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IN THE FIRST INSTANCE DIVISION OF THE COURT OF JUSTICE OF THE  
COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA  
AT LUSAKA, ZAMBIA

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**TAXATION CAUSE NO. 1 OF 2018**

Arising from

**REFERENCE NO. 1 OF 2017**

**MALAWI MOBILE LIMITED .....APPLICANT**

**VERSUS**

**THE COMMON MARKET FOR EASTERN  
& SOUTHERN AFRICA (COMESA)..... RESPONDENT**

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**CORAM:**

**Hon. Nyambura L. Mbatia – Taxing Master**

**Hon. Philippe H. Ruboneza – Assistant Taxing Master**

**Counsel for the Applicant: Mr David Kanyenda**

**Counsel for the Respondent: Mr Gabriel Masuku**

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**RULING**

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## Background

1. Malawi Mobile Limited ('the Applicant'), filed a Notice of Motion for Taxation of Costs ('the Application') on 10 September 2018. The costs are in respect of two decisions of the First Instance Division of the Court ('the FID') in Reference No. 1 of 2017 – Malawi Mobile Limited versus the Common Market for Eastern and Southern Africa (COMESA).

The application is brought under Rule 79 and 41 of the COMESA Court of Justice Rules of Procedure, 2016 ('the Rules') and was supported by an affidavit sworn by Mr David Kanyenda, the Applicant's Legal Counsel.

2. The Common Market for Eastern and Southern Africa (COMESA) ('the Respondent'), did not file a reply to this application although during the hearing of the Application, its Counsel did state that they had filed a response. This issue will be dealt with in more detail later in this Ruling to set the record straight. Of importance to mention at this point is the fact that the Court did give the Respondent an opportunity to make oral submissions in response to the Application and they did.

3. The decision by the FID from which this Application emanates was delivered on 12 August 2018, and reads at the relevant part:

*"f. MML is awarded two-thirds of its costs incurred in defending the Preliminary Objection to jurisdiction and full costs in its Motion for the production of the Judges' Curricula Vitae."*

On 21 August 2018, the Respondent filed an application for stay of execution of judgment pending appeal. The said application was heard by a single Judge of the Appellate Division, Honourable Dr. Justice Michael Mtambo, JA who dismissed the same on 11 December 2018 thereby paving the way for the hearing of the Motion for Taxation.

## The Applicant's Case

4. Counsel for the Applicant relied on the Application as well as his affidavit in support of the Application sworn on 6 September 2018. The Application is divided into five parts as follows:



Part A – Preparation

Part B – General Care and Conduct

Part C – Court Attendance Inclusive Travelling and Waiting Time

Part D - Taxation

Part E – Disbursements.

#### 5. **Part A – Preparation**

Under this part, the Applicant seeks payment of US\$114,600 at the rate of US\$300 per hour made up as hereunder:

- (i) Part A 3(i) and (ii) - preparation which includes taking of instructions from the Applicant's Directors and providing audience to them on diverse dates and electronic correspondence with the Court, the Respondent and the Respondents lawyers – total claimed US\$10,800 which is tabulated as fees for 36 hours of work.
- (ii) Part A 3 (iii) - documents perused
  - a) documents prepared by Counsel for 125 hours - US\$37,500;
  - b) documents perused through and considered by Counsel for 59 hours and 30 minutes – US\$17,700; and
  - c) research – 162 hours – US\$48,600.

#### 6. **Part B – General Care and Conduct**

The Applicant seeks US\$103,140 being 90% of the costs claimed in Part A. This claim is grounded on the fact that, according to the Applicant, this was a novel case whose nature required utmost care and attention.

#### 7. **Part C**

The Applicant seeks US\$293,200 made up as follows:

- (i) Court Attendances Inclusive of Travelling and Waiting Time - US\$253,200 being 844 hours of work;
- (ii) Counsel's Brief and Instruction Fees agreed with client – US\$40,000.





8. **Part D**

The Applicant seeks US\$18,000 being 60 hours of spent preparing and attending court for taxation.

9. **Part E**

The Applicant seeks US\$134,600.32 being disbursements for air tickets, accommodation, translation and sundry expenses.

10. **Summary of the Applicants Costs**

(i) Professional Fees – US\$528,940.00

(ii) Disbursements – US\$143,600.32

(iii) Add 16.5% VAT – US\$109,484.15

**GRAND TOTAL - US\$773,024.47**

11. Mr Kanyenda submitted that, in its computation, the Applicant had already factored the 2/3 granted in the jurisdiction objection and had reduced the amount by 1/3. He urged the Court to ensure that the Applicant is indemnified for the expense it was put through by being compelled to initiate and defend the applications in issue.

12. The Applicant further urged the Court to take into consideration the fact that this was a novel reference as there is absence of developed jurisprudence on the subject or on the issues that were raised. There were no precedents from COMESA on the issues that were raised in the applications. That the case was a relatively complex one and was a landmark in the development of the jurisprudence and integration of the community. The considerable resistance on the part of the Respondent should also be taken into account.

13. In closing, Mr Kanyenda invited the Court to consider the value of the initial reference which, according to him, was quite substantial, being 66 million dollars. Further, that the Court should take into account the international nature of the case and the caliber of lawyers that had appeared in the matter.



## The Respondent's Case

14. The Respondent, as earlier mentioned, did not file any response to the Application and neither did Mr Masuku, its Counsel refer to any response lodged in Court during his submissions. He only mentioned that he had filed a response during the reply by Applicant's Counsel Mr Kanyenda. Mr Masuku raised an objection that Counsel for the Applicant should desist from alleging that the Respondent had not filed a response yet there was one on the Court record.

15. No such document was found in the court file and the Court sought to know when it had been filed and if so, if and when it had been served on the Applicant, and if there was, on record, an affidavit of service. Mr Masuku could neither produce a duly filed copy nor an affidavit of service. Mr Kanyenda informed the Court that he had not been served with any such response.

16. The Court did request to have sight of the document Mr Masuku had in his possession and it neither had a court stamp nor had it been dated or signed by the Respondent. Counsel Masuku did send an email to the Registrar on 17<sup>th</sup> December 2018 which stated as follows:

*'Dear Madam Registrar,*

*Further to my this morning's email, may I humbly seek for your guidance and directions in relation to the issued Cause List pertaining to the Taxation of the Bill of Costs.*

*Firstly, as COMESA, we would like to be availed an opportunity to respond in writing to the Bill of Costs we were served with by Malawi Mobile before the dates indicated on the Cause List. We seek your directions in this regard.'*

On 18<sup>th</sup> December 2018, the Registrar responded to the above email as follows:

*'Dear Counsel Masuku,  
Your email below refers.*

*Regarding your request for COMESA to be availed an opportunity to respond, there is no reason given in your email as to why no response was filed by COMESA to the Notice of Motion for Taxation of Costs. Be that as it may, unless both parties can reach a consent to have the same filed out of time, then you will have to make a formal application.'*



Nothing further was heard from the Respondent until the issue was raised as indicated in paragraph 2 above. When asked why he would have sent that email if a response had already been filed in court, he responded that the Respondent was seeking to be given an opportunity to file a more detailed response (see proceedings page 57 at line 12-16).

17. It is our finding that the Respondent did not file any response as alleged. There is no provision in the Rules for a party to file a skeleton response to be later augmented by a detailed response. This would cause unnecessary confusion on many fronts – for example, when would time begin to run, on the lodgment of a skeleton response or the detailed response? The Respondent would not have made the request to be ‘availed an opportunity to respond’ if a Response had already been lodged in Court. More telling is the fact that no response was served on the Applicant. The Court will therefore rely on the oral submissions made by Mr Masuku during the hearing.

18. The Respondent’s case is that the Bill of Costs filed is inflated and very exorbitant. Mr Masuku submitted that the Rules provide guidance on how a bill ought to be structured and the quantity as well as quantum of the composite items of the bill. He referred the Court to Rule 79(3) which provides that in taxing a bill of costs, the Registrar shall take into account the legal practitioners' costs in contentious matters stipulated in Schedule II. He gave a detailed analysis of the provisions of this Schedule and their relevance to the present Application.

19. According to Mr Masuku, the Applicant should have been guided by the Folios in Schedule II which outline various entitlements for counsel and parties in matters concluded before the Court. He stated that all that the Taxing Master ought to do is to compare the bill to the rates prescribed in the Schedule.

20. Regarding the items in the Bill that are based on number of hours, Mr Masuku submitted that there is no breakdown of how the hours were accumulated. He raised issue with the claim for \$40,000 under Item 6 entitled ‘Brief and Instruction Fees’ which he urged the Court to strike it off completely because there is already a claim for taking instructions. Folio 1 and 2 of Schedule II cover the taking of instructions to file a reference and preparing for the hearing.





21. The Applicant disputed the claims for travel on the ground that even though the business address of Applicant's Attorney is in Blantyre, Malawi, some of the tickets that are being claimed indicate travels originating from South Africa and these should be disallowed.

22. Finally, Mr Masuku urged the Court to strike off the claim for 16.5% VAT because it was not part of the award of costs and that granting it would be tantamount to amending the award by the Court. He also submitted that the claim for interest in the event there is delay in payment of the taxed amount should be dismissed because the Court did not award interest.

### **The Applicant's Rejoinder**

23. In his rejoinder, Mr Kanyenda invited the Court to find that any expenses incurred by the Applicant for the purpose of these proceedings were awardable during taxation proceedings. In his opinion, Schedule II is not exhaustive, and the Court had the discretion under Rule 3 to award any costs it deemed appropriate for each case.

24. On travel from South Africa, he submitted that the Applicant is a limited liability company and that some of its Directors were based in South Africa. He also had to travel to Pretoria on several occasions to get visas to Sudan since there is no Sudanese Embassy in Malawi.

### **Issues for Determination**

We have taken into consideration the Application and supporting affidavit filed by the Applicant as well as oral submissions by both Counsel. We have also analysed all the documents filed in support of the Bill and we have considered the Rules as cited and in particular Schedule II thereof. We have noted that Counsel for the Applicant seems to have totally disregarded Schedule II when he prepared the Bill of Costs. We do not know why. The end result of this omission is that the Taxing Masters have had to go through each and every document submitted to determine whether it was relevant for the two Applications in issue and if the costs claimed were recoverable. This has been a very laborious and extremely time-consuming exercise which would have been greatly simplified had the Applicant adhered to the Schedule.



25. In our view, the issues for determination are two:

1. What are recoverable costs?
2. Which of the costs claimed by the Applicant are recoverable and what is the quantum?

### Issues No. 1 – What Costs are Recoverable?

26. The starting point is to lay down what the COMESA of Justice Rules of Procedure, 2016 provide regarding costs. Rule 79 (1), which was cited extensively by both Counsel, defines recoverable costs as:

*‘(a) sums payable to witnesses and experts*

*(b) expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and substance expenses and the remuneration of Counsel.’*

Sub-rule (2) and (3) thereof provide that *‘If costs are disputed by a party, the party awarded costs by the Court may, within thirty (30) days of such award, submit a bill of costs to the Registrar for taxation’* and that *‘In taxing such bill of costs, the Registrar shall take into account the legal practitioner’s costs in contentious matters stipulated in Schedule II hereto.’*

Rule 80 (1) provides that *“if there is a dispute concerning the costs to be recovered, the Registrar shall, on application by the party concerned and after hearing the opposing party, make an order on the matter.”*

27. Secondly, as Mr Masuku submitted, and rightly so, the next place to look is Schedule II of the Rules. It lays down the Scale of Practitioners’ Costs in Contentious Matters and has a total of ten parts that cover:

- (i) Institution of Proceedings (Part 1);
- (ii) Instructions (Part 2);
- (iii) Preliminary Applications and Proceedings in Chambers (Part 3);
- (iv) Attendances (Part 4);
- (v) Perusals (Part 5);
- (vi) Drawing Documents (Part 6);
- (vii) Opinions (Part 7);
- (viii) Communication (Part 8);
- (ix) Subpoenas (Part 9); and



## (x) Adjournments (Part 10).

Each of these parts provides details of recoverable items.

28. A question that needs to be answered at this point, is whether a Taxing Master is bound to follow Schedule II to the letter. In our view, the answer to this question lies in the wording of Rule 79 (3) which provides - '*In taxing such bill of costs, the Registrar shall take into account the legal practitioner's costs in contentious matters stipulated in Schedule II hereto.*' (emphasis ours). This choice of words, in our opinion, gives the Taxing Master the discretion to tax bills as they deem fair and just but in doing so, they should, at all times, be guided by Schedule II.

29. The FID awarded the Applicant two-thirds of the costs incurred in defending the Preliminary Objection to Jurisdiction. In deciding which costs are recoverable under this limb, it is necessary to separate costs incurred before the Preliminary Point of Law was raised by the Respondent on 14 September 2017, and those related to the defending that objection, up the delivery of the Ruling. The operative period with respect to the Preliminary Objection to Jurisdiction was therefore, 14 September 2017 to 12 January 2018.

30. After delivery of the Ruling on Jurisdiction 12 January 2018, there was an intervening period until 30 April 2018 when the Application for Production of CVs was filed. This is the second Application for which costs were awarded. The operative period for this Application is 30 April 2018 to 4 August 2018 when the Ruling was delivered. We, however, wish to clarify that not all costs claimed within these two operative periods are recoverable. Details of those disallowed are found in the tabulation found at the end of this Ruling.

31. How would the Court determine what costs are recoverable? We find it necessary to make a distinction between Party-and-Party Costs and Advocate/Client Costs given that the Bill filed appears to have comingled these two categories of costs. In *Fullerton v. Matsqui* (1992), 19 B.C.A.C.284(CA);34 W.A.C.284, a case decided by the British Columbia Court of Appeal in Canada, the court ruled that:

*'The fundamental principle of costs as between party and party is that they are given by the court as an indemnity to the person entitled to them; they are*

*not imposed as punishment on the person who must pay them. Party-and-party costs are in effect damages awarded to the successful litigant as compensation for the expense to which he has been put by reason of the litigation.'*

32. A clear description of what constitutes Advocate/Client costs is given in the Ugandan case of *Tabu v Langi* (MISCELLANEOUS CIVIL APPLICATION No. 0023 OF 2017) [2017] UGHCCD 95 (20 July 2017), where the court ruled that:

*'Advocate/client costs are the costs that an advocate claims from his own client and which the advocate is entitled to recover from a client, for professional services rendered to and disbursements made on behalf of the client. These costs are payable by the client whatever the outcome of the matter for which the advocates' services were engaged and are not dependent upon any award of costs by the court.'* (emphasis ours)

## **Issue No. 2 - Which of the Costs Claimed by the Applicant are Recoverable and What is the Quantum?**

33. What is before the Court is taxation of Party-and-Party costs. We shall now analyse each of the claims submitted in the 5 parts of the Bill, namely Part A, B, C, D and E to determine whether they are recoverable or not, and if recoverable, the quantum thereof.

34. The claim by Counsel for the Applicant under paragraph 2 of the Bill titled 'Status of Fee Earner' indicating that Counsel charges US\$300.00 per hour for legal services and the claim under Part C, where he seeks US\$40,000 being Counsel's Brief and Instruction Fees - these would constitute Advocate/Client costs and not Party-and-Party costs. It is our finding that a fees agreement between an advocate and his or her client cannot be the basis for calculating party-and-party costs. Such an agreement would only be useful in a taxation of Advocate/Client costs.

35. An amount of US\$10,800 is claimed as fees for 36 hours of work at the rate of US\$300. The Applicant did not show how these hours were arrived at. No attempt was made to expound how these were calculated, which dates or times they were incurred, what was done and by whom.



36. Counsel for the Applicant did not produce a single receipt issued by his law firm to his client to show that he had been paid all or any part of the amount claimed under this Part. The fees agreement is not, in our considered view, proof of payment. We are not persuaded that the claim under Part A 3(i) and (ii) is justified in so far as the hours worked are concerned.

37. However, this is not to say that no instruction fees will be awarded to Counsel. Schedule II does provide some guidance on the costs payable for taking instructions. We hereby use our discretion and award US\$2000 for the Preliminary Objection and US\$1000 for the Application for the Production of CVs.

38. Regarding the claim for Court Attendances Inclusive of Travelling and Waiting Time under Part C of the Bill, some of these costs are recoverable. Unfortunately, Counsel for the Applicant did not itemise each court attendance, travelling and waiting time to show how the total of 844 hours was arrived at. The Court is not in a position to determine this without any evidence. However, given that indeed, Counsel did travel to attend to various issues related to the two Applications, we will use our discretion to award what we consider reasonable.

39. We have decided to award lump sum amounts for each of the awards after taking into consideration the complexity of each, the estimated amount of time spent preparing for, and defending or prosecuting each. We are of the view that the Preliminary Objection on Jurisdiction demanded more time and research given that, if it had been allowed, the Reference would have been dismissed. For that reason, we award the sum of US\$7500 as costs incurred in defending the Preliminary Objection. This is on a 100% basis and two thirds (2/3) of this amount is US\$5000. The Application for production of CVs was, in our view, not as complex or demanding as the Preliminary Objection. It took also a shorter time to determine. We therefore award US\$2000.

The total payable under this heading is  $\text{US\$5000} + \text{US\$2000} = \text{US\$7,000}$ .





### Documents Prepared, Perused and Researched

40. Part A 3 (iii) - documents prepared, perused and researched - we found that some of these costs may be recoverable, not in terms of hours worked as claimed, but in accordance with Schedule II. However, any costs claimed for perusal or research involving documents lodged by the Applicant's Counsel are not recoverable as these form part of instruction fees.

#### (a) Prepared Documents

N	ITEMS	OBSERVATION	AWARDED	BASIS
1	Reference	Not recoverable. Reference prepared before P.O was filed		NIL
2	Special Power of Attorney	Recoverable by 100%	\$80	Schedule II Part 2(12)
3	Inter Parte Notice of Motion for Suspension of 2 Judges	Not recoverable - is not related to jurisdiction nor to CVs	NIL	
4	Applicant's Response to Preliminary Objection	Recoverable at 2/3 of \$20	\$13.33	Schedule II Part 3(3)
5	Submissions by MML in Support of Inter Parte Notice of Motion for Suspension of 2 Judges and Stay for Revision proceedings	Not recoverable - is not related to jurisdiction nor to CVs	NIL	
6	Amended Reference	Not recoverable - is not related to jurisdiction nor to CVs	NIL	
7	Amended Inter Parte Notice of Motion for Suspension of 2 Judges and Stay for Revision Proceedings	Not recoverable - is not related to jurisdiction nor to CVs	NIL	
8	Affidavits of Service of the court process on the 2 Judges	Not recoverable - is not related to jurisdiction nor to CVs	NIL	
9	Inter Parte Notice of Motion for Production of CVs of 2 Judges	Recoverable at 100%	\$50	Schedule II Part 3(1)
10	Affidavit in Response to Respondent's Notice of Motion on Production of CVs	Recoverable at 100%	\$20	Schedule II Part 3(3)
11	Heads of Arguments	Recoverable at 100%	\$80	Schedule II Part 2(12)
12	Applicant's Reply to	Recoverable at 100%	\$80	Schedule II

	Respondent's Heads of Arguments			Part 2(12)
13	List of Authorities	Recoverable at 100%	\$20	Schedule II Part 3(3)
14	Counsel's Undertaking	Recoverable at 100%	\$20	Schedule II Part 3(3)
15	Assessment bundle	Not identified hence not recoverable		

**Total for (a)****\$363.33****41. (b) Perused Documents**

1	COMESA Official Gaz Vol 20 n° 1	Recoverable at 100%	\$50	Schedule II Part 5(1)
2	Response by 1 <sup>st</sup> and 2 <sup>nd</sup> Respondents to Applicant's Reference	Recoverable at 2/3 of \$50	\$33.33	Schedule II Part 5(1)
3	Response by 1 <sup>st</sup> and 2 <sup>nd</sup> Respondents Inter Partes Notice of Motion for Suspension of 2 Judges and Stay for Revision Proceedings	Not recoverable - is not related to jurisdiction nor to CVs	NIL	
4	Rules of Procedure for the Election of the Judges of CCJ (2005)	Recoverable at 100%	\$50	Schedule II Part 5(1)
5	Report of the 34 <sup>th</sup> Meeting of the Council of Ministers	Recoverable at 100%	\$50	Schedule II Part 5(1)
6	Final Communique of the 12 <sup>th</sup> Summit of COMESA	Recoverable at 100%	\$50	Schedule II Part 5(1)
7	Skeleton argument	Recoverable at 100%	\$50	Schedule II Part 5(1)
8	Response or Defence to Amended Statement of Facts in Reference made by the Applicant under Art 26 of the Treaty and art 17(2) of the Treaty	Not recoverable - is not related to jurisdiction nor to CVs	NIL	
9	Report on 35 <sup>th</sup> meeting of COMESA Council of Ministers	Recoverable at 100%	\$50	Schedule II Part 5(1)
10	Respondent's Replication for Production of CV of the 2 Judges	Recoverable at 100%	\$50	Schedule II Part 5(1)
11	Respondent's Heads of Argument	Recoverable at 100%	\$50	Schedule II Part 5(1)
12	Ruling of FID on 4 <sup>th</sup> 8/18	Recoverable at 100%	\$50	Schedule II Part 5(1)
13	Ruling of FID on 12 <sup>th</sup> 8/18	Not recoverable	NIL	
14	CVs of the 2 Judges	Recoverable at 100%	\$50x 2 = \$100	Schedule II






				Part 5(1)
15	Letter dated on 5 <sup>th</sup> Aug 18	Not recoverable - a routine letter drawn by Counsel for the Applicant	NIL	

**Total for (b)** **US\$583.33**

**Total for (a) and (b)** **US\$946.66**

#### **Research: Treaty, Rules, Cases, Books, Journals articles**

42. The Applicant claims a total of US\$48,600 being 162 hours of research under this heading. It is our finding that research is covered under instruction fees. This claimed, as framed, is therefore dismissed.

#### **General Care and Conduct**

43. In Part B, the Applicant seeks 90% of the costs claimed under Part A being costs for General Care and Conduct. In Common Law jurisdictions, it is a generally accepted practice to grant costs for General Care and Conduct and this is normally a percentage of professional fees. Unfortunately, the Rules of Procedure (2016), do not make provision for General Care and Conduct costs. The Court will therefore use its discretion in deciding on the percentage to grant and we hereby award costs for General Care and Conduct at 30% of US\$7946.66 (Court Attendances – US\$7,000 and Preparation & Perusal of Documents – US\$946.66) which gives a total of US\$2384.

44. The Claimant seeks a total of US\$18,000 being 60 hours of work related to this Taxation. There is no justification or support for the claimed number of hours. However, in reaching a decision, we will be guided by Schedule II Part 4 and the amount of time Counsel spent in Court prosecuting the Bill, which was approximately three hours. We hereby award US\$1000 for this head.

#### **Part E – Disbursements**

45. The tabulation below shows each of the items claimed under Part E. It outlines claims awarded or dismissed and the justification thereof. We have perused all the air tickets and hotel accommodation receipts and incidentals and separated those that were related to either






of the Applications and those that were not. Those that were not related we have disallowed. The ones we considered were related or necessary, we have allowed.

46. The claim for sundry expenses such as photocopying and others, for which a total of US\$5000 was claimed is not supported by any receipts or proof of payment. The Court will use its discretion to arrive at a figure it considers reasonable given that some of the expenses incurred may not necessary be specifically provable. We grant US\$500 to be added to the total amount found due for travel, accommodation and other disbursements.

N <sup>o</sup>	PAYER	DATE	NARRATIVE	OBSERVATIONS	AMOUNT	AMOUNT IN COM DOLLARS
<b>RECOVERABLE COSTS ON PRELIMINARY POINT OF LACK OF JURISDICTION</b>						
01	KANYENDA	3/1/2018-15/01/2018	Blantyre to JHB & JBH to Blantyre	Recoverable	R 4,994.29 <b>1 dollar</b> <b>=Rands 14.8</b>	\$337.4
02	NAKA	6/01/2018 - 9/01/2018	JHB to NBO & NBO to JHB	Recoverable	R14,000	\$946
03	KANYENDA	06/01/2018-13/01/2018	JHB to NBO & NBO to JHB	Recoverable	R 14,000	\$946
04	TSAPERAS	10/01/2018-13/01/2018	JHB to NBO & NBO to JHB	Recoverable	R 14,000	\$946
05	NAKA	06/01/18	Paid at Four Points for accommodation	Recoverable	\$ 1,597,23	\$ 1,597,23
06	TSAPERAS Done by Naka	08-09/1/18	Paid at Four Points for services on 9th /1/18	Recoverable.	\$ 297.29	\$ 297.29
07	NAKA	06/01/18 09/01/18	Tickets for Naka	Recoverable	\$946	\$946
08	TSAPERAS	10-13/1/18	Accommodation at Four Points	Recoverable	\$ 417.99	\$ 417.99
09	TSAPERAS	6-9/01/18	Accommodation at Four Points	Recoverable	\$ 466.41	\$ 466.41
10	KANYENDA	13-15/1/18	Payment at the Capital on Bath. Paid on 15th /01		R2,420 Taxed at R 1,000 \$67.5	\$67.5

11	TSAPERAS	11-13/1/18	Payment at Four Points	Recoverable	KES 2,350.00 <b>1Dollar =101KES \$23</b>	\$23
12	TSAPERAS	12/1/18	Payment at TRIBE Hotel using the master card.	Recoverable	KES 13,700.00 \$135.6	\$135.6
13	TSAPERAS	11-13/18	Payment done on 13th at Four Points for accommodation	Recoverable	\$460.31	\$460.31
14	KANYENDA	3/01/18	Payment at the Capital on Bath	Recoverable	R.3,650 \$246.6	\$246.6
15	KANYENDA	4/01/18	Payment at Capital on Bath	Recoverable	R. 4,840 \$327	\$327
<b>TOTALS</b>  <b>Preliminary Point on Lack of Jurisdiction</b>					<b>SUB TOTAL</b>  <b>\$6316.5</b>  <b>2/3 of total costs as per Court order = <u>\$4211</u></b>	<b>SUB TOTAL</b>  <b>\$6316.5</b>  <b>2/3 of total costs as per Court order = <u>\$4211</u></b>
<b>APPLICATION FOR PRODUCTION OF CV'S</b>						
16	KANYENDA	14/07/2018 15/08/2018	Blantyre to JHB and JHB to Blantyre	Recoverable	R 4,994.29 \$337.4	\$337.4
17	KANYENDA	09/09/2018 14/09/2018	JHB to KRT and KRT to JHB	Recoverable.	R. 16,166 \$1092	\$1092
18	KANYENDA	04/07/2018 07/07/2018	Blantyre to JHB and JBH to Blantyre	Recoverable	R 4,994.29 \$337.4	\$337.4
19	KANYENDA	4-5/07/2018	Accommodation and breakfast at the Capital of Bath	Recoverable done within the period	R 3,810 \$257.4	\$257.4
20	KANYENDA TSAPERAS	31/7/2018- 13/8/2018	Payment of the tickets on the said dates	Recoverable	R. 8,659.36 \$585	\$585





21	TSAPERAS	31/07/2018- 13/08/2018	Payment for the stay at Radisson Blu Hotel	Recoverable at 50%	\$ 4,994.73 Taxed at \$2497.37	\$2497.37
22	TSAPERAS	02/08/2018 03/08/2018 04/08/2018 05/08/2018	Payment at Chicago's Bistro Payment at Radisson Blu Payment at Radisson Blu Payment at Chicago's Bistro	Recoverable at 50%	ZMW 865.00 267.96 480.00 Tot = 1612.96  Taxed at 806.48 <b>1 dollar =9.98 ZMW</b>  \$80.76	\$80.76
23	KANYENDA	13/08/2018	Payment at the Capital on Bath	Recoverable at 50%	R 2,680 Taxed at 1340 \$90.5	\$90.5
24	KANYENDA	18-19/08/18	Blantyre to JHB and from JHB to Blantyre	Recoverable	R 6,381.68 \$431	\$431
25	KANYENDA	10/10/17	Payment at Capital on Bath	Recoverable	R. 1,210 \$81.8	\$81.8
26	TSAPERAS	10/10/17	Payment at Radisson Blu using the master card	Recoverable	ZMW 9,324.92 \$934.3	\$934.3
27	KANYENDA	08/10/17 10/10/17	JHB to LUS LUS to JHB	Recoverable	R 8,983.29 \$606.97	\$606.97
28	KANYENDA	04/10/17 11/10/17	Blantyre to JHB JHB to Blantyre	Recoverable	R 4,994.29 \$337.4	\$337.4
<b>TOTALS</b>					<b>SUB TOTAL</b>	<b>SUB TOTAL</b>
Application for Production of CV's					<u><b>\$7,759.3</b></u>	<u><b>\$7,759.3</b></u>
Application for Production of CV's Preliminary Point on Lack of Jurisdiction					<b>GRAND TOTAL</b>  <b>\$7,759.3</b> <u><b>\$4211</b></u> <u><b>= \$11,970.3</b></u>	<b>GRAND TOTAL</b>  <b>\$7,759.3</b> <u><b>\$4211</b></u> <u><b>= \$11,970.3</b></u>
<b>NON-RECOVERABLE COSTS FOR BOTH APPLICATIONS</b>						



29	KANYENDA	20/01/2018-03/02/2018	Blantyre to JHB & JHB to Blantyre	Not recoverable, out of scope.	R 4,994.29 Taxed NIL	NIL
30	TSAPERAS	23/01/2018-26/01/2018	JBH to KRT & KRT to JHB	Not Recoverable, out of scope.	R 15,633.29 Taxed NIL	NIL
31	KANYENDA	23/01/2018-26/01/2018	JBH to KRT & KRT to JHB	Not Recoverable, out of scope.	R 15,633.29 Taxed NIL	NIL
32	KANYENDA	28/01/2018-30/01/2018	JHB to LUS and LUS to JHB	Not recoverable, out of scope.	Taxed NIL	NIL
33	TSAPERAS	28/01/2018-30/01/2018	JHB to LUS and LUS to JHB	Not recoverable out of scope.	Taxed NIL	NIL
34	KANYENDA	18-24 and 25 to 31/8/2018	Accommodations at the Capital on Bath	Not recoverable, out of scope.	R8,890 Taxed NIL	NIL
35	KANYENDA	14, 18 and 19/02/18	Accommodations and services at Capital on Bath	Not Recoverable, out of scope.	R 2,380  Taxed NIL	NIL
36	KANYENDA	15/02/2018-18/02/18	JHB to NBO NBO to JHB	Not recoverable, out of scope.	Taxed NIL	NIL
37	TSAPERAS	14/02/18-21/02/18	Blantyre to JHB and from JHB to Blantyre	Not recoverable, out of scope.	Taxed NIL	NIL
38	KANYENDA	14/02/18-21/02/18	Blantyre to JHB and from JHB to Blantyre	Not recoverable, out of scope.	Taxed NIL	NIL
39	KANYENDA	18/02/18-19/02/18	Accommodation at the Capital on Bath	Not recoverable, out of scope.	R 1,190 Taxed NIL	NIL
40	KANYENDA	14/02/18-16/02/18	Accommodation at Capital on Bath	Not recoverable, out of scope.	R. 2,380 Taxed NIL	NIL
41	TSAPERAS	30/01/18 and 05/02/18	Payment at Taj Pamodzi and payment using the card at BARCLAYS	Not recoverable out of scope.	ZMW4,224.98 R. 6,424.40 \$ 904.00 \$ 100.00 \$ 60.00  Taxed NIL	NIL
42	TSAPERAS	30.01.18	Payment receipt from Taj Pamodzi	Not recoverable not in recoverable period.	ZMW4,599.65 Taxed NIL	NIL
43	TSAPERAS	24.01.18	Registration and accommodation at Corinthia	Not recoverable. Out of scope	SDC 1,632.21 Taxed NIL	NIL

44	KANYENDA	24-25/01/18	Accommodation and services at Corinthia	Not recoverable, out of scope.	\$ 360.48 Taxed NIL	NIL
45	TSAPERAS	24-25/01/18	Accommodation and services at Corinthia	Not recoverable, out of scope.	\$ 360.48 Taxed NIL	NIL
46	TSAPERAS	24-25/01/18	Detailed payment of accommodations and other services at Corinthia	Not recoverable, out of scope.	\$ 746.70 Taxed NIL	NIL
40	KANYENDA	30/01/18	Bed and Breakfast at The Capital on Bath	Not recoverable out of scope.	R 1,190 Taxed NIL	NIL
41	KANYENDA TSAPERAS	23/01/18 26/01/18	JHB to KRT KRT to JHB	Not recoverable, out of scope.	R 31.267 Taxed NIL	NIL
42	KANYENDA TSAPERAS	23/01/18 26/01/18	Tickets related to these 2 trips	Not recoverable, out of scope.	R 31.267 Taxed NIL	NIL
43	KANYENDA	19/01/18 19/01/18 25/01/18	Payment at The Capital on Bath for accommodations	Not recoverable, out of scope.	R 6,050 R 3,630 R 7,450	NIL
44	KANYENDA	19/01/18	Payment at the Capital on Bath	Not in recoverable period.	R 2,420 Taxed NIL	NIL
45	KANYENDA TSAPERAS	22/01/18	Payment for visas for both Kanyenda and Tsaperas	Not recoverable it does not disclose any relationship with this matter.	SDG 1,400 Taxed NIL	NIL
46	TSAPERAS	28/11/17 29/11/17	JHB to LUS LUS to JHB	Not Recoverable, as the Client was already represented by his Counsel for purposes of service.	Taxed NIL	NIL
47	TSAPERAS	8-10/10/17	Payment at Radisson Blu for accommodation and services	Not Recoverable, The Client was represented by Counsel to file pleadings.	\$ 975.41 Taxed NIL	NIL
48	TSAPERAS	8-10/8/17	Payment at Corinthia	Not recoverable, out of scope.	\$ 1,170.43 Taxed NIL	NIL





49	KANYENDA	15/08/17	Payment at the Capital on Bath for accommodation	Not recoverable, out of scope.	R 1,190.00 Taxed NIL	NIL
50	KANYENDA	11/08/17	Payment at the Capital on Bath for accommodation	Not recoverable, out of scope.	R 2,380.00 Taxed NIL	NIL
51	TSAPERAS	13-15/8/17	Accommodation and services at Radisson Blu	Not recoverable, out of scope.	\$ 996.04 Taxed NIL	NIL
52	TSAPERAS	13-15/8/17	Tax invoice from Radisson Blu	Not recoverable out of scope.	\$ 996.04 Taxed NIL	NIL
53	KANYENDA	28/07/17 to 02/08/17	Payment at the Capital on Bath. A detail list of services received	Not recoverable out of scope.	R. 13,090.00 Taxed NIL	NIL
54	KANYENDA TSAPERAS	8-9/08/17 and 11/8/17	JHB to KRT KRT to JHB	Not recoverable out of scope.	R. 15,077.29 R. 15,077.29 Taxed NIL	NIL
55	KANYENDA TSAPERAS	13/8/ 17 15/8/17	JHB to LUS LUS to JHB	Not recoverable out of scope.	Taxed NIL	NIL
56	KANYENDA	16/8/17	JHB to Blantyre	Not recoverable out of scope.	Taxed NIL	NIL
57	KANYENDA	28/07/17	Payment at the Capital on Bath	Not recoverable, out of scope.	R. 7,140.00 Taxed NIL	NIL
58	KANYENDA TSAPERAS	02/08/17	Payment for visas for both Kanyenda and Tsaperas	Not recoverable, out of scope.	SDG1,400 Taxed NIL	NIL
59	KANYENDA	28/7/17 07/8/17	Lilongwe to JHB JHB to Lilongwe	Not recoverable out of scope.	Taxed NIL	NIL





N	TRANSLATED DOCUMENTS	DATE	AMOUNT IN RANDS & DOLLARS	OBSERVATIONS
1	Applicant's Reply to the Respondent's heads of Argument	4/8/18	R 23. 580.50/ \$2.025	To award R 22,080.5 at 100 %
2	Applicant's Heads of Argument & Submissions	26- 27/ 2/2018	R 171,456.70/ \$14,567	To award R 168,812.70 at 2/3 as it is for jurisdiction.
3	Submission for suspension of election of Judges	26- 27/ 2/2018	R. 111,390.40/ \$ 9,463. 92	Not recoverable, out of the scope
4		30/5/18	R. 108,464.00/ \$ 9,215.29	Not recoverable based on documents not identified.
5	Submission for suspension of the election of Judges	15/11/ 18	73,256.20/ \$ 6,223.97	Not recoverable out of the scope
6		26/10/ 18	R 17,400.00/ \$ 1,478.33	Documents not identified
7	Response to preliminary	25/10/ 17	R 184,792.00/ \$15,700.42	Recoverable is items 1 and 2 only i.e. R72,776 at 2/3 as related to jurisdiction = R 48,517.33
<b>TOTALS</b>			<b>SUB TOTAL</b>	<b>R 239,410. 53</b> \$16,176.38  <b>GRAND TOTAL</b> \$16,176.38 \$11,970.3 <u>= \$28,146.68</u>
Recoverable costs for translation of documents Recoverable costs under both applications				

#### 47. Summary of Costs Awarded

1. Instruction Fees – US\$7000
2. Documents Prepared and Perused – US\$946.66
3. General Care and Conduct – US\$2384
4. Taxation - US\$1000
5. Disbursements – US\$28,646.68
- TOTAL - US\$39,977.34**



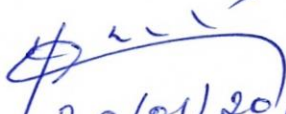


## 48. VAT and Interest

We award the Applicant VAT at 16.5% being the rate applicable in the Malawi. We also award interest on the total sum at the current Commercial Rate applicable in Malawi from the date hereof till payment in full.

DATED and DELIVERED this <sup>30th</sup>.....day of January 2019 AT LUSAKA, ZAMBIA.

  
  
 HON. NYAMBURA L. MBATIA - TAXING MASTER

  
 HON. PHILIPPE H. RUBONEZA – ASSISTANT TAXING MASTER

In the presence of:  
 Mr. Kanyunda for the Applicant  
 Mr. K. Chenda for the Respondent  
  
 30/01/2019  
  
 30/01/2019