REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

ELECTION PETITION NO. 14 OF 2017

(***Being a reference filed against the ruling of Hon. J.N Maragia, the taxing officer,***

on the 1st and 2nd respondents' party and party bill of costs dated 28th March 2018)

SETH AMBUSINI PANYAKO.....PETITIONER

VERSUS

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

THE RETURNING OFFICER, KAKAMEGA COUNTY.....2ND RESPONDENT

CLEOPHAS WAKHUNGU MALALA.....3RD RESPONDENT

RULING

1. The application for hearing is the Chamber Summons dated 30th November 2018, which seeks the setting aside of the ruling on taxation delivered on 18rh November 2018 by the taxing officer, Hon. Maragia, Deputy Registrar, taxation by this court of the bill of costs dated 28th March 2018 on the disputed items and costs of the application.

2. The factual background to the application is set out in the affidavit sworn in support, on 30th November 2018, by Grace Chepchirchir Ronoh. It is averred that the taxed bill of Kshs. 1,095,399.00 was replete with errors of principle, which invited the court to interfere with the taxed bill so as to correct those errors. It is further averred that the taxing officer failed to appreciate the nature, complexity, urgency and importance of the matter, and erred in principle on the item of instruction fees, saying that the taxed amount of Kshs. 700,000.00 was erroneous. It is also argued that the taxing officer erred in law and principle in disallowing items 58, 60, 62, 63, 64, 67, 70, 71, 72, 73, 74, 77 and 78, on travel costs, which involved the advocate's travel from Nairobi to Kakamega and Kisumu, though the matter was filed and taxed at Kakamega. It is contended that the taxing officer erred in principle in holding that the length of a folio was equivalent to one page of a document, which was contrary to paragraph 17(1) of the Advocates (Remuneration) order, 2009, which provided the length of a folio to be 100 words. It is deposed that the taxing officer erred in holding that the applicants were only entitled to costs of service of documents once, and not severally. Finally, it is deposed that the taxing officer erred in principle in failing to award the costs of taxation to the applicants.

3. There was no rejoinder to the reference by the petitioner, even after the court ruled that proper service been effected on him, in the interests of justice and fairness, which was done. From the record, the application, together with the supporting affidavit, hearing notice and submissions, were duly served upon the petitioner in person, as evidenced by the affidavit of service, on record, sworn, by Daisy Nabalayo Wakoli, on 28th August 2019. Due to absence of the rejoinder, the reference proceeded undefended.

4. The issues that I have identified for determination, after going through the filings , are :

a) whether the taxing officer erred in awarding the sum of Kshs. 700,000.00 as instructions fees to the applicants;

b) whether the taxing officer erred in taxing off items 58, 60, 62, 63, 64, 67, 70, 71, 72, 73, 74,77 and 78 in the applicants' party and party bill of costs, on travel costs;

c) whether the taxing officer erred in holding that the length of a folio is equivalent to one page of a document, and whether this was contrary to the provisions of Paragraph 17(1) of the Advocates(Remuneration) Order, 2009 ; and

d) whether the taxing officer erred in failing to award costs of taxation to the applicants.

5. On the first issue, the applicants, argued that the taxing of the instructions fees at Kshs. 700,000.00 for the election petition for the Senate seat for Kakamega County, which has 12 constituencies and 1,497 polling stations, was an error in law and in principle, and contrary to precedents on election petitions heard and determined by the High Court. the applicants further argued that taxed fees were not fair remuneration to the professional services rendered and were not commensurate with the work done, which included voluminous pleadings drafted and perused, the short timelines within which to carry out research, draft pleadings and attend court, the urgency of the matter, the will of the electorate of Kakamega County that was at stake and complexity of the matter. It was submitted that there was no consistency or basis for taxing the instruction fees at Kshs. 700,000.00, which was contrary the orders by the court on instruction fees , made in other election petitions touching on the County as an electoral unit in the 2017 election petition series.

6. The applicants further contended that the relevant provisions of the Order provide that the instruction fee sum cannot be less than Kshs. 500,000.00, but there was no specificity as to the maximum limit. The applicant submitted that taxing the instruction fees for the two applicants at Kshs, 700,000.00, was below the recommended scale as it meant that each of them receive Kshs. 350,000.00.

7. The Court of Appeal, in *Dickson Daniel Karaba vs. Kibiru Charles Reubenson & 5 others* [2018] eKLR held said:

> *"We have considered this issue at length as was recognized by the learned Judge who handled the petition on electoral disputes are in the nature of public interest litigation. They do not belong to the petitioner. The public in the electoral area and the general public in the Republic has an interest on how those matters are handled and determined. A balance must be drawn on the issue of costs where successful litigants are awarded costs but those who lose in electoral disputes should not appear to be punished by award of costs that may send the wrong message that a party should not approach the court if they feel aggrieved in the manner elections are conducted. We think these are necessary principles to guide a court in awarding costs in election petition."*

8. In *Rachier & Amollo Advocates LLP v National Hospital Insurance Fund Board of Management* [2019] eKLR **,** it was stated that:

> *"The principle to be applied when assessing instruction fee in a suit are well settled. The Court of Appeal in the case of Joreth Ltd v Kigano & Associates [2002] eKLR outlined the principle as follows:*
>
> > *"We would at this stage point out that the value of the subject matter of a suit for the purpose of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not ascertainable, the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, among other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances"*
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> *Similarly, the principles upon which a judge of the superior court interferes with the taxing officer's exercise of discretion are well settled. Ojwang J (as he then was) outlined these principles in the case of Republic v Ministry of Agriculture and 2 Others; Ex-parte Muchiri W'Njuguna & others [2006] as follows:-*
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> > *"The taxation of costs is not a mathematical exercise; it is entirely a matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award is somewhat too high or too low; it will only interfere if it thinks the award is so high or so low as to amount to an injustice to one party or the other…. The court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was manifestly excessive as to justify an inference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge. Needless to state, not all the above factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him. If the court considers that the decision of the taxing officer discloses errors of principle, the normal practice is to remit it back to the taxing officer for reassessment unless the judge is satisfied that the error cannot materially have affected the assessment… A taxing officer does not arrive at a figure by multiplying the scale fee, but places what he considers a fair value upon the work and responsibility involved… Since costs are the ultimate expression of essential liabilities attendant on the litigation event, they cannot be served out without either a specific statement of the authorising clause in the law, or a particularized justification of the mode of exercise of any discretion provided for…. The complex elements in the proceedings which guide the exercise of the taxing officer's discretion, must be specified cogently and with conviction. The nature of the forensic responsibility placed upon counsel, when they prosecute the substantive proceedings, must be described with specificity. If novelty is involved in the main proceedings, the nature of it must be identified and set out in a conscientious mode. If the conduct of the proceedings necessitated the deployment of a considerable amount of industry and was inordinately time-consuming, the details of such a situation must be set out in a clear manner. If large volumes of documentation had to be classified, assessed and simplified, the details of such initiative by counsel must be specifically indicated – apart, of course, from the need to show if such works have not already been provided for under a different head of costs..."*

(See *John Maina Mburu t/a John Maina Mburu & Co. Advocates v George Gitau Munene (Sued as Administrator of the Estate of Samuel Gitau Munene) & 3 others* [2015] eKLR)

9. In *KANU National Elections Board & 2 others v Salah Yakub Farah* [2018] eKLR, it was held that:

"*The principles applicable to a review of a taxing master's decision*

The general principles governing interference with the exercise of the taxing master's discretion were authoritatively stated by the South African court in the case of Visser vs Gubb 1981 (3) SA 753 (C) 754H – 755C as follows:-

> "*The court will not interfere with the exercise of such discretion unless it appears that the taxing master has not exercised his discretion judicially and has exercised it improperly, for example, by disregarding factors which he should properly have considered, or considering matters which it was improper for him to have considered; or he had failed to bring his mind to bear on the question in issue; or he has acted on a wrong principle. The court will also interfere where it is of the opinion that the taxing master was clearly wrong but will only do so if it is in the same position as, or a better position than, the taxing master to determine the point in issue . . . The court must be of the view that the taxing master was clearly wrong, i.e. its conviction on a review that he was wrong must be considerably more pronounced than would have sufficed had there been an ordinary right of appeal."*
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> *Differently put, before the court interferes with the decision of the taxing master it must be satisfied that the taxing master's ruling was clearly wrong, as opposed to the court being clearly satisfied that the taxing master was wrong. This indicates that the court will not interfere with the decision of the taxing master in every case where its view of the matter in dispute differs from that of the taxing master, but only when it is satisfied that the taxing master's view of the matter differs so materially from its own that it should be held to vitiate the ruling. (See Ocean Commodities Inc and Others vs Standard Bank of SA Ltd and Others [1984] ZASCA 2; 1984 (3) and Legal and General Insurance Society Ltd vs Lieberum NO and Another 1968 (1) SA 473 (A) at 478G.)*
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> *It is settled law that when a court reviews a taxation it is vested with the power to exercise the wider degree of supervision. (Johannesburg Consolidated Investment Co. vs Johannesburg Town Council 1903 TS 111).*
>
> *The Taxing Master is required to take into account the time necessarily taken, the complexity of the matter, the nature of the subject-matter in dispute, the amount in dispute and any other factors he or she considers relevant. The ultimate question raised by the applicant for review/setting aside the taxation is therefore whether the Taxing Master struck this equitable balance correctly in the light of all the circumstances of this particular case.*
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> *The scope of this application requires this court be satisfied that the Taxing Master was clearly wrong before interfering with her decision. The quantum of such costs is to be what was reasonable to prosecute or defend the proceedings and must be within the remuneration order. The determination of such quantum is determined by the Taxing Master and is an exercise of judicial power guided by the applicable principles.*
>
> *It is a well-established principle of review that the exercise of the Taxing Master's discretion will not be interfered with 'unless it is found that he/she has not exercised his/her discretion properly, as for example, when he/she has been actuated by some improper motive, or has not applied his/her mind to the matter, or has disregarded factors or principles which were proper for him/her to consider, or considered others which it was improper for him/her to consider, or acted upon wrong principles or wrongly interpreted rules of law, or gave a ruling which no reasonable man would have given.' (Per SMIT AJP in Preller vs S Jordaan and Another 1957 (3) SA 201 (O) at 203C - E.)*
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> *Guidance can also be obtained from the Canadian case of Reese vs. Alberta {1993} 5 A.L.R. (3rd) 40in which McDonald J. sets out the general principles applicable to awarding costs, at page 44:-*
>
> > *"While the allocation of costs of a lawsuit is always in the discretion of the court, the exercise of that discretion must be consistent with established principles and practice. … The costs recoverable are those fees fixed for the steps in the proceeding by a schedule of fees ….plus reasonable disbursements…."*
> >
> > *In principle, costs are awarded, having regard to such factors as:- (a) the difficulty and complexity of the issues; (b) the length of the trial; (c) value of the subject matter and (d) other factors which may affect the fairness of an award of costs. The law obligates the taxing master to take into account the above principles.*
> >
> > *Restating the principles of taxation of costs, the Ugandan Supreme court in Bank of Uganda vs. Banco Arabe Espanol SC Civil Application No. 23 of 1999 (Mulenga JSC).stated:-*
> >
> > *"Save in exceptional cases, a judge does not interfere with the assessment of what the taxing officer considers to be a reasonable fee. This is because it is generally accepted that questions which are solely of quantum of costs are matters with which the taxing officer is particularly fitted to deal, and in which he has more experience than the judge. Consequently a judge will not alter a fee allowed by the taxing officer, merely because in his opinion he should have allowed a higher or lower amount.*
> >
> > *Secondly, an exceptional case is where it is shown expressly or by inference that in assessing and arriving at the quantum of the fee allowed, the taxing officer exercised, or applied a wrong principle. In this regard, application of a wrong principle is capable of being inferred from an award of an amount which is manifestly excessive or manifestly low.*
> >
> > *Thirdly, even if it is shown that the taxing officer erred on principle, the judge should interfere only on being satisfied that the error substantially affected the decision on quantum and that upholding the amount allowed would*

cause injustice to one of the parties."

…The principles guiding the review of taxation in this court were settled in President of the Republic of South Africa and Others v Gauteng Lions Rugby Union and Another:

"a. Costs are awarded to a successful party to indemnify it for the expense to which it has been put through, having been unjustly compelled either to initiate or defend litigation.

b. A moderating balance must be struck which affords the innocent party adequate indemnification, but within reasonable bounds.

c. The taxing master must strike this equitable balance correctly in the light of all the circumstances of the case.

d. An overall balance between the interests of the parties should be maintained.

e. The taxing master should be guided by the general precept that the fees allowed constitute reasonable remuneration for necessary work properly done.

f. And the court will not interfere with a ruling made by the taxing master merely because its view differs from his or hers, but only when it is satisfied that the taxing master's view differs so materially from its own that it should be held to vitiate the ruling."

10. The order of the election court, made20th December 2017, and issued on 31st January 2018, stated:

"1…

2. THAT the costs are capped to an all-inclusive sum of Kshs. 3,000,000/- to be paid by the petitioner to the respondents

3. THAT the 1st and 2nd respondents will get half of the costs while the 3rd respondent will get the other half."

11. It is clear from that order that the much each of the applicants could receive as costs, before taxation, was Kshs. 750,000.00 to make up Kshs. 1,500,000.00 of the half that they were both entitled to as costs. This means that from the onset, the applicants' party and party bill of costs could not exceed Kshs. 1,500,000/- as the costs had been capped by the election court. Therefore, the applicants' bill of Kshs.3, 000,000.00, as instruction fees, had no basis or foundation. In preparing their party and party bill of costs, the applicants ought to have been guided by the decision of the election court, and, if at all they were dissatisfied with that decision, they ought to have appealed the same. Looking at the taxing officer's decision, there is indication that she took into account the "complexity of the case vis-à-vis the principle of access to justice" and the minimum scale fees payable, Kshs. 500,000.00 , as per the Advocates Remuneration Order, 2014, in arriving at the decision to tax the instructions fees at Kshs. Kshs.700,000.00 The amount was in line with the decision of the election court as the same did not exceed the capped amount of Kshs. 1,500,000.00, that the applicants were entitled to, and the taxing officer took into account the relevant factor of the "complexity of the case vis-à-vis the principle of access to justice." I find the decision to be sound and judicious, and I see no reason to interfere with the same, as the said amount was not manifestly low so as to occasion an injustice on the part of the applicants. It is also do not find that the taxing officer applied the wrong principles in arriving at the decision to tax the instructions fees as was contended by the applicants.

12. The applicants had submitted on the getting up fees, that was taxed, stating that it was erroneous, as the basis for its taxation was replete with errors in principle.

13. Schedule 6 paragraph 2 of the Advocates Remuneration (Amendment) Order, 2014 provides as follows:

"2. Fees for getting up or preparing for trial

In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:

Provided that—

(i) this fee may be increased as the taxation officer considers reasonable but it does not include any work comprised in the instruction fee;

(ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 15% of the instruction fee allowed on taxation may, if the judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned;

(iii) in every case which is not heard the taxing officer must be satisfied that the case has been prepared for trial

under this paragraph."

14. From the record of the election court, though the matter was dismissed at a preliminary stage, for the reason that the petition was fatally defective, as it denied the applicants an opportunity to know the case they were faced with, the matter had been set down for hearing, nevertheless, and the respondent had occasioned an adjournment, in respect of which he was penalized, to pay costs to the applicants. The applicants were ready to proceed with the hearing of the petition. In any case, the taxing officer had taxed the getting up fees at one-third of the instruction fees, which was in conformity with paragraph 2(i) Schedule 6 of the Advocates Remuneration (Amendment) Order, 2014, and I find no reason to interfere with the same as she correctly applied the relevant principles.

15. On the second issue, the applicants argued that the taxing officer erred in law and principle in disallowing items 58, 60, 62, 63, 64, 67, 70, 71, 72, 73, 74, 77 and 78, on travel costs, in the applicants' party and party bill of costs, and yet the same involved advocate's travel from Nairobi to Kakamega and Kisumu . The applicants submitted that that was contrary to the established principles of taxation, and that the taxing officer failed to appreciate that the applicants' firm of advocates on record was based in Nairobi and attendance was in Kakamega and Kisumu, which entailed travel, arguing that there was no single time the advocate failed to attend court.

16. The applicants submitted that the taxing officer misapprehended and misapplied the provisions of the Advocates (Remuneration) (Amendment) Order, 2014, and failed to appreciate that the said Order applied together with the Advocates(Remuneration) Order, 2009, which was the principal Order that laid down the principles and rules of taxation as opposed to the "mere" schedules in the 2014 Order. The applicants argued that the taxing officer ought to have taken into account the provisions of Schedule V Paragraph 7 of the 2009 Order, which provide for remuneration of advocates for journeys from home for every day of not less than seven hours employed in travelling. The applicants further argued that the taxing officer did not have jurisdiction to disallow the travelling costs claimed, and that that decision deprived them of fair disbursement of the costs incurred in defending the petition, which was prejudicial to them.

17. Indeed, the taxing officer's ruling states that the items billed by the applicants were taxed off because, according to her, travelling expenses were not provided for under the Advocates(Remuneration)(Amendment) Order, 2014. In *NO Sumba & Co Advocates vs. Piero Cannobio* [2017] eKLR, it was said that: *"The applicable Advocates (Remuneration) Order…would be that which was operational at the time of filing suit..."*

18. In the instant case, the petition in the election court was filed on 8th September 2017 and , vide Legal Notice Number 35 of 2014 , all schedules of the Principal Order (ARO,2009) were deleted and substituted with new schedules, which are those in the Advocates (Remuneration)(Amendment) Order, 2014. It is clear that the operational remuneration order at the time of filing the suit was the Advocates Remuneration(Amendment) Order, 2014, and therefore the Advocates Remuneration Order, 2009, does not apply in this particular case as was contended by the applicants

19. Looking through the Advocates Remuneration(Amendment) Order, 2014 I note that "Journey From Home" is provided for under Schedule 5 Part II Paragraph 6 of the header "FEES IN RESPECT OF BUSINESS THE REMUNERATION FOR WHICH IS NOT OTHERWISE PRESCRIBED OR WHICH HAS BEEN THE SUBJECT OF AN ELECTION UNDER PARAGRAPH 22" as follows:

> "*JOURNEY FROM HOME*
>
> *For every day of not less than seven hours employed in travelling - 15,000*
>
> *Where a lesser time than seven hours is so employed, per hour - 2,500*
>
> *The taxing officer may increase or diminish the above fee for any special reason."*

20. It was, therefore, incorrect for the taxing officer to rule that the Advocates (Remuneration) (Amendment) Order, *2014* did not provide for travel costs, when the Order in fact did, as can be seen from the aforementioned provision. I am in agreement with the applicants that all the taxing officer could have done was increase or diminish the scale fees while giving special reasons.

21. On the third issue, paragraph 17 of the Advocates (Remuneration) Order, *2009*, which was not deleted by the Advocates Remuneration(Amendment) Order, 2014 , provides that:

> "*17. Length of folio.*
>
> *(1) A folio shall for all purposes of this Order be deemed to consist of 100 words and any part of folio shall be charged as one folio.*
>
> *(2) A sum or quantity of one denomination stated in figures is to be counted as one word: e.g. "?25,564 16s 8d." is to be counted as three words, and "254 feet 11 inches" is to be counted as four words."*

22. Under Item 9, the taxing officer translated 87 pages of the petition to mean 87 folios. The same can be said in Item 3. This was clearly a misrepresentation of the definition of a 'folio' above and, therefore, an error in principle.

23. On the fourth issue, I have stated above, that the applicants contended that the taxing officer erred in in failing to award the costs of taxation to them even after they had prayed for them in the bill of costs that was before the taxing officer, which error, according to them, offended paragraph 77(1) of the Advocates (Remuneration) Order, 2009. A perusal of the applicants' party and party bill of costs, dated 28th March 2018, indicates that they had sought costs of taxation as 'Item 80.' The taxing officer did not make any determination on the same in

her ruling of 18th November 2018, which implies that no costs for the taxation were awarded to the applicants.

24. In *Bernard Gichobi Njira vs. Kanini Njira Kathendu & another* [2015] eKLR, said:

> *"The Black's Law Dictionary defines "Taxation of Costs" as follows:*
>
> > *"The process of fixing the amount of litigation-related expenses that a prevailing party is entitled to be awarded."*
>
> *On the other hand the same dictionary defines assessment of costs as follows:*
>
> > *"Determination of the rate or amount of something (costs in this instance) – imposition of something (costs) e.g. fines..."*
>
> *The Oxford English Dictionary defines "taxation of costs" as follows:*
>
> > *"To examine and assess the costs of a case."*
>
> *The same dictionary (Oxford) defines 'assessment' as follows:*
>
> > *"To evaluate or estimate the nature, value or quality…to set the value of a tax, fine, etc. for a person at a specified level."*

25. The issue of 'costs of the taxation' is not provided for in the Advocates Remuneration Order, 2014, but the applicants claimed that the applicable Order was the Advocates Remuneration Order, 2009, which was the principal order. Paragraph 77(1) of the Advocates Remuneration Order, 2009, which was not deleted by the Advocates (Remuneration)(Amendment) Order, 2014 provides as follows:

> *"77. Where more than one-sixth mixed off.*
>
> > *(1) If more than one-sixth of the total amount of a bill of costs, exclusive of court fees, be disallowed on taxation, the party presenting the bill for taxation may, in the discretion of the taxing officer, be disallowed the costs of such taxation.*
> >
> > *(2) The decision of the taxing officer under this paragraph shall be final."*

26. From the taxing officer's decision, more than one-sixth of the total amount of bill of costs, exclusive of court fees, had been disallowed. This may have been the reason why the costs of taxation was disallowed, which in any case, was proper as going by the relevant provisions cited above.

27. In conclusion, I find that the taxing officer applied her mind and principles of taxation correctly, when she awarded the applicants the sum of Kshs. 700,000.00, as instructions fees and Kshs. 233,334.00, as getting up fees or preparing for trial. I find that the taxing officer correctly applied various factors, such as the complexity of the case vis-à-vis the principle of access to justice, the judgment of the election court and the Advocates Remuneration (amendment) Order,2014, in arriving at her decision, which was sound and judicious, and which I find i have no reason to interfere with. I find that the applicable remuneration order is the Advocates Remuneration Order, 2014, which was operational at the time of filing the case in the election court. The 2014 Amendment Order, as well as the 2009 principal Order provided for travel costs, and, as such, it was an error for the taxing officer to state that the same were not provided for. It was also erroneous for the taxing officer to hold that one page translated to one folio, as this was a misinterpretation of Paragraph 17 of the Advocates (Remuneration) Order, 2009 which was not deleted by the Advocates Remuneration (Amendment) Order, 2014. It is my finding that the taxing officer applied her mind correctly in disallowing the costs of the taxation as she had taxed more than one-sixth of the total bill of costs , and her decision was in conformity with Paragraph 77(1) of the Advocates Remuneration Order, 2009, which was not deleted by the Advocates (Remuneration)(Amendment) Order, 2014.

28. In light of the foregoing, I uphold the decision of the taxing officer on Items 1, 2 and 80 of the bill of costs. On the other hand, I order that the bill of costs be remitted back to the taxing officer, Hon. Maragia, for the purpose of taxation of Items Nos. 3, 9, 58, 60, 62, 63, 64, 67, 70, 71, 72, 73, 74, 77 and 78 , with respect to folios and travel costs. The rest of the decision on the other items is hereby upheld. The applicants shall have half the costs of the reference.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 27TH DAY OF FEBRUARY 2020.

W MUSYOKA

JUDGE