REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

MISCELLANEOUS APPLICATION NO. 296 OF 2012

MAKHECHA & COMPANY ADVOCATES …… APPLICANT

VERSUS

CENTRAL BANK OF KENYA ……..……. RESPONDENT

R U L I N G

1. There are 2 Applications pending for determination before this Court. The first is the Respondent's Chamber Summons dated 28 January 2013 but not filed until 14 February 2013. The second is the Applicant's Notice of Motion dated 4 February 2013 but filed in Court on 6 February 2013. The Respondent's said Application is brought under the provisions of **Rule 11 (2)** of the *Advocates (Remuneration) (Amendment) Order*, *2009*. It seeks Orders that the taxation by the Deputy Registrar of the Advocate/Applicant's Bill of Costs as per his Ruling of 12 October 2012, as well as the certificate of taxation emanating therefrom, be set aside. The grounds in support of the Application were that the Taxing Officer had erred in law and fact in finding that the agreed advocate/client should be increased by one half. He had also erred in law and fact by awarding VAT on the taxed costs as the same had not been prayed for by the Advocate/ Applicant. With regard to that Application, the Applicant filed Grounds of Objection on 11 March 2013 detailing that the Application is *res judicata* as well as being incompetent for being filed out of time.
2. The said Application of the Respondent was supported by the Affidavit sworn on 20 January 2013 by **Kennedy Abuga** who detailed that he was the Respondent's Director of Legal Services. The deponent detailed that he was aware of the Ruling delivered by the Hon. R. N. Nyakundi, the Deputy Registrar of this Court in relation to the Advocate/Applicant's Bill of Costs dated 15 May 2012. He noted that the Taxing Officer had found that there was an agreement between the Applicant and the Respondent as regards fees and that the agreed instruction fee was Kenyan shilling 12,972,240/-. The Taxing Officer had also found that the agreed fees should be increased by one half as provided for under Schedule VI B of the Advocates Remuneration Order 2006. He had also proceeded to award the Advocate/Applicant the sum of Kenya shillings 3,113,337/- as VAT on the taxed costs. In Mr. Abuga's opinion, the Taxing Officer had erred in making both those findings more particularly the VAT element when the same had not been specifically prayed in the Advocate/Applicant's Bill of Costs dated 15 May 2012. In that regard, he felt the Ruling was erroneous and prejudicial to the Client/Respondent and should be set aside.
3. The Advocate/Applicant's Notice of Motion dated 4 February 2013 was brought under the provisions of **section 51 (2)** of the *Advocates Act* and **Order 51 Rule 1** of the *Civil Procedure*

Rules, 2010. It sought orders that Judgement be entered for the sum of Shs. 8,917,163/-being the costs taxed and certified by the Deputy Registrar and confirmed by this Court as due to the Applicant against the Respondent. It also sought Orders that it be at liberty to execute as against the Respondent as well as seeking the costs of the Application. The Application was based on the following Grounds:

> **"a) The Applicant received instructions from the Defendant/Respondent to defend it in Misc. Application No. 427 of 2000.**
>
> **b) An Advocate – Client Bill of Costs in respect of the Applicant costs in the sum Kshs. 8,917,163.00 was taxed by the Deputy Registrar.**
>
> **c) A certificate of Taxation was issued on the 19th October 2012 in respect of the Applicant's costs in the sum Kshs.8,917,163.00 which was has not been satisfied.**
>
> **d) The Applicant being dissatisfied with the Ruling of the Deputy Registrar filed an appeal in the High Court.**
>
> **e) The High Court confirmed the Ruling of the Deputy Registrar in a Ruling Dated and Delivered on 23rd January 2013.**
>
> **f) The retainer of the Applicant is not in dispute.**
>
> **g) The costs remain unpaid to date".**

The Advocate/Applicant's said Application was supported by the Affidavit sworn by **Wambugu Gitonga** an advocate of this Court dated 4 February 2013. The deponent noted that he had been instructed by the Client/Respondent to defend it in Miscellaneous Application 427 of 2000. He related that his Client/Advocate Bill of Costs in relation to the matter before Court was taxed in the amount of Shs. 8,917,163/-by the Ruling of the Deputy Registrar delivered on 12 October 2012. By a Ruling dated 23rd of January 2013, this Court confirmed the Deputy Registrar's said Ruling. He concluded his said Affidavit by noting that the Respondent had failed, neglected and/or refused to settle his costs as set out in the Certificate of Taxation dated 19 October 2012.

4. The said **Kennedy Abuga** deponed to a Replying Affidavit to the Advocate/Applicant's said Notice of Motion such being dated 20 February 2013. Mr. Abuga detail the history of the taxation application before this Court annexing to his said Replying Affidavit a copy of this Court's Ruling of 23 January 2013. In his reading of that Ruling, the Court had set aside the Ruling of the Taxing Officer dated 12th October 2012. The Client/Respondent maintained that indeed the Taxing Officer's said Ruling was erroneous and it had challenged the same pursuant to paragraph 11(2) of the Advocates Remuneration Order. To date, the Taxing Officer had not provided his reasons for the Ruling. Thereafter, the deponent went into detail as to what had been explained to him by the advocates on record for the Client/Respondent as regards the availability of the Court file during January 2013. However what was important, as far as the deponent was concerned, was that it was not true that the Court's Ruling of 23 January 2013 confirmed the entire Ruling of the Deputy Registrar. He maintained that the Court only ruled that there had been an agreement/accord between the parties in relation to fees but that the Court did not deal with other issues.
5. The Client/Respondent's submissions as regards the 2 Applications were filed herein on 18 March 2013. After detailing what it termed the brief history of this matter as before Court, it noted that having been dissatisfied with the decision of the Taxing Officer in his Ruling of 12 October 2012, the Client/respondent sought the reasons for the decision by letter dated 26 October 2012. It maintained that the Taxing Officer did not provide the requested reasons within the timelines set out in Paragraph 11 (2) of the Advocates Remuneration Order, or at all. The submissions then detailed the events after the delivery of the Taxing Officer's Ruling on the 12 October 2012. Significantly, such included the details of the two Applications, the one filed by the

Advocate/Applicant on 6 February 2013 and the one filed by the Client/Respondent on 14 February 2012. As regards the Client/ Respondent's Application, its submissions emphasised the two grounds upon which that Application was brought as per the face of the Application. The Client/Respondent maintained that having found that there was an agreement on fees as between advocate and client, the Taxing Officer did not have the option of varying that agreement by holding that the agreed fees were to be increased by one half. Secondly, the Advocate/Applicant when it filed its Bill of Costs on 15 May 2012, did not pray for VAT to be levied on the same. The Taxing Officer had awarded the Respondent a sum of Kenya Shs. 3,113,337/- as VAT, erroneously. Thereafter, the Client/Respondent referred the Court to the well-known case of **Arthur v Nyeri Electricity Undertaking (1961) EA 492** in which it had been held that where there is an error in principle, the Court will interfere with the decision of the Taxing Officer. The Client/Respondent also referred the Court to the finding in the case of **Kibet & Co. Advocates v Ibrahim Ahmed & Anor Nbi HC Misc. Appl. No. 739 of 2001**. Such was perhaps in relation to the VAT award by the Taxing Officer as **Azangalala J** had held *inter-alia* in that case:

> **"I also find that to award sums not provided for in the relevant schedules is an error in principle. The error is compounded when the sums awarded are not even claimed."**

6. The Client/Respondent then turned its attention to the Advocate/Applicant's grounds of objection as regards the application of *res judicata* as well as the Client/Respondent's said Application being out of time. The proposition that *res judicata* applied in this instance because the Advocate/Applicant had maintained that this Court's Ruling delivered on 23 January 2013 had dealt with all matters as before the Taxing Officer. It was the Client/Respondent's submission that this Court had only dealt with the issue of whether there was an agreement on fees as between the Advocate and the Client. It maintained that all other issues advanced in support of the Applicant's Chamber Summons dated 5th November 2012, were not dealt with by the Court. It submitted that it had been held that for the principle of *res judicata* to apply as per **section 7** of the *Civil Procedure Act*, parties and issues must be the same. It was the Client/Respondent's view that the issues in this Application before Court had not been dealt with.
7. As to whether the Chamber Summons dated 28 January 2013 was filed out of time, the Client/Respondent maintained that paragraph 11 (2) of the Advocates Remuneration Order was mandatory in that upon filing of an objection under Paragraph 11 (1), the Taxing Officer must record and forward the reasons for his decision on the questioned items, within 14 days. There had been no response whatsoever from the Taxing Officer. In this connection, the Client/Respondent referred the Court to the decision of **Okwengu J.** in the case of **Mbugua & Mbugua, Advocates v Kenindia Assurance Co. Ltd Nbi HC Misc. Appl. 1332 of 2006**. Finally, in relation to the Advocate/Applicant's Notice of Motion dated 4 February 2013, the Client/Respondent submitted that the Certificate of Taxation dated 19 October 2012 was not final for the reason that the Taxing Officer had not provided his reasons for his Ruling dated 12 October 2012. The Court was referred to the case of **Kerandi Manduku & Co v Gathecha Holdings Ltd (2006) eKLR** as per **Ochieng J.** in which the Judge held that the respondent therein had demonstrated a desire to challenge the certificate of taxation but the same had not materialised into a reference, because the taxing officer had not provided his reasons for his ruling on costs.
8. The Advocate/Applicant's submissions were filed herein on 10 April 2013. They contained a chronology of events before Court which more or less coincided with the version of the Client/Respondent apart from the reference to the Taxing Officer supplying to the parties, on 26 October 2012, a copy of his Ruling delivered on 12 October 2012, setting out the reasons for his decision. Following upon that, the Advocate/applicant had filed its Chamber Summons dated 5 of November 2012 which sought to set-aside the Ruling of the Taxing Officer on the Bill of Costs. The Advocate/applicant then turned its attention to the Client/ Respondent's Chamber Summons dated 28 January 2013. It maintained that in accordance with **section 7** of the *Civil Procedure Act*, that Application was *res judicata*. It was of the view that the said Chamber Summons was a replica of the Advocate/Applicant's Chamber Summons dated 5th November 2012 both in the prayers thereof and in the provisions of the law under which it was proffered as well as upon the grounds upon which it was premised. Again in the Advocate/Applicant's view, the Ruling dated

23 January 2013 dismissing the Advocate/Applicant's Chamber Summons dated 5th November 2012 is on record as conclusive evidence that the prayers in the said Chamber Summons have been determined with finality in a court of competent jurisdiction. In this connection, the Court was referred to Explanation (4) of **Section 7** of the *Civil Procedure Act* as well as the Court of Appeal's decision in the well-known case of **Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Ors Civil Appeal No. 36 of 1996** as the same was quoted in the case of **Patrick Mwaura v Kenya Commercial Bank & Anor (2006) eKLR** in which the Court found:

> **"The long and short in all this is that once an application … within a suit has been heard and determined upon the principles laid down … a similar application cannot be brought unless there are new facts not brought before the court earlier after exercise of due diligence which merit a re-hearing and possible departure from the previous ruling."**

9. With regard to the Client/Respondent's Application being time-barred, again the Advocate/Applicant's version of events differs somewhat from that of the Client/Respondent. The former noted that the Ruling on the taxation of the Bill of Costs was delivered on 12 October 2012 and a Certificate of Costs was issued on 19 October 2012. On 15 October 2012, the Advocate/Applicant intimated its objection to the taxation Ruling and sought the reasons for the same. The Advocate/Applicant related that the Taxing Officer in compliance with the provisions of paragraph 11 (2) of the Advocates Remuneration Order issued a well-reasoned Ruling that explained how the decision had been arrived at, on 26 October 2012. The Advocate/applicant went into definitions of the word "reason" and it was its position that the Taxing Officer had complied with paragraph 11 (2) as above. The Advocate/Applicant then submitted that the Client/Respondent should have filed its reference to this Court in compliance with the provisions of paragraph 11 (2). The Application dated 28 January 2013 was well over 60 days after the Deputy Registrar had furnished the Client/Respondent with the reasons for his Ruling. Accordingly, it was preposterous for the Client/Respondent to seek to rely on the Ruling to file the reference while in the same breath submitting that they had not been supplied with the reasons by the Taxing Officer. Finally, as regards the Notice of Motion dated 4 February 2013, the Advocate/Applicant quoted from my Ruling delivered on 23 January 2013 to the extent that I had confirmed the ruling of the Taxing Officer as to the finding of the amount as instruction fees.
10. The Court was then referred to the provisions of **section 51 (2)** of the Advocates Act as well as the 2 cases of **Owino, Okeyo & Co., Advocates v Fuelex Kenya Ltd (2005) eKLR** and **Owino, Okeyo & Co. v Pelican Engineers & Construction Co. (2006) eKLR** in which in the latter case, **Ochieng J.** had this to say:

> **"There is no dispute about the fact that the Certificate of Taxation which was issued by the taxing officer has not been varied, reviewed or set aside… The question that needs to be answered is whether the respondent has brought forth any good reason that may persuade this court not to grant judgement as prayed. That is the only question that I may need to grapple with as the certificate of taxation has not been altered or set aside. It is therefore final as regards the costs of Ksh.309,895/-. In the circumstances, unless the respondent persuades me otherwise, I would grant judgement in favour of the Applicant."**

The Advocate/Applicant asked the Court to grant its Application as prayed together with costs.

11. The Client/Respondent filed further submissions in response to those of the Advocate/Applicant. It reiterated that in its Ruling dated 23 January 2013, this Court dealt with only one issue namely whether there was an accord between the parties. It maintained that the rest of the issues, now the subject of the Client/Respondent's Chamber Summons dated 28 January 2013, were not determined. In its opinion, it was clear from the reading of Paragraph 11 (2) of the Advocates Remuneration Order, that a ruling does not amount to reasons. In the circumstances, the Client/Respondent submitted that time does not run and the reference cannot be time barred. The Court was referred to the Ruling of my learned brother **Odunga J.** in the matter of **Evans Thiga**

Gaturu v Kenya Commercial Bank Ltd HC Misc. Appl. No. 343 of 2011 in which it was held that if the Taxing Officer was satisfied that his/her Ruling was so elaborate, detailed and sufficient to express clearly all the reasons for the decision on each item, then he should advise the party seeking reasons, that the same are in the Ruling. In the case before Court, the Taxing Officer had not written to the Client/Respondent to that effect.

12. It is obvious that this Court should determine the Client/Respondent's Chamber's Summons dated 28 January 2013 first. If the same is allowed, the Advocate/Applicant's Application dated 4th February 2013 will automatically fall away. As I see it, the Client/Respondent's Application is opposed on the 2 grounds – firstly, that the same is *res judicata* and secondly, that it is filed out of time. I will deal with the *res judicata* point first. My Ruling delivered on 23 January 2013 was based on the Advocate/Applicant's Chamber Summons dated 5 November 2012. The Grounds in support of that Application were as follows:

> **"(a) The taxing master erred in law and in principle in failing to appreciate that item 1 was drawn to scale.**
>
> **(b) The honourable taxing master erred and misdirected himself in that the Applicant had accepted to compromise its claim to full fees despite the evidence to the contrary.**
>
> **(c) The taxing master erred in law and misdirected himself in finding that instruction fees were agreed at Kshs.12,972,240/=.**
>
> **(d) The taxing master erred and misdirected himself in not finding that the they instructions fees agreed upon rested with the Applicant's letter dated 13th May 2012, where the Applicant insisted that the fees would be chargeable under Schedule VIB of the Advocates remuneration Order.**
>
> **(e) The honourable taxing master erred and misdirected himself in failing to finding that instructions fees were Kshs.25,964,480/= which was what the Respondent paid as party and party fees.**
>
> **(f) The taxing master erred in failing to recognize that for there to be a compromise on fees, both parties have to be ad idem, and in this case they were not.**
>
> **(g) The taxing master misdirected himself by misapprehending the evidence before him.**
>
> **(h) The taxing master's decision is non-sequiter in the face of the facts and the clear provisions of the Remuneration Order".**

As can be seen, there was no reference in the Grounds to either the finding of the Taxing Officer to increase the agreed fees as between the parties hereto by one half under part B of Schedule VI of the Advocates Remuneration Order 2006 or for the provision of VAT at 16% of the fee figure. Further, at page 18 of my said Ruling dated 23rd January 2013, the actual words used were:

> **"I concur with the Deputy Registrar's said ruling delivered on the 12 October 2012 as to the finding of the above amount as instruction fees."** (underlining mine).

The above amount as stated on page 17 for the advocate/client fees was Shs. 12,970,240/-. There is no doubt, in my mind, that I was not agreeing with the overall Ruling of the Taxing Officer but purely his finding as to what the agreed advocate/client fees were. I paid no attention to the increase of the same by one half or the provision of VAT as awarded by the Taxing Officer. Consequently, on this point of *res judicata*, I find against the Advocate/Applicant.

13. As regards the Client/Respondent's said Application being filed out of time, I have taken cognizance of the findings of my High Court colleagues in the **Mbugua & Mbugua** and **Kerandi Manduku** cases (supra). The Ruling in the first of those cases was delivered in February 2008 while for the second case, the Ruling was delivered earlier, in October 2006. Since then, we have had the important Ruling of the **Court of Appeal** in the **Kipkorir, Titoo & Kiara Advocates v Deposit Protection Fund Board Civil Appeal No. 220 of 2004; (2005) eKLR**, in which the learned appellate judges held inter alia:

> **"On a reference to a Judge from the taxation by a taxing master, the judge will not normally interfere with the exercise of discretion by the taxing master unless the taxing master, erred in principle in assessing the costs."**

Further, the judges determined that;

> **"It is true that the taxing officer did not record the reasons of the decision on the items objected to after the receipt of the respondent's notice. It seems that the taxing officer decided to rely on the reasons in the ruling of taxation dated 24th February, 2004. That ruling at least indicated the formula that the taxing officer applied to access the instructions fees. Although there was no strict compliance with Rule 11 (2) of the Order, we are nevertheless, satisfied that there was substantial compliance. The adequacy or otherwise of the reasons in the ruling is another matter. Indeed, we are of the view, that if a taxing master totally fails to record any reasons and to forward them to the objector, as required then that would be a good ground for a reference and the absence of such reasons would not in itself preclude the objector from filing a competent reference."**

14. In the ruling of the Taxing Officer, Nyakundi R.N. dated 12 October 2012, he made a determination on the following terms:

> **"The legal effect of the negotiations and confirmation by both parties on advocate's fees is buttressed under section 45 (i) (a) (b) of Advocates Act Cap 16 of the laws of Kenya.**
>
> **In this respect the law allows an agreement with respect to remuneration be entered therefore on instruction fees and court attendance or as the case may be, before, after or in the course of any contentious business. The agreement reached in such circumstances as described under section 45 (i) (a) (b) shall be valid and binding on the parties so long as it is in writing and signed by them or agents duly authorised.**
>
> **On my part I am of the considered view that an agreement was reached as between advocates-client in respect of fees payable."**

To the Court's mind, these suffice as *"substantial compliance"* according and in following the Court of Appeal's determination in the **Kipkorir,Titoo Advocates** case as above. Even though the taxing officer was not in complete compliance with the provisions of **Rule 11 (2)** of the Order, he had substantially complied with the provisions thereof. Thereafter, the Taxing Officer went ahead and gave a breakdown on how he arrived at the grand total of Kenya shillings 22,573,903/-. In my opinion, it can be deduced that the Taxing Officer then addressed the reasons for his Ruling on taxation though not in strict compliance to **Rule 11 (2)** of the *Advocates (Remuneration) Order*. The absence of reasons did not bar the Client/Respondent from filing a competent reference. To this end, I would refer to the Ruling of my learned brother Odunga J. in the case of **Evans Thiga Gaturu** (supra). The learned judge considered the ruling of Ochieng, J on the issue of compliance in **Ahmednasir Abdikadir & Co. Advocates v National Bank of Kenya Ltd (2) [2006] 1 E.A 5** where he had held *inter alia*:

> **"..where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek for further reasons simply**

because the unfortunate wording of sub-rule (2) of rule 11 of the Advocates (Remuneration) Order demands so. The said rule was not meant to be ritualistically observed even when reasons for the disputed taxation are already contained in the formal and considered ruling."

In his said Ruling in the **Evans Gaturu** case (supra), Odunga, J observed that;

"However, where there are reasons on the face of the decision, it would be futile to expect the taxing officer to furnish further reasons. The sufficiency or otherwise is not necessarily a bar to the filing of a reference since that insufficiency may be the very reason for preferring a reference. Otherwise mere adherence to the procedure may lead to absurd results if the advocate was to continue waiting for reasons as it happened in the case of Kerandi Manduku & Co. Advocates v Gathecha Holdings Ltd Nairobi (Milimani) H.C Misc. App. No. 202 of 2005."

15. Having determined that there were reasons contained in the Taxing Officer's Ruling dated 12 October 2012, what is now for this Court's consideration is whether the Client/Respondent's application is meritorious and competent. **Rule 11 (2)** of the *Advocates (Remuneration) Order* provides for the timeline within which an application of this nature has to be made. It provides that:

"2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the objector *may within fourteen days from the receipt of the reasons apply to a judge by chamber summons,* which shall be served on all the parties concerned, setting out the grounds of his objection."

By filing the said application on 22 February 2013, the Client/Respondent waited for almost 4 months after the Taxing Officer had "failed" to provide reasons for his Ruling. This, in the Court's view, amounts to inordinate delay. The provisions of **Rule 11 (4)** are thereafter quite clear: the applicant needs to have applied for leave to file out of time. The rule provides:

(4) The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2), for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired".

16. In applying this provision, Ochieng, J in **Ahmednassir Abdikadir & Co. Advocates V National Bank of Kenya** (supra) held:

"Therefore the reference having been filed way out of the period prescribed should have been dismissed but having been given due consideration in substance, the same is dismissed."

In reference to the said ruling, Odunga, J on the issue of time, determined the matter of **Evans Thiga Gaturu Advocate** (supra) as follows:

"If, however, at a later stage he decided to proffer the reference notwithstanding the failure by the taxing master, after the lapse of the 14 day period, it is my view that he would be bound to apply for extension of time under paragraph 11(4) of the Remuneration Order, in which case one of the grounds if not the only ground would be the failure by the taxing master to furnish him with the reasons which according to the decision of Kipkorir, Titoo & Kiara Advocates (ibid) is a ground for allowing a reference. However, a party would not be entitled to an indefinite time within which

to proffer a reference simply because the reasons were not given if even by the time of making the same reference the same reasons had not been furnished. I accordingly find that the client has filed the reference outside the 14 days of the delivery of the decision and before being furnished with the reasons, the reference is incompetent for being out of time and/or being prematurely instituted."

17. The Client/Respondent has obviously failed to adhere and comply with the timelines set out as under **Rule 11 (2)** of the *Advocates (Remuneration) Order*. Indeed, it appears to this Court, that it was only with the filing of the Advocate/Applicant's Application dated 4 February 2013 that the Client/Respondent woke up to the necessity of having to file its reference before this Court. As detailed above, I find that the delay on the part of the Client/Respondent inordinate. It has made no effort to apply for leave to this Court, for its reference to be filed out of time. Consequently, in all the circumstances, and for this reason alone, I dismiss the Client/Respondent's Chamber Summons dated 28 January 2013 with costs to the Advocate/Applicant.
18. This leaves the Court with the Advocate/Applicant's Notice of Motion dated 4 February 2013. I have perused at length the Replying Affidavit thereto sworn by the said **Kennedy Abuga** on 20 February 2013. The deponent detailed therein that by this Court's Ruling dated 23rd January 2013 there was found to be an agreement on fees. He noted that V.A.T. had been awarded by the Taxing Officer which had not been pleaded. In my opinion, the provisions of the Value Added Tax on tax being charged on professional fees is very clear. Advocates are liable to charge V.A.T. on their fees. I find that the Taxing Officer was correct on this point and V.A.T. should be added to the taxed Bill. Mr. Abuga also noted that Counsel for the Applicant had submitted in relation to the Bill of Costs being taxed that the options available to the Taxing Officer were either to rule that advocate/client costs should be the same as party/party costs plus one half, or that there had been an accord and satisfaction by the applicant/client accepting the sum of Kshs.12 million and leave it at that.
19. The Deputy Registrar in his said Ruling dated 12 October 2012 detailed that an agreement was reached between advocate and client with respect to the fees payable. That amount was confirmed at Shs. 12,972,240/=. The Deputy Registrar then referred to Schedule VI part B of the Advocates Renumeraiton Order, 2006 and found that as between advocates and client, the minimum fee shall be:

> **"(a) The fees prescribed in A above, increased by one half on**
>
> **(b) The fees ordered by the Court, increased by one half or**
>
> **(c) The fees agreed by the parties under paragraph 57 of this Order; increased by one half;".**

The Deputy Registrar having found the amount payable in the bill of costs to the advocate was Kshs.12,972,240/= increased that amount by ½ namely Kshs.6,386,120/=. With due respect, I consider that decision of the Taxing Officer to be incorrect. The fees under (a) and (b) above do not apply here. (a) represents party/party costs while here we are talking about advocate/client costs. (b) does not apply as there was no amount of fees ordered by the Court. That leaves (c) in relation to fees agreed between the parties under paragraph 57 of the *Advocates Remuneration Order*. That paragraph reads as follows:

> **"57. (1) If, after the disposal of any proceedings by the Court, the parties thereto agree the amount of costs to be paid in pursuance of the Court's order or judgment therein, the parties may instead of filing a bill of costs and proceeding to taxation thereof, request the registrar by joint letter to record their agreement, and unless he considers the amount agreed upon to the exorbitant the registrar shall do so upon payment of the same court fee as is payable on the filing of any document for which no special fee is prescribed.**
>
> **(2) Such agreement where recorded shall have the same force and effect as a certificate of taxation by the taxing officer:**

Provided that, if the taxing officer considers the amount so agreed upon to be exorbitant, he may direct the said costs to be taxed in accordance with this Order and paragraph 11 shall apply in regard to every such taxation".

20. Again with due respect to the Deputy Registrar, the parties referred to in paragraph 57 are the parties involved in the litigation who agree their costs. Such are party/party costs not advocate/client costs. In my view, the Applicant and Respondent herein came to an agreement in respect to the advocate/client fees payable in relation to work done by the Applicant on the Respondent's behalf in *H.C. Misc. Cause No. 296/2012* and *HC. Misc. Cause 427/2000*. Accordingly, such agreed advocate/client fees should not have been increased by half as awarded by the Deputy Registrar and I concur with the Counsel for the Applicant as regards her second option when she submitted that there had been accord and satisfaction and the debate should be left at that. As a result and applying the provisions of **Section 3A** of the *Civil Procedure Act*, I enter Judgement for the Advocate/ Applicant in the amount of Shs. 15,047,798/40 made up as to Shs. 12,972,240/= (the agreed client/advocate fees plus V.A.T. at 16% being Shs. 2,075,558/40. I also grant the Advocate/Applicant the costs of its Application.

DATED and delivered at Nairobi this 19th day of June, 2013.

J. B. HAVELOCK

JUDGE