REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISC. SUIT NO. 354 OF 2015

J.M.NJENGA & COMPANY ADVOCATES....................................APPLICANT

VERSUS

FRANCIS CHEGE MAINA ....1ST RESPONDENT

JOSEPH MACHARIA MAINA ....2ND RESPONDENT

JAMES MUTHAIGA MAINA ....3RD RESPONDENT

DEDAN MUTHAIGA MAINA ....4TH RESPONDENT

RULING

1. The ruling herein relates to two applications. The notice of motion application dated 10th January 2018, brought under the provisions of; Order 50 Rule 1 of the Civil Procedure Rules, Section 51 of the Advocates Act (Cap 16 Laws of Kenya) as read together with Rule 7 of the Advocates (Remuneration) Order 2009, and all other enabling provisions of the law.

2. The second application is a chamber summons application dated 25th January 2018, brought under the provisions of Paragraph 11(2) of the Advocates Remuneration Order and Judicature Act (Cap 8) of the Laws of Kenya.

3. The Applicant in the notice of motion application is seeking for orders that, judgment be entered in its favour as against the Respondents, jointly and severally for the sum of Kshs. 48,981,777.65, plus accrued interest thereon at the rate of 12% per annum from 22nd December 2017, until payment in full and the costs of the application be provided for.

4. The application is based on the grounds on the face of it and an affidavit dated 10th August 2018, sworn by Jeremy Njenga, an Advocate of the High Court of Kenya, practicing as a partner in the firm of; J.M. Njenga & Company Advocates. The Applicant avers that, it filed an Advocate-Client Bill of costs (herein “the bill”), and the same was taxed vide a ruling delivered by the Taxing master on 10th June 2016. Being dissatisfied with the decision therein, the client filed a notice of motion application dated 3rd August 2016, seeking for orders that, the ruling be reviewed and/or set aside and in the alternative, the bill be referred to another Taxing master for purposes of taking accounts on various items listed therein.

5. Upon hearing the parties on the application, the court delivered its ruling on 20th July 2017, and ordered inter alia; that “the instructions fees based on the special damages under prayer (b) be re-calculated based on a period of thirty (30) months and directed the Taxing master to undertake the same. In addition, the fees awarded for getting up, was to be recalculated based on the recalculated instruction fees and the special damages.

6. The Applicant avers that, subsequently the Taxing master reconsidered the bill based on the court’s directions and rendered a ruling on 22nd December 2017, whereby it was ordered that:-

> *“The total amount due to the Applicant plus interest is therefore Kshs. 39,674,731.80 plus Kshs. 9,234,635.85 (interest) plus Kshs. 74,410= Kshs. 48,981,777.65”.*

7. That as a result, the Applicant seeks for judgment for that sum of money. It is averred that there is no stay of the ruling, or a challenge on the taxed amount neither has the certificate of taxation been set aside, varied and/or reviewed. Further, there is no dispute to the retainer fees, therefore, it is in the interest of justice that the orders sought for be granted.

8. However, the Respondents opposed the application based on the replying affidavit dated 18th April 2018, sworn by James Kihara Maina, the 2nd Respondent herein. He deposed that, the application was premature and without basis for reasons that, the retainer is in dispute and there is need to interrogate the extent of the Advocates instructions upon which fees are claimed. Further the Applicant should file a suit pursuant to the provisions of the Advocates Act, (cap 16), laws of Kenya to enforce the payment.

9. The Respondent argued that, the Applicant has not annexed a letter of instructions to the Affidavit in support of the application in proof of her claim of retainer. Further, the certificate of costs issued and relied on, is in dispute and contested by way of the application dated 25 th January 2018, which is still to be heard before judgment can be entered on taxed costs.

10. Finally, the Respondents averred that they are agreeable to pay a sum of; Kshs. 8,751,600.00, which the parties agreed on and as such there is no basis for the grant of summary judgment as prayed for.

11. The application was disposed of vide written submissions, which I have considered herein alongside the arguments advanced. The application is premised on the provisions of; Order 50 Rules 1 of the Civil Procedure Rules, which stipulates that;

> *"Where by these Rules or by any judgment or order given or made, time for doing an act or taking any proceedings is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months unless otherwise expressed"*

12. It is further based on the provisions of Section 51 of the Advocates Act, which provides that;-

> *(1) "Every application for an order for the taxation of an Advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an Advocate shall be made in the matter of that Advocate;*
>
> *(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs."*

13. Finally, the Applicant relied on the provisions of 'Rule 7 of the Advocates (Remuneration) Order 2009' which states follows:-

> *"An advocate may charge interest at 14 per cent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, provided that such claim for interest is raised before the amount of the bill shall have been paid or tendered in full."*

14. To revert back to the application, the claim herein is basically for judgment to be entered on the basis of the certificate of taxation herein. From the provisions of; Section 51(2) of the Advocates Act, the court has the discretion to make orders as it deems appropriate and just, in relation to the certificate of the Taxing master unless the retainer is disputed. In that regard, the court can make an order that judgment be entered for the sum certified in the certificate of taxation costs.

15. It suffices to note that, the certificate of the Taxing master shall be final as to the amount covered therein, unless it has been set aside, varied and/or altered otherwise. Therefore, the sum stated therein deemed to be final. The certificate of taxation herein dated 9 th January 2018, was issued in the sum of Kshs. 48,981,777.65. It has not been set aside, varied or reviewed.

16. However, the Respondents averred at paragraph 2 of the Replying Affidavit that, the retainer in this matter is disputed. However, Hon. Justice Ringera (Rtd) held in the case of; *Hezekiah Ogao Abuya t/a Abuya & Company Advocates vs Kuguru Food Complex & Another Misc. Application No. 400 of 2001 (unreported)*, an Advocate duly instructed is retained and where there is no dispute that an Advocate was duly instructed by the client in any matter, the retainer cannot be a basis of dispute.

17. The Respondents herein deposed in the replying affidavit that, they have already paid the Applicant a sum of Kshs. 8,751,600.00 through the firm of; Llyod Masika Company Ltd. If the issue of retainer is in dispute, what then was the Respondent paying the Applicant for?

18. The Respondent further averred that, the firm of; Khaminwa & Company Advocates was initially on record and it is imperative that the court evaluates whether or not the services for which fees are claimed were rendered by the said firm and/or the Applicant herein. From these averments, it is clear that, the Applicant took over the brief from the initial law firm.

19. It is settled law that, an Advocate need not obtain written instructions from the client to represent that client in a particular dispute (see; *Ochieng, Onyango, Kibet and Another vs Adopt A Light (supra).* Even then, all through, the Respondents have not raised the issue of retainer nor the amount claimed. Be that as it were, as aforesaid the necessary prerequisites, pursuant to the provisions of Section 51(2) of the Advocates Act, are proof that, the certificate of taxation has not been set aside, altered, varied or reviewed, and that, the retainer is not in dispute. Therefore, judgment can be entered as prayed for herein with costs.

20. However, before I conclude I note that, the Respondents have raised other issues which require to be considered before final orders are made. These issues are:-

> *(a) Whether the Applicant should have filed a suit under Section 48 and 49 of the Advocates Act, instead of seeking for summary judgment under Section 51(2) of the Act;*

(b) Whether there is a pending Reference dated 25th January 2018, should be determined first before judgment can be entered;

(c) Whether the Advocate was paid Kshs. 8,751,600 as final and full settlement and whether that is an issue of evidence reserved for hearing of a main suit.

21. I have considered the first issue, in the light of the provisions of Section 51(2) of the Act, which empowers the court to enter judgment on the basis of a valid certificate of taxation, and I find that the rationale thereof is the expeditious and cost-effective disposal of matters before the court. As stated by Hon. Justice Vishram J (as he then was), in the case of; *Owino Okeyo & Company Advocates vs Mike Maina & Another (2006)* the subject provisions makes it expedient, less costly for the Advocate to obtain quick judgment.

22. The spirit of Article 159(2) of the Constitution of Kenya and the overriding objectives under Section 1A of the Civil Procedure Act, aims at the efficient and expeditious disposal of matters in court. In that case I find the argument by the Respondent that the Applicant should pursue its rights under Section 48 and 49, of the Advocates Act.

23. I shall revert back to the prayers and the decision on the subject notice of motion. For now, I shall deal with the Reference dated 25th January 2018. It is supported by the grounds thereto and an affidavit sworn by Joseph Macharia Maina, the 2nd Defendant/Applicant. The Applicant is seeking for orders as follows;-

(a) There be stay of execution of the order of costs granted in favour of the Respondents made on 22nd December 2017 pending the hearing and determination of the application;

(b) The Honourable court be pleased to review and/or set aside the ruling of the taxing master on 22nd December 2017 in the amended bill of costs dated 3rd August;

(c) The court do proceed to tax the bill under the appropriate provisions of the law;

(d) That the costs of this reference be provided for.

24. The Applicants avers that, on 22nd December 2017, the Taxing master rendered a decision on the bill of costs filed by the Advocates (herein "the Respondent") but they are dissatisfied with that decision. It is argued that, the learned Taxing master proceeded on the wrong premises in awarding the instructions fees as Kshs. 14,633,794, yet the Respondent took up the matter from another firm after the initial filing, and did not execute the instructions to completion.

25. Further, the bill should have been taxed taking into account the amount already paid to the Advocate. Similarly, the Taxing master erred in fact and law, in failing to consider the value of the subject matter in relation to instructions fees, and in total disregard of the provisions of the Advocates Remuneration Order, and the arguments advanced on the same.

26. Finally, the Applicant argued that, the Taxing master failed to give reasons in her ruling for allowing or disallowing some items even after the same had been brought to her attention in the written submissions. The Applicant prayed that the application be allowed in that, if the orders sought are not granted, they will suffer substantial or irreparable loss.

27. However, the application was opposed by the Respondent vide a Replying affidavit dated 5th February 2018, sworn by Victoria Wambua, an Advocate of the High Court; practicing in the Applicant's law firm. She deposed that, the application is not only legally misguided and misplaced but is a deliberate attempt by the Applicants not only to waste the court's time with vexatious applications but also delay the payment of the amount due.

28. The Respondent further opposed the application based on the grounds that:

a) there are currently no execution orders capable of being stayed;

b) the ruling delivered by the taxing master on 22nd December 2017 was a result of the directives issued by the Honourable court in the ruling of 20th July 2017, in which the taxing master was directed to do calculations on some specific items. The taxing master did not therefore re-tax the bill of costs afresh or in its entirety as to give basis for an alleged Reference against the ruling of 22nd December 2017;

c) that if annexure "JMM 1" is anything to go by, then the instant application is premature as no reasons have been given so far by the taxing master as to form basis of a reference but in all honesty, save for a party that would want to be vexatious, there cannot be a reference over a reference;

d) if the application is properly on record, then the Respondents have not disclosed where the taxing master erred, i.e. the item(s) the taxing master dealt with outside the ambit and/or parameters set by the High Court in its ruling of 20th July 2017;

e) the grounds under which the application is based on relates to issues already canvassed and ruled on by the court that, the Advocate is entitled to full instruction fees irrespective of the point at which they joined the matter thus the current application is nothing but a regurgitation of issues that are res judicata;

f) the issue of alleged amounts paid to the Advocate has been canvassed previously and a decision made and the same cannot be regurgitated over and over again;

g) There was no order made by the High court directing the taxing master to review the bill, as alleged in paragraph 5 of the affidavit in support but rather, only specific items were to be recalculated based on guidelines set by the court.

29. Finally, the Respondent averred that, the Applicants will not suffer any loss as the amount in issue is already secured by an order issued in High Court Misc. 459 of 2015. Further, there exists no basis why payment of the taxed amount should not be done.

30. The Respondent also relied on the grounds of opposition dated 8th February 2018, and argued that, the High court has already addressed the issues raised by the Applicants herein through the notice of motion application dated 3rd August 2016, in its ruling of 20th July 2017. It is now functus officio and/or the issues raised herein are; Res judicata and the court cannot be called upon to once again deal with them.

31. The Respondent submitted that, if the Applicants are dissatisfied with the High Court's ruling dated 20th July 2017, the remedy lie in the Appeal with leave to the Court of Appeal. That the High court can only grant stay pending appeal, on the basis of a competent Appeal duly filed but not on the basis of the purported Reference. Yet there is no Appeal filed against the stated High court ruling as such there is no basis to stay payment and/or execution.

32. The application was disposed of by filing of submissions, whereby the Applicants submitted that, taxation is a judicial exercise that enjoins a taxation master to apply the principles of equity, fairness and justice while considering a bill of costs. It is not merely a mathematical exercise removed from the underlying facts but must as of necessity infuse the judiciousness that is required of every decision of the court based on the facts in issue.

33. The result thereof must be relatable on a scale of equity and justice, to the facts and where that is not considered, and then the discretion of the court is available to set aside such a decision. In addition, the duty to exercise fairness and equity is on the part of all judicial officers including a Taxing master as provided for in the Constitution of Kenya and thereby binds all judicial officers to the principles enunciated therein.

34. The Applicants relied on Article 159 (2) of the Constitution of Kenya which provides that; in exercising judicial authority, the courts and tribunals shall be guided by principles inter alia; that the purposes and principles of the constitution shall be protected and promoted, and Article 10(1) and (2)(b), which provides that the national values and principles of governance shall bind all persons whenever any of them enacts, applies or interprets any law.

35. The Applicants relied on the case of; *Republic vs Minister for Agriculture & 2 others ex parte Samuel Muchiri Wanjuguna & others (2006) eKLR*, where the Court held that:

> "*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 award was manifestly excessive as to justify an inference that it was based on an error in principle or the fee awarded was manifestly excessive as to justify an inference that it was 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."*

36. The Applicants submitted that the award of Kshs. 48,981,771.65 by the Taxing master in her ruling made on the 22nd December 2017 is manifestly excessive in the circumstances, as it is not relatable to the underlying services alleged to have been rendered by the Advocate, only drew and filed a further amended Plaint dated 20th November 2012, including a prayer for Special damages in the sum of Kshs. 1,011,543,539.00 and a further claim for Kshs. 5,000,000 per month. The Advocate did not attend any hearing of the matter or any substantive proceeding towards the realization of the claim.

37. Therefore, the Taxing master was wrong to consider and calculate the instructions based only on the amount pleaded in the pleadings and nothing else and whereas, the amount pleaded in the further amended plaint is an important factor for consideration, it is not the only factor. The Taxing master was under a legal obligation to consider other material factors that are relevant to the computation and award of instructions fees.

38. That, Schedule 6(1) (b) of the Advocates (Remuneration) Order, 2014, which is the applicable scale for costs of proceedings in the High court, the Taxing master is empowered in exercise of her discretion, to reduce the instruction fees based on her consideration of other relevant factors, so as to come up with a fair and equitable award on costs.

39. The Respondents relied on the case of; *Republic vs Minister for Agriculture & 2 Others ex parte Samuel Muchiri Wanjuguna & Others (2006) eKLR*, where the court stated that;

> "*of court it would be an error of principle to take into account irrelevant factors or to omit to consider the 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 the matter, the amount or value of subject matter, the interest of the parties, the general conduct of proceedings and any discretion 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 that may exist in the actual case before him/her.....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 with either a specific statement authorizing 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 conscientious mode. If the conduct of the proceedings necessitated the deployment of 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."

40. Similarly the Respondents cited the case of; *Nguruman Limited vs Kenya Civil Aviation Authority & 3 others (2014) eKLR* , which cited *Premchand Raichand Ltd vs Quarry Services of East Africa Ltd (1972) EA, 162,* where the Court outlined the principles of taxation as follows;-

a) That costs should not be allowed to rise to a level as to confine access to justice to the wealthy;

b) That a successful litigant ought to be fairly reimbursed for his costs;

c) That the general level of remuneration of Advocates must be such as to attract recruits to the profession;

d) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party.

41. The Applicant further relied on the Court of Appeal decision in; *Joreth Limited vs Kigano and Associates (2002) EA, 92,* where the Court stated that some of the factors to consider in taxation of a bill are; the importance of the matter, general conduct of proceedings, nature of the case, time taken for its dispatch and the impact of the case.

42. The Applicant argued that reliance on the pleadings only to calculate instruction fees is a clearly wrong criteria and one that is susceptible to abuse especially in the absence of other accentuating factors, taken together would justify such an excessive award of Kshs. 14,000,000. The case of; *Lubullelah & Associates Advocates vs N.K. Brothers Limited (2014) eKLR*, was cites where the court stated as follows;-

"whereas as it was rightly argued by the Applicant that the instruction fee is an independent and static item of law and take up a matter by his client, it is determined from the pleadings, judgment or settlement of the parties as contemplated under Schedule VI (1) (iii)(a) of the Advocates (Remuneration) Order, it cannot and should not be determined sorely by the pleadings. The applicants proposition that the primary reference for determining the subject matter so as to determine the instruction fee is the pleadings does not find favour with the court.....from the applicant's submissions, it is evident that it sought to have the value of the subject matter based on the amounts claimed for liquidated pecuniary claim, declaration for breach of contract of the said sum and compound interest. This cannot form the basis of the subject matter as they could be allowed or disallowed. They are merely figures that a party claims in its pleadings and they can only be determined after hearing the cases on merit. If the position of calculating the subject matter based on sums claimed in a pleading, nothing would stop any rogue Advocate from plucking figures from the air because he would know that his instruction fee would be based on the figures indicated in the pleadings, despite knowing very well that he would not succeed in such a claim at the end of the day. This would be a traversity and miscarriage of justice."

43. The Applicants submit that in the alternative and without prejudice to the foregoing, the Taxing master applied the wrong scale in determining the instruction fees and thereby arrived at the wrong figure, and failed to consider that, there was no a defence filed denying the liability for the amended claim. It follows that, the application of Schedule VI, paragraph 1(b) of the Advocates Remuneration (Amendment) Order 2014, was based on an assumption that the claim was defended.

44. That the provisions of; Schedule VI, paragraph 1(b) provides that;

"to sue in any proceeding (whether commenced by plaint, petition, originating summons or notice of motion) in which no defence or other denial of liability is filed, where the value of the subject matter can be determined from the pleading, judgment or settlement between the parties and........"

45. The Applicants thus submitted that the application of the wrong or different scale produced substantially different award and amounts to an error in principle. The court should direct that the matter be re-committed to another Taxing master for consideration under the correct schedule.

46. However the Respondent reiterated that from the Applicants submissions, it is apparent that they are approaching the matter as if the Taxing master in her ruling of 22nd December 2017 was dealing with a fresh-taxation of the amended bill of costs dated 14th December 2015, yet she was simply playing her role and merely calculating figures as directed by the Honourable court. Therefore if any Reference can be filed and/or entertained on the taxation orders of 22nd December 2017, such reference can only be limited to the issues dealt with by the Taxing master as directed by the Honourable Judge, and if she either misdirected herself or erred in her calculations on the same.

47. The Respondent submitted that the Applicants submissions at paragraphs 3, 4, 5, 6, 7 and 8, contain a treatise on the principles applicable in assessment of instructions fees, the quantum of work undertaken by the Advocate and a generalized attack on the final figure of Kshs. 48,981,777.65, the summarized amount due and payable, as per the ruling of 22nd December 2017, yet these were not issues canvassed before the Taxing master.

48. That if at all the issues raised in the said paragraphs were raised during the initial taxation that led to the taxation orders of 10th June 2016 and subsequently addressed and decided on with finality in the ruling of 20th July 2017, which has not been appealed against, reviewed and/or set aside, then there is no valid challenge and the court should dismiss the application with costs.

49. The Respondent as a matter of procedure, paragraph 11(1) of the Advocates Remuneration Order requires that, a notice of objection be filed within fourteen (14) days from date of ruling. That the ruling challenged herein was delivered on 22nd December 2017, yet the letter seeking for reasons was filed on 22nd January 2018, on the 18th day after lapse of the statutory period of the fourteen (14) days having lapsed on 4th January 2018, yet no leave was sought or any explanation given for the delay. Therefore the Reference incompetent and ought to be struck off and/or dismissed this with costs.

50. The Respondent submitted that, the application for judgment, has been pending since 29th June 2016, but more so, was eventually amended and filed before the Applicants Reference and yet they have been indolent in filing the Reference, which was only done, after the application for judgment, That, does not find support in the principles of Equity that; "it assists the vigilant and not the indolent" and the Applicants cannot argue that, the application for judgment is premature.

51. The Respondent submitted that the issue of the payment of Kshs. 8,751,600, was the subject of the 1st Reference and while arguing the said Reference, the Applicant submitted as follows:-

> *"As regards the alleged payment made to the Respondents and which the Taxing master allegedly failed to consider it is worth emphasizing that, save for baseless statements/allegations of the payment, no documentary evidence was placed before the Taxing master as proof of the alleged payment amounting to Kshs. 3,240,000 as per items/prayers 2(a) – (c) of the notice of motion. That the issue before the Taxing master was not how much had been paid to the Respondent but rather the total fees payable for services rendered and logically, if it's true any payment was made, it would be only procedural and just that the amount paid be deducted from the gross taxed figure.*
>
> *It is not for the Taxing master to do that arithmetic but rather for the parties at the time of payment."*

52. The Respondent distinguished the cases of; Njogu & Company Advocates (supra) and Meenye & Kirima Advocates (supra) cited by the Applicants where the court declined to enter judgment under Section 51(2) of the Act, in that, the cases were in relation to the payment of costs in full and dispute to the accounts respectively. In the instant case, there is no evidence, the Respondents have been paid in full or accounts are in dispute, but more so, as stated above, the issue of payment made has been dealt with and conceded to. There is nothing to adduce evidence to, only documents in proof of payment. Finally, as held in the case of; Kithi & Co. Advocates vs Menengai Downs Ltd 2015 eKLR (supra) ,*"an objection under Rule 11 is not a stay of proceedings by itself. That does not alter or set aside the certificate of Taxation."*

53. In conclusion the Respondent reiterated that, prayer (a) of the application is superfluous in that, there is no judgment entered so far for the taxed costs and there is no threat of execution particularly so in light of the Reference.

54. I have considered both applications and I find that, as regards the Reference, it is a fact that the same arises out of the impugned decision of the Taxing master and which decision arose out of the directions and/or the orders of the High Court, issued pursuant to the hearing of the first Reference. It is therefore a fact that this is the second Reference in relation to the same subject matter. I say so because it must be clear that, the court cannot revisit issues raised in the first Reference fully dealt with.

55. Therefore to put this matter in perspective, I shall reproduce the orders the court gave on hearing and determining the first Reference and which informed the second taxation exercise. The court clearly stated at paragraph 23 as follows:-

> *i) "...*
>
> *ii) Instruction fees based on special damages under prayer (b) be calculated based on a period of thirty (30) months. The taxing master to undertake the same.*
>
> *iii) The fees awarded for getting up be re-calculated based on the instruction fees arising from (i) and (ii) above;*
>
> *iv) ....*
>
> *v) Interest be awarded on the taxed amount at the stipulated date"*

56. I have therefore considered the decision of the Hon Taxing master's and I find that, she indeed dealt with the issues referred to her. She clearly states as follows;-

> *"I have considered the submissions made by the Applicant and the Respondent, and pursuant to the orders of the Judge, the instructions fees, the getting up fees and the interest are recalculated as hereinunder"-*
>
> *Instruction fees:*
>
> *Instruction fees based on special damages under prayer (b) of the Plaint is recalculated based on a period of thirty (30) months as follows:-*
>
> *Value of the subject matter is Kshs. 1,011,543,539 (prayer (a) plus (Kshs. 5,000,000 x 30) Kshs. 150,000,000 = Kshs. 1,161,543,539.00 and pursuant to provisions of paragraph 1(b) of Schedule VI of the 2009 Advocates Remuneration Order, the fees works out as follows:-*

1st Kshs. 1,000,000 - Kshs. 77,000.00

2nd Kshs. 20,000,000 x 1.5/100 - Kshs. 300,000.00

3rd Balance of Kshs. 1,140,543,539 x 1.25/100 -Kshs. 14,256,794.00

Total -Kshs. 14,633,794.00

Based on Kshs. 14,633,794 as the instruction fee, the Getting up fees works as follows;

1/3 x Kshs. 14,633,794.00 = 4,877,931.00

Total amount before interest:

Having recalculated the instruction fees and the Getting up fees, the Applicant's bill of costs works out as follows;

a) Instruction fees (including getting up fees and fees on counter claim) + attendances, drawings, copies, perusals and service- (Kshs. 14,633,794 + Kshs. 4,877,933 + Kshs. 3,289,845)= -Kshs. 22,801,570.00

b) Add ½ as per paragraph B(a) of Schedule 6- -Kshs. 11,400,785.00

Subtotal - Kshs. 34,202,355.00

c) V.A.T. @ 16% - Kshs. 5,472,376.00

d) Disbursement - Kshs. 72,410.00

Total - Kshs. 39,747,142.00

57. However, instead of the Applicants addressing the issue referred to by the Hon. Taxing master they choose to argue the Reference on all issues as though it was the first Reference, and in the course of that, they lost sight on the particular issues the taxing master was directed to deal with. As such I cannot find any particular argument and/or submissions on how the Taxing officer erred and/or misdirection herself.

58. Be that as it may, I find from the decision of the Hon. Taxing master is well reason, and has taken care of all the issues that were referred back to her. The upshot of all this, is that, I find no merit in the chamber summons application dated 25th January 2018 and I dismiss it and as a consequence, I allow the application dated 10th January 2018 as prayed in terms of prayer (1), save that, the sum of Kshs. 8,751,600 alleged paid should be provided for. The costs of the application are awarded to the Applicant.

59. It is so ordered.

Dated, delivered and signed in an open court, this 29th day of April 2019.

G.L. NZIOKA

JUDGE

In the presence of;

Ms Wambua for Advocate/ the Applicant

No appearance for the Clients/Respondents

Dennis ....Court Assistant