

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 25 OF 2014

1. ANTHONY NGOO
2. DAVIS ANTHONY ..... APPLICANT/DECREE HOLDER

VERSUS

KITINDA KIMARO ..... RESPONDENT/JUDGMENT DEBTOR

(Appeal from the Judgment and decree of the High Court of Tanzania at  
Arusha)

(Hon. K.M.M. Sambo)

Dated 12<sup>th</sup> day of October, 2012

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RULING

BAMPIKYA, P.W. – TAXING OFFICER

The Respondents in this Taxation Cause referred as applicant/decree holders filed the Bill of Costs No. 25/2014 against the Applicant /Respondent, claiming a total of Tshs 421,607,000.00/= being costs incurred to lodge and prosecute an Appeal No. 25/2014, to that Appeal the Appellants/Applicants won the appeal where the Court of Appeal awarded the costs for two counsel on 24<sup>th</sup> February, 2015.

Following the Judgment of the Court of Appeal and the order, of 16<sup>th</sup> MARCH 2015 the applicant filed the Bill of Costs claiming the grand total of Tshs 421,607,000.000/= against the Respondent.

The applicants' Bill of Costs consists 44 items, and categorized as follows. Item No. 1 being for an instruction fees to prosecute and to institute an appeal, Tshs 380,000,000/=.

Item (1) caters for instruction fees Tshs 380,000,000/=.

Item 2 to 44 concern Court attendences, disbursements and advocates costs which is Tshs 41,647,000.00/=.

The Taxation Cause was argued by way of written submission. The applicant written submission was submitted by Michael J.T. Ngalo and A.S. A.S. M.O. O'HHAY SANGKA while reply to the written submission for the Judgment debtor to oppose the Bill of costs was filed by Neema Mutayangukwa from Crest Attorney's Firm.

The learned counsel for Respondent had no dispute for costs presented to items **12,13,14, 15 and 16** to the tune of Tshs 460,000/= being costs for both counsel represented the Applicants in attending the court. Thus he conceded the said costs be taxed as presented. Consequently Tshs 460,000/= claimed for items **12,13,14,15 and 16** is taxed as presented.

On their written submission, the counsel for the Applicants argued as follows:-

Regarding to item 1 which concern with an instruction fees, the counsel submitted that their claims of Tshs 380,000,000.00 is most reasonable amount on the reasons that the appeal was involving and complex and that reflects a lot of energy, research and time spent by two counsels from different law firms. They submitted that amount is charged in respect of instruction fee to lodge and present an appeal to the Court of Appeal against the proceedings judgment and orders of the High Court, in Civil Case No. 17/2010 dated 12<sup>th</sup> October, 2012, is Tshs 380,000,000/= cementing their submission regarding the instruction fees, submitted that, it is trite law and elementary instruction fee are legal fees paid to the advocate for accepting to take up a brief and or render legal services to his/her client. They further submitted that, in this matter, the Advocates were instructed and accepted to institute with Civil Appeal to challenge the proceedings and decisions of the High Court in Civil Case No. 17 of 2010 dated 12 October, 2010 and that in that regard the instructed advocates had to prepare and lodge the appeal and prosecute it, on the applicant's behalf to the end. Therefore they prayed toe amount of Tshs 380,000,000/= be taxed as presented.

Regard the complexity of the appeal they contended that it is easy be described, and what had been ascertained from the record, that the case in the High Court involved a mining property and that the proceedings of the High Court and pleadings is voluminous, which reflects that a lot of energy research and time had to be spent by both the two counsel form two different Law Firms for its preparation and prosecution. They referred the Taxing Officer to read Rule 124(2) of the 3<sup>rd</sup> schedule to the Tanzania Court of Appeal Rules 2009, the paragraph governing on assessment and award of an instruction fees. With regard the factor of importance, nature and difficulty of the matter, they submitted that, Civil Appeal No. 25 of 2014 was very sensitive matter, and matter of great personal interest and importance of the subject matter of the suit being a sale of the mining plot on Block "D" situated at Mererani Simanjiro District. Manyara area with primary mining license 0003601 worth billions of shillings.

They further sought the Taxing Officer to consider the fact that the counsel had to prepare the Notice of Appeal, do research and prepare list of authorities. They submitted that all goes to show the level of energy, time and industry spent on the matter by the two counsel for the Applicants. To concretize their submission, they referred the Taxing Officer in page 30 of

the Court of Appeal Judgment which illustrates the complexity of the appeal. Further in considering the level or amount of instruction fees to award, Taxing Officer was invited to have a look at the conduct of the proceedings.

Regard with items **2,3,4,5,6,7,8,9,11,17,19,20,21,22,23,24 and 25** the counsel submitted that these are in respect of receiving and examining pleading filed in Court record of proceedings, exhibits submission judgment and decree, drawing up notice of appeal for appeal and preparation of eight (8) record of Appeal. They stated that those amount claimed because before accepting the brief and instruction to lodge appeal they spent the time and energy in perusing relevant documents necessary for the appeal process so as to ascertain and satisfy themselves as to whether there is merit in the intended appeal or not. The counsel for the applicants submitted that drawing up a notice of appeal is very tricky task and has to be handled carefully and deligently to avoid the appeal to be challenged on technical ground and struck out or dismissed. Thus they prayed Taxing Officer to tax item No. **2, 3, 4, and 20, 21, 22, 23, 24, and 25 to taxed as presented.**

In relation to item 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 it was submitted that the claimed amount is for respect of alternative and appearance in court and effecting services of the record of appeal on the dates appearing on the first column. It was further submitted that those amounts are charged because of the time of between half an hour and an hour spent in court when the matter was being processed and for lodging the records of appeal and effecting service of records of Appeal to the parties. Consequently it was submitted that the amount claimed is fair and reasonable hence and they prayed the same be taxing as presented.

In item 10 the amount claimed is 23 million being costs for the hearing of the preliminary objections raised by the respondent before the on set of the main appeal which took three hours and the same dismissed with costs in favour of the applicants in the Ruling delivered by the court of Appeal on 7/8/2013. Thus, they prayed the matter be taxed as presented.

Coming to item 19, the counsel for the applicant submitted that the amount charged is respecting of drawing up the present Bill of Costs, and that the said amount is fair and reasonable hence be taxed as presented. In

the final analysis they prayed the amount of Tshs 421,607,000,000/= be taxed as presented.

In reply to written submission submitted by counsel for the applicants, the learned counsel for the Respondent/Judgment debtor, submitted as follows:-

Regarding with the instruction fees item (1) she submitted that, the amount of Tshs 380,000,000.00 claimed as an instruction fees is too excessive, un reasonable and unfair because :-

1. The submission and arguments advanced by the counsels for the applicants does not express or indicate the complexity of the appeal but only refers to the words in the judgment which is not enough to arrive to find that the purported complexity and or involving nature of the appeal accounts for a claim of Tshs 380,000,000.00/=. She submitted that the said amount is consolidated sum for the two (2) advocates from two different firms, hence it is wrongly charged without being split between the two Law firms and or advocates to clearly indicated who paid, and how much. She is further submitted that the amount is not receipted no receipt is produced from either

of the advocates to evidence that the same was actually charged by the advocate and paid by the Applicant.

Regards Civil Appeal No. 25 /2014 as a sensitive matter, the learned counsel for the Respondent submitted that the explanation by the counsel for the applicants that the subject matter being mining plot which worth billions of shillings, is unacceptable since the Applicants at all the material time of the case insisted that the mining plot for a long time has not produced anything. He referred the Taxing Officer to read Paragraph 9 of the written statement of defence, and she stated that the applicants cannot take a U-turn and claim the mining plot to be worth billions of shillings.

In relation to **research** involved in appeal she submitted that is too minimal as the whole matter was centered on legislations as Court of Appeal Rules, 2009, Civil Procedure Code Cap 33, The Law of contract Act, Cap 345 and that the most of the cases referred were most of the cases referred, most of them were of the Local Jurisdiction and few of the East Africa Jurisdiction which she submitted that are common statutes largely used on every day basis she further submitted that the *Legal research and Appeal is general and not break a new legal principle on award for instruction fees.*



The counsel further submitted that the 14 ground of appeal submitted by the appellants were consolidated and not argued individually and that only grounds 1, 2, and 12 were argued separately. In other words that six (6) grounds could have been raised instead of advancing 14 grounds and lengthen the whole thing which made the appeal look complicated on the face of it while it is a matter of fact that was not the case.

In considering how much to be regarded as reasonable instruction fees she invited the Taxing Officer to take note on the findings in the case of **HAIDER BIN MOHAMED ELMAM DRY AND 4 OTHERS VS KHADIJA BINT ALI BIN SALEM (1956) 23 E.A.C.A. 313 AND A CASE OF PREMCHAND REICHAND LTD AND ANOTHER VS QUARRY SERVICE OF EAST AFRICA LTD AN OTHERS NO (3) [1993]1992] 162.**

Therefore the counsel submitted that the amount claimed at a tune of Tshs 380,000,000.00/= is unreasonable and she prayed item one (1) be taxed at Tshs 20,000,000/=.

Regards items 2, 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 22, 23, 24 and 25, she submitted that the amount claimed are not in dispute. Hence she conceded the total amount of Tshs 332,000/= be taxed as presented.

In item 6 the claims of Tshs 6,893,000/= being costs for preparing written submission on appeal and making 122 folios and 8 copies each, the counsel for the Respondent on her submission disputed that costs for the reasons that in the scale of costs under the third schedule (item 12) each folio is charged at Tshs 50,000/= which makes a total of Tshs 610,000 (six hundred ten thousand shillings) and not Tshs 4,880,000/= as indicated. Thus she prayed Tshs 4,270,000/= be taxed off. She further submitted that on making 8 copies the amount of Tshs 1,281,000 claimed is fair and correct hence not disputed Consequently he prayed in item 6 the amount to be taxed is Tshs 610,000/= + 1,281,000/= 1891,000/= and Tshs 5002,000/= be taxed off.

Regards item 10, she submitted that the amount of Tshs 23,000,000/= being costs for attending hearing of a preliminary objection is too excessive and unreasonable as looking at the argument adduced by Ngalo advocate suppose that the only referred to the provision of Appellate

Jurisdiction Act. She stated that a very minimal legal research was done and that the counsel as already had an instructions to pursue the appeal, she submitted that, the fees is covered under the instruction fees and further that the applicant in the circumstances has not instructed another advocate. In short she stated that the preliminary objection forms part of the appeal. However she submitted that any amount to be claimed they should fall under the scale of costs (item 8) which indicates the costs for attending court where an Taxation Cause or appeal for first 30 minutes is Tshs 30,000/= and each subsequent 30 minutes 10,000/=. She further submitted that the 2 hours spent by the counsel for the applicant is 30,000/= for the 1<sup>st</sup> minutes 10,000x3=30,000/=. Thus she prayed a total of Tshs 60,000/= be taxed of and Tshs 22,940,000/= be taxed off.

In item 11 she submitted that 50,000/= is on high side hence he prayed only Tshs 10,000/= be taxed of and Tshs 40,000/= be taxed off.

Regard item 26, 27 and 28 she submitted that as no receipts have been produced, air tickets or receipt for lunch that the item purports to be cost claimed for return tickets from Arusha to Dar es salaam Tshs 460,000/=, the taxi expenses from JNIA to Tegata Tshs 70,000/=, tax from Tegeta to

CAT Tshs 45,000/= and lunch Tshs 25,000/= are disputed and should be taxed off as the items do not bear any date thus, it is difficult to ascertain if any travel was required. She further submitted that the costs of Tshs 70,000/= alleged for taxi taxed Tegeta to JNIA and Tshs 5000/= from Arusha to residence be taxed off for lack of supported receipts.

In relation to item 29, the counsel for the Respondent disputed the all costs under the above item for the reasons that:-

- (i) No air ticket produced from any airline.
  - (ii) That no boarding pass to show the applicant actually revealed to where they were supposed to go.
  - (iii) That no receipts for airport to hotel evidencing payment of Tshs 60,000/= and
  - (iv) That No receipts from hotel restaurant evidencing payment of Tshs 250,000/= for boarding and Tshs 250,000/= for meals.
- Therefore she prayed the whole amount of Tshs 1,480,000/= under item 29 be taxed off.

Regards un itemized item indicating that advocate Sangka travelled between Arusha and Dar es salaam on 3<sup>rd</sup> and 7<sup>th</sup> August 2014 to attend a

hearing on 5<sup>th</sup> August 2014 the claims of shs 1,067,000/= disputed by the counsel for the respondent for the following reasons;

That a ticket dated 3<sup>rd</sup> August 2014 reveals the names of 2 passengers including Raymond Ngoo, traveling from KIA to Dar es Salaam. She submitted that the amount of Tshs 542,000/= is disputed as the person by names of Raymond Ngoo was not a part to the appeal, neither Advocate for the applicants. Thus she prayed his costs be excluded a total of Tshs 271,000/= for air ticket of the passenger Sangka Akonaay be taxed and the rest Tshs 525,000/= claimed be taxed off. Regards the Air ticket issued on 7<sup>th</sup> August 2014, she submitted that a number of 3 passengers Raymond Ngoo, Mr. Sangka Akonaay and David Ngoo indicates the said three passengers were traveling from Dar es salaam to KIA for costs amount of Tshs 525,000/= for air ticket. Again she stated that a person named as Raymond Ngoo was not part to the appeal neither Advocate for the applicants thus she prayed his costs not be included in the air ticket i.e. 525,000/= be divided by 3 and hence Tshs 175,000/= be taxed of for each.

The counsel further submitted that the amount of Tshs 1,067,000/= claimed in the bill of Costs is fabricated and does not correspond, with the

ticket. She said upon calculations the total amount claimed was supposed to be Tshs 621,000/= as a ticket dated 3/8/2014 should cost Tshs 271,000/= and that dated 07/08/2014 should cost Tshs 350,000/=. Thus she said  $271,000+350,000$  is equal to Tshs 621,000/=. Thus, she prayed that Tshs 446,000/= be taxed off and a total of Tshs 621,000/= be taxed. In item 30 the counsel submitted that although there was a hearing on 12<sup>th</sup> /9/2014, where Mr. Ngalo attended the Court, she wondered how he travelled to Arusha from Dar es salaam and back, as there was no ticket to prove he travelled by air. She further stated that no receipts for hotel accommodation for any amount neither no receipts for meals and taxi. Hence she prayed the whole amount claimed under item 30 be taxed off.

The counsel also disputed the whole amount claimed under item **30** that there is no proof of travel on the alleged date. She submitted that the attached ticket indicates was issued on 17<sup>th</sup> October, 2014 to Mr. Michael Ngalo for travel on 18<sup>th</sup> October, and 21<sup>st</sup> October reveals the amount of Tshs 444,490/= only, while in the Bill of Costs indicated Tshs 460,000/= appears twice. After a normal calculation he prayed a total of

Tshs 444,490/= for item **31** be taxed at Tshs 444,490/= which is for the costs for return of air ticket.

Regards item 32,33, 34 & 35 the counsel for the respondent prayed the whole amount of Tshs 675,000 be taxed off as no documentary evidence to support the happening of the events mentioned, only Tshs 288,000 which evidenced with the Air ticket from fast Jet be taxed while other amount be taxed off.

The item claimed under items **36, 37, 38 and 39** the counsel for the respondent prayed the whole amount be taxed off for lacks of supported documentary evidence to support the information, that the purported clients travelled and spent the alleged amount for the purported services.

In items **40,41,42,43 and 44** she submitted that the amount claimed is disputed on the reasons that out of Tshs 2,115,000/= claimed under the above indicated item only Tshs 256,000/= was proved to have been incurred. Thus she prayed a total of Tshs 256,000/= be taxed on and Tshs 1,859,000/= be taxed off.

In conclusion the counsel for the Respondent submitted that as there was no documentary evidence of receipts evidencing payment of amounts claimed for services offered, and in the absence of receipts on their humble views, she submitted that the purported services were not offered at the purported price/cost and that the costs claimed which lacks documentary evidence in support are to be disregarded when taxing the present Bill of costs. She asked also the Taxing Officer to go through the Bill of costs and view air tickets and receipts attached with the bill of costs he can easily notice a lot of discrepancies in both dates for the occurrence of the purported events and that amount stated in the bill of costs and that there has been double entry of costs in some items which she submitted that in their view, she stated was done intentionally to deceive the Taxing Officer and steal from the respondent. She further concluded that the most of the costs purported to have been incurred are extravagant and unreasonable. She said that the principle of payment of costs to the winning litigant is to fairly reimburse of costs reasonably incurred and to enable access to the court and not otherwise. She invited the Taxing Master to see the case of **Premichand (supra)**.



In the final conclusion she prayed the bill of costs be taxed at a tune of Tshs 20,000,000/=only for instruction fees under the item 1.

Item **2, 3, 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 22, 23, 24, and 25** be taxed at Tshs 332,000/= only.

Item 6 be taxed at Tshs 1891,000/=.

Item 10 be taxed at Tshs 60,000/=.

Item 11 be taxed at Tshs 10,000/=.

Item 12, 13, 14, 15, 16, be taxed at Tshs 460,000/= only.

Item 26, 27 and 28 be taxed off.

Item 29 be taxed off.

Item dated 3<sup>rd</sup> and 7<sup>th</sup> August, 2014 be taxed at Tshs 621,000/=.

Item 30 be taxed off.

Item 31 be taxed at Tshs 444,490/= only.

Item 32, 33, 34 and 35 be taxed at Tshs 248,000/= only

Item 36, 37, 38, and 39 be taxed off

Item 40,41,42,43 and 44 be taxed at Tshs 256,000/= only and that grand total to be taxed at Tshs 24,332,490/ and the rest of Tshs 397,284,510/= be taxed off.

Now starting with an item No. 1, regards instruction fees where a total of Tshs 380,000,000/= is claimed, the issue is whether the amount claimed is fair and reasonable, or it is in the high side. In relation to this issue, I find the guidance on what to be taxed as instruction fees is envisaged under paragraph 9(1) (2) of the third schedule to the Tanzania Court of Appeal Rules, 2009. The paragraph provides:-

***"9(1) The fees to be allowed for instruction to make support or oppose any Taxation Cause shall be such as the taxing officer shall consider reasonable but shall not be less than Tshs 100/=.***

***9(2) The fees to be allowed for instructions to appear or oppose an appeal shall be such sum or the taxing officer shall consider reasonable having regard to the amount***

*involved in the appeal its nature importance and difficulty the interest of the parties, the other costs to be the general conduct of the proceedings, the fund or person to bear the costs and all other relevant circumstances”.*

Again in relation to amount to be taxed as instruction fee, see the case of **PREMCHAND RAINCHAND LTD AND ANOTHER VS ZUARY SERVICE LTD AND OTHERS** [1972] 162 EA. In that case I was held:

*“An award of large sum as instruction fee will only be justified nature of the case its complexity time taken up to the hearing or arguments, the amount involved etc.”*

Another guideline regards award of instruction fees see the case of **HAIDER BIN MOHAMED ELMANDARY AND OTHER VS KHADIJA BINTI ALISELEM** [1956] EA CA 313.

In this bill of costs the applicants urged to consider the all above factors enumerated in the above cited authorities and further the factors envisaged under paragraph 9(1) , (2) of the Third schedule to the Tanzania Court of Appeal Rules, 2009 to award him the total amount of Tshs 380,000,000,000/=, where the applicants respondent strongly resisted that claim for the reasons advanced, and that the applicant does not expressly indicated the stated factors, as the amount of research involved etc. see the case of **HAIDER BIN MOHMED ELMANDARY AND OTHERS VS KHADITA BINT ALI SELEM [1956] EA CA 313 AND ANCHE MWEDU AND 2 OTHERS VS CONSOLIDATED HOLDING CORPORATION REFERENCE NO. 9 OF 2009 DSM CA (UNREPORTED)**.

Upon gone through the record of Appeal and after scrutiny of the same, including the High Court record, I got a time to go through the various Ruling by that courts I find a comprehensive research was done by the counsel for the Applicants. They went through the High Court record which is very bulky, before filing appeal No. 24/2014 at the Court of Appeal.

I have also put into account the nature of the case which was a sale of block mining situated at Simanjiro area, the time taken from the filing of

the case up to the stage of hearing of the appeal filed in the court of Appeal which is almost 3 years. By that time applicants were producing nothing from the mining plot, and also the interest and importance of the subject matter, the complicity of the issues involved on appeal, the authorities cited by the applicants advocate, I find the applicant counsel spent a time for legal research contrary to the submission of the counsel for the respondent who submitted that the legal research involved in the appeal was too minimal. I also read the decision of court of appeal in civil appeal No. 25/2014, the justices of appeal at page 30 stated that:-

***"Taking into account the complicity of the issues involved and multiplicity of proceedings preliminary point of law prior to the hearing of the appeal the cross appeal, revision proceedings filed we exceptionally all costs for two advocates. We think it is reasonable and proper under circumstances"***

(The emphasis is mine)

For that extract from the court of appeal decision in civil appeal No. 25/2014 concretized my arguments that there was complicity of issues and that much time was spent by counsel for applicant while dealing with that matter.

In relation to the submission by the respondent counsel that most of the authorities referred by the applicants counsel were of local jurisdiction and that only few common statute of the East Africa largely used on every day basis, I find that argument with no leg to stand, as there is prove that the common Laws authorities carry more weights than local Laws authorities. Thus I find his arguments with no logic.

Regards the submission by the Respondent's counsel that the amount claimed for, as an instruction fees was not receipted and it is wrongly charged as it was supposed to be split between the two law firms, and advocates clearly indicating who paid how much, I find also that arguments lacking merit. The guide line of Taxing Bill of Costs is enshrined under Rule 24(2) of the Tanzania Court of Appeal Rules, 2009.

The Rule states:-

Rule 124(2): *The costs shall be taxed in accordance with rules and scale set out in the third schedule to these rules”.*

I have gone through the whole scale set out in the **third schedule to the Tanzania Court of Appeal Rules 2009**. I find no where, no item or para under the scale of costs under the **third schedule to the Tanzania Court of Appeal rules** directs an advocate from different firms split out the costs awarded into two different firms, also there is no items directs or asked a party to submit the receipt while claiming any amount under instructions fees. The only claims where the submission of receipts is needed is for disbursement. See item **4(2)** of the same schedule. Therefore I find the submission by the counsel for the Respondents regards that item with no basis.

Now following the above advanced reasons and upon considering both submissions, the factors enumerated under item 9(1) (2) of the Third Schedule to the Tanzania Court of Appeal Rules, 2009, the factors again stated in **PREMCHAND supra** I find amount of Tsh. 380,000/= claimed as instruction fee being fair but I bit in the high side. Therefore I find Tshs.

250,000,000/= Being fair and reasonable. Hence is taxed and Tshs 16,674,000/= is taxed off.

In relation to items **12, 13, 14, 15 and 16** where amount of Tshs. 460,000/= is claimed, I find that amount had no dispute Consequently it is accordingly taxed.

Regards items 2, 3, 4, 5, 8, 9, 17, 18, 19, 20, 21, 22, 23, 24 and 25 the respondent did not dispute the amount of Tshs. 332,000/= claimed under the above items but after computation of the raised amount under each item, I find the exactly amount to be claimed is 282,000/= and not 332,000/= as presented by the applicants hence Tshs. 50,000/= is taxed off, and Tshs 282,000/= is taxed.

Regards item 6, I concede with the advanced arguments by the counsel for the respondent, as what has been envisaged under the scale of costs of the Third Schedule to the Tanzania Court of Appeal Rules 2009, is very clear. Thus a total of Tshs. **1,281,000/=** is accordingly taxed and Tshs. **5,002,000/=** is taxed off.



In connection with item **10** after considering the arguments from the submission of both sides, and upon reading item **18 of the scale of costs under the Third Schedule of the same Rule**, (Tanzania Court of Appeal 2009), I am quite agreed with the submission by the counsel for the Respondent's counsel that the amount should be taxed is Tshs. 60,000/= and the rest be covered under item 1 of the Bill of Costs. Therefore I find Tsh. 60,000/= being fair and reasonable under the above item hence taxed and Tsh. 22,040/= is taxed off.

Coming to item **11**, according to the status of the counsel for the applicant being Senior Advocate I find Tsh. 50,000/= being costs for attending court being reasonable hence it taxed accordingly as presented.

Regards items 26, and 27 I concede with the submission by the counsel for the respondent that Tsh. 70,000/= was not itemized and no date indicated in the Bill of Costs in relation to that amount and no receipts have been attached to ascertain or approve the amount claimed.

**Item 3(1) (Taxation of Costs) the Third Schedule to the Tanzania Court of Appeal Rules 2009 states:**

***3(1) A bill of costs shall be instituted and filed in proceedings and shall be in the form of a bill prepared in five columns as follows:-***

***(a) the first column for the dates of the items.***

***(b) the 2<sup>nd</sup> item for the serial numbers of the items***

***(c) .....***

***(d) .....***

***(e) .....***

(The emphasize is mine)

Therefore failure of the applicant to itemize and date the column indicating the claim of Tsh. 70,000/= in the bill of costs is fatal also failure to date the column indicating amount of Tsh. 460,000/= being costs for travelling from Arusha to Dar es Salaam, Tsh. 45,000/= being for taxi costs and Tsh. 25,000/= being costs for lunch which were not itemized neither dated it is fatal. Therefore as the Applicants failed to comply with the

conditions stated in the cited item to the rule, a total of Tsh. 600,000/= is taxed off.

In connection with item **28**, where the applicants are claiming Tshs. 70,000/= being taxi costs from Tegeta to JNIA and costs for Taxi from Arusha city to resident, I find it is not in dispute that on that material day and date, the counsel for the applicants Mr. Sang'ka attended the court. The dispute from the Respondent is in relation with Applicant's failure to produce receipts as supporting documents. I have gone through the court record I find that, on the alleged day and date to wit, on 18/6/2014 Mr. Sang'ka counsel for the applicants attended the court. Therefore the claimed amount of Tsh. 70,000/= as costs for Taxi services is reasonable hence it is accordingly taxed.

Regards item **29**, where the Respondent disputed the costs for the reasons that were not supported by receipts, upon going through the court proceedings, I find on 18/6/2014, the counsel for the Applicants Mr. Michael Ngalo attended the court, and he appeared before Hon. E. Kileo, Hon. B. Luanda and Hon. K. Oriyo (Justices of Appeal). Thus, as a matter of logic if he attended the court it is obvious had meals, he travelled and had an

accommodation. Upon considering the costs for Air tickets although, it was not produced, but the amount claimed Tshs. 920,000,000/= return ticket is fair and reasonable hence it is taxed accordingly. I find also the claimed costs Tsh. 60,000/= for transport from airport to Hotel being fair and reasonable. But I find Tsh. 250,000/= for boarding being in the high side hence only Tsh. 180,000/= is taxed and Tsh. 70,000/= is taxed off. The costs for meal Tsh. 250,000/= also is on the high side. Thus, Tsh. 100,000/= is taxed and Tsh. 150,000/= is taxed off. Therefore a total of Tsh. 1,260,000/= in item 29 is taxed and Tsh. 220,000/= is taxed off.

In connection with item with no number I concur with the counsel for the respondent that Raymond Ngoo was not a party to the suit despite that one of the submitted Air ticket by applicants reveal his name. But, Mr. Sang'ka advocate for the applicant according to the attached Air tickets travelled from Kilimanjaro to Dar es Salaam on 3 August, 2014 where the Name of Raymond Ngoo is appearing in the same ticket. Therefore, as the passenger namely Raymond Ngoo was not a party to the appeal, I concede with the counsel for the respondent that his costs for air ticket should be excluded, and as the Counsel for the applicant Mr. Sang'ka travelled together

with Mr. Raymond Ngoo, the total amount costs for air ticket should be divided in to two passengers. Thus, Tsh, 271,000/= costs incurred for by Mr. Sang'ka is taxed and Tsh. 271,000 is taxed off.

In relation with the ticket revealing that Names of Raymond Ngoo also the amount of Tshs 175,000 should be excluded in the air ticket issued on 7<sup>th</sup> August 2014, and the costs incurred by only two passengers namely Sang'ka Akonay and Davis Ngoo who were parties to the appeal should be taxed. Hence Tsh. **175,000/=** each for two passenger is taxed and Tsh. **175,000/=** is taxed off. Therefore, I concur with the submission by the counsel for the respondent that Tsh. **1,067,000/=** the costs claimed by the applicants on 3<sup>rd</sup> and 7<sup>th</sup> August 2014 is fabricated and does not correspond with the tickets. Hence Tsh. **446,000/=** is taxed off and Tsh. **621,000/=** is taxed.

Regards **item 30**, the counsel for the respondent disputed the amount claimed in that item for the reasons that the claims were not supported by receipts,

Now, as there was no dispute in the part of the respondent that, on that material dates the counsel for the applicant's travelled to Arusha from Dar es Salaam, to attend the Court of Appeal, a simple logic is obvious that he had meal, accommodation and costs for taxi. Services, he incurred this is according to the status of the counsel. For that reasons advanced above, I find a total of Tsh. **1,010,000/=** being fair and reasonable for the claims raised to item 30. Therefore it is according taxed.

Coming to **item 31**, I concede with the respondents' submission that the amount of Tsh. 444,490/= only be taxed as per what Air ticket reveals. Hence it is hereby taxed, and Tsh. 15,510/= is taxed off. I concede again with the submission by the respondent that the claimed costs of Tsh. 460,000/= is appearing in the bill of costs twice, thus Tsh. 460,000/= is taxed off. What remains under **item 31** is the costs for Hotel accommodation, meals and Taxi service. Upon considered the said claimed costs I find that, as the Air ticket indicates the counsel for the Applicants travelled on that particular dates, it is obvious deserves with other costs like costs for accommodation, meals and taxi services. For that reasons, I find Tsh. 250,000/= costs for accommodation being on the high side, hence Tsh.

100,000/= is taxed off and Tshs. 150,000/= is fair and reasonable hence it is taxed. Tshs. 200,000/= claimed for meals, is also on the high side hence Tsh. 100,000/= is taxed off. Tshs. 100,000/= is taxed. I find also the costs claimed for taxi services Tshs. 150,000/= being on the high side hence Tsh. 50,000/= is taxed off and Tshs. 100,000/= is taxed in the final analysis regards item 31, a total of Tsh. **794,400/=** is taxed and a total of Tsh. **725,600/=** is taxed off.

Regards item 32, 33, 34 and 35 I find those items bears no dates and there no evidence that on the indicated items Mr. Sang'ka travelled by flight from Arusha to Dar es Salaam as it has been submitted by the counsel for the respondent. Hence the whole amount of Tsh. 675,000/= is taxed off. Regards items **36, 37, 38 and 39**, the items bear the dates 20<sup>th</sup> and 26<sup>th</sup> November 2014 purports claims of costs for return Air ticket for 2 clients Tsh. 920,000/=: the counsel for the respondent prayed that costs to be taxed off for lack of supported evidence. I have gone through the documents tendered in relation to the mentioned date and events, in the court record; I find it is true that Mr. Sang'ka travelled from Arusha to Dar es Salaam on that alleged dates to wit, 26<sup>th</sup> November, 2014 and 26<sup>th</sup> November 2014, by

flight No. 152 Fast jet from Kilimanjaro to Dar es Salaam and on 26<sup>th</sup> November 2014 by flight No. 155 Fast jet but the costs for return Air ticket which bears on the Air ticket is only Tsh. 248,000/= and not Tsh. 920,000/= as indicated on item 36. From that evidence I find Tsh. 248,000/= were costs for Air ticket hence Tshs. 248,000/= is taxed and Tsh. 672,000/= is taxed off.

Now in relation for claims for costs from Airport to hotel the applicants failed to indicate which place or location of the mentioned hotel situated, I think Tsh. 200,000/= indicated as costs for taxi services in the high side. I find Tsh. 100,000/= is fair and reasonable for taxi services from Airport to Hotel, hence is Taxed and Tshs 100,000/= is taxed off. In relation to Boarding I think Tsh. 600,000/= for accommodation for 6 days being fair and reasonable. Hence is accordingly taxed, and Tsh. 200,000/= being costs for meal, I think that amount for 6 days is not on the high side hence is also accordingly taxed. In the final analysis regards the above items, a total amount of Tsh. **1,148,000/=** is taxed and amount of Tsh. **772,000/=** is taxed off.



Coming to **items 40, 42, 42, 43 and 44**, the counsel for the respondent prayed the taxing officer to taxi off the costs claimed in the above items for the reasons that they lacks documentary evidence to support the information, that the purported clients travelled and spent the said amount for the purported services.

Now in order to ascertain what have been submitted by the counsel for the respondent and to insure that the justice is done, I went through the court record to justify whether on the alleged date to wit 10<sup>th</sup> February 2015 there was any court, business, I find the answer in affirmative. Mr. Akonay Sang'ka and Mr. Michael Ngalo both represented the applicants before Justices of Appeal Hon. E. Kileo, Hon. Mjasiri and Hon. Kaijage for arguing the submission on that dates. I further went through the documents attached by the applicants in their written submission, I find the Air tickets issued by Fast Jet Company bearing No. 000 2300782908/01 and Air ticket No. 000 2300 782908/02 issued to Mr. Michael Ngalo. The tickets reveals only one passenger travelled on 10/2/2015 from Dar es Salaam to Kilimanjaro and on 13/02/2014 he travelled from Kilimanjaro to Arusha at a fare costs of Tsh. 256,000/= . From that evidence, I disagree of what have

been submitted by counsel for the respondent that there was no evidence at all to support the claims.

The only issues here is whether the amount claimed under the above item is fair and reasonable. For the reasons above stated reasons I find Tshs 256,000/= indicated on the air ticket being fair and reasonable hence accordingly taxed

In relation to 3 days spent in Arusha by Mr. Ngalo, I find that, as there was no any reasons or evidence advanced by the Applicant as to why Mr. Ngalo spent 3 days at Arusha, while the Court record reveals, the Court business was conducted for only one day, I think two days was enough for Mr. Ngalo. Hence I find Tshs 795,000/= for accommodation not justifiable hence Tshs 150,000/= x 2 days is **300,000/=** is fair and reasonable for two days accommodation hence is taxed and Tshs 495,000/= is taxed off. I also find 200,000/= for 2 days meal being fair and reasonable hence it is accordingly taxed. I further find that Tshs 200,000/= for tax since for two days being fair and reasonable hence it is accordingly taxed.

In the final analysis under the mentioned items a total of Tshs 956,000/= is taxed a total of Tshs 1,059,000/= is taxed off.

In the final analysis, I find that the total amount of Tshs **24,322,490** conceded by the Respondent to be taxed as a bill of costs being on the lower side in comparison with the weight work done by the Applicants in Civil Appeal No. 25 of 2014. As afore stated therefore I find Tshs 250,000,000/= taxed as for instruction fees + 8,908,090/= for the other costs in other items be taxed, and the rest be taxed off. Therefore a total of Tshs **258,908,090/=** is taxed, and a total of Tshs **162,698,910/=** is taxed off.

**DATED at DAR ES SALAAM** this 5<sup>th</sup> day of August, 2016.

P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**TAXING OFFICER**

I certify that this is a true copy of the original.

  
P.W. BAMPIKYA  
**SENIOR DEPUTY REGISTRAR**  
**TAXING OFFICER**