwise. S. 27 of the Civil Procedure Act Cap.71. In *Rwantale v Rwabutoga* [1988-1990] HCB 100, it was held that a successful party is generally entitled to costs but that entitlement is discretionary.

In *National Insurance Corporation v Pelican Air Services* (supra) the court noted that:

“...The correct approach to be adopted by the taxing officer would be the exercise of an intricate balancing act whereby the taxing officer has to mentally weigh the diverse general principles applicable, which are sometimes against one another, in order to arrive at the reasonable fees. Thus while the taxing officer has to keep in mind that the successful party has to be reimbursed expenses reasonably incurred due to litigation and that advocate’s remuneration should be at such level as to attract recruits into the profession he or she has to balance that with his/her duty to the public not to allow costs to be so hiked that the courts would remain only accessible to the wealthy...”

It is against these principles that this court shall proceed to tax this bill accordingly;

Item 3:

The respondent claimed Shs. 300,000 for preparing submission. The applicant argued that the amount should be reduced to Shs. 100,000. Rule 10(4) provide for Shs. 300,000 for making written submissions. I allow Shs. 300,000 for the same and I overrule the applicant's submission to have item reduced.

Item 4:

Rule 10 (4) provides for Shs. 50,000 for each extra copy made. The parties are required to file six copies of submissions before the tribunal. I disallow the applicant's argument to have the item struck off. I allow Shs. 300,000. I tax off Shs. 50,000.

Item 5:

The respondent claimed Shs. 800,000 appearances. Rule 12(1) provide for Shs. 100,000 per attendance. The applicant contended that it is agreeable to only three appearances. According to the record, the respondent appeared seven times. I reject the applicant's contention. I allow Shs. 700,000 and tax off Shs. 100,000.

Item 6:

The respondent claimed Shs. 200,000 for drawing a bill of costs. Rule 10(5) provide for Shs. 200,000 for drawing a bill of cost. I allow the same.

Item 7:

The respondent claimed Shs. 250,000 for making extra copies. Rule 10(5) provide for Shs. 50,000 for each extra copy. I accordingly allow Shs. 150,000 for three extra copies and tax off Shs.100, 000.

In now turn to part B of the bill. The applicant disputes entire items 1 to 4 which relates to disbursement. The respondent claimed a total of Shs. 1,600,000 for disbursements incurred. The applicant contended that all items under disbursements are not prepared in accordance with the rules.

Rule 47 of The Advocates (Remuneration and Taxation of Costs) Regulations provides for the manner of preparing a bill of costs. It provides that a successful party is entitled to claim disbursements and include them in the bill. The aim is to fairly reimburse the successful litigant for what he or she had spent in the case. The party claiming expenses must claim disbursements properly incurred and the claimant must adduce evidence to show the dates on which the activity for which a claim is made took place. Disbursements must be clearly particularized in the bill. A bill of costs is a factual statement of services rendered and disbursements made. Taxing it requires exercise of discretion which must be done in accordance with the rules. In the case of *National Housing and Construction Corporation v Lira Municipal Council* (1996) HCB 53, Justice Kagaba held that;

“...a taxing officer must use his discretionary powers judicially and that if a taxing officer exercises his discretion outside the set rules laid down by the law, such officer cannot be said to have used his discretion judicially...”

The respondent has not indicated any dates for the events claimed or charged in part B of the bill. It is my finding that without indicating dates for the event it is difficult for one to tell whether the event for which a claim is made ever took place. It is accordingly struck off. However, the respondent is free to file fresh bills of costs if she is still interested in claiming her expenses it incurred.

In all, part A of the bill of costs is taxed and allowed at Shs. 1,947,000 (One million Nine Hundred Forty Seven Thousand Shillings only) inclusive of VAT.

Dated this **14th** Day of **October** 2022

WAMAI SOLOMON

DEPUTY REGISTRAR.