REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 14 OF 2013 (O. S.)

IN THE MATTER OF: AN APPLICATION UNDER SECTION 47 (1) OF THE ADVOCATES ACT CHAPTER 16 LAWS OF KENYA

AND

IN THE MATTER OF: A TRANSACTION RELATING TO PARCEL OF LAND KNOWN AS LAND REFERENCE NUMBER 209/309/1 (I.R. 92457)

AND

IN THE MATTER OF: AN APPLICATION BY CLIENT (PLAINTIFFS) THAT AN ADVOCATE (DEFENDANT) DO DELIVER HER BILL OF COSTS FOR TAXATION AND RELEASE TITLE DOCUMENTS AND OTHER DOCUMENTS IN HER POSSESSION AND POWER TO THE CLIENTS

LINMERX HOLDINGS LIMITED …………….…………….. 1ST PLAINTIFF

UPWARD SCALE INVESTMENT COMPANY LIMITED.. 2ND PLAINTIFF

VERSUS

MERCY NDUTA KENG'ARA T/A

MWANGI KENG'ARA & COMPANY ADVOCATES ……….. DEFENDANT

R U L I N G

1. The Plaintiffs brought an Application before Court under **section 47 (1)** of the *Advocates Act* by way of Originating Summons dated 22nd January 2013. The Application related to the provision of legal services to the Plaintiffs by the Defendant advocate regarding a transaction involving L.R. No. 209/309/1 (I. R. 92457), Nairobi ("the suit property"). The Application sought the release of the title documents and any other documents in the possession of the Defendant advocate relating to the suit property either straight away, or in the alternative, pending the *inter-partes* hearing and determination of the Application, the same to be deposited in Court. The Defendant advocate had

demanded the deposit of the sum of Shs. 2,045,603.90 in Court as a condition for the release of the title deeds of the Plaintiffs. As a result of the *ex parte* appearance before Court, under Certificate of Urgency, this Court ordered the release of the Title Deeds of the suit property as well as directing the Plaintiffs to deposit the sum of money as above.

2. The Supporting Affidavit of **Joseph Gitau Mburu**, a joint director of the Plaintiff companies herein, was sworn on 22nd January 2013. He deponed to the fact that the 2nd Plaintiff herein had approached the1st Plaintiff in the year 2011 with the intention of acquiring the suit property for joint development purposes. The 1st Plaintiff had agreed to such transaction and the Plaintiffs appointed the Defendant to act on their behalf. The Plaintiffs set out in the Grounds in support of their Application the tasks that the Defendant herein was also required to carry out over and above the sale, purchase and transfer of the suit property as between the 1st and 2nd Plaintiffs. These tasks were detailed as follows:

> **"(i) Prepare an agreement to subscribe shares in the 2nd Plaintiff by M/s Richood Limited.**
>
> **(ii) Prepare a shareholders agreement for M/s Richhood Limited.**
>
> **(iii) Prepare an unconditional agreement for acquisition of shares in the 2nd Plaintiff for purposes of joint venture for purchase of land between the 1st and 2nd Plaintiff, M/s Richood Limited and M/s First Western Consortium Limited.**
>
> **(iv) Prepare a shareholders agreement for 2nd Plaintiff.**
>
> **(v) Provide Secretarial Services to the promoters of the 2nd Plaintiff.**
>
> **(vi) Prepare deed of assignment of the Civil and Structural Engineering fees.**
>
> **(vii) Prepare memorandum of agreements for appointment of the Civil Structural Engineer.**
>
> **(viii) Prepare memorandum of agreement for the appointment of the Mechanical and Electrical Consulting Engineers.**
>
> **(ix) Prepare memorandum of agreement for the appointment of Architect (TRIAD Architects).**
>
> **(x) Prepare a deed of assignment of the Architect's (TRIAD Architect) professional fees.**
>
> **(xi) Prepare the memorandum of appointment of the Quantity Surveyor (Masterbill Integrated Project).**
>
> **(xii) Prepare the deed of assignment of the Quantity Surveyors (Masterbill) professional fees.**
>
> **(xiii) To act in the sale, purchase and transfer of L.R. No. 209/309/1 from 1st to 2nd Plaintiff as joint counsel for the Plaintiffs".**

3. The said Affidavit of **Joseph Gitau Mburu** sworn on 22nd January 2013, outlined the history of the matter including the instructions given to the Defendant firm of Advocates. The deponent emphasised that it had been mutually agreed between the Plaintiffs and the Defendant that the legal fees payable in respect of all the legal work carried out by the Defendant would be Shs. 12,000,000/-plus VAT and disbursements. According to the deponent the Defendant had

acknowledged the agreement on fees by letter dated 6th March 2012. Thereafter, the deponent outlined details of correspondence had with the Defendant more particularly a letter dated 17th August 2012 whereby the Plaintiff detailed that the total amount due as per the agreement on fees was Shs. 12 million less amounts paid of Shs. 2 million in December 2011, Shs. 4 million in March/April 2012 and Shs. 3 million in June 2012 leaving a balance of Shs. 3 million. However, by letter dated 27th August 2012, the deponent recorded that the Defendant had reneged on the agreement for fees and demanded Shs. 14,503,435/-.

4. Indeed the Defendant had unlawfully purported to convert the sum of Shs. 10,240,040/-that the Plaintiffs had paid on account of Stamp Duty to offset the legal fees owed and demanded a further sum of Shs. 4,263,395/-. The deponent noted that by a letter dated 29th November 2012, the Plaintiffs forwarded to the Defendant a sum of Shs. 4,263,395/-being the sum that had been demanded by the Defendant. However, the Defendant had changed her stand again introducing extraneous issues in relation to the transaction and accused the Plaintiffs, amongst other things, of fraud and demanded damages. Later, she had demanded interest on legal fees to which the Plaintiffs' new advocates had responded that no interest was payable on legal fees and that the Defendant had been paid in full. The Defendant had responded by letter dated 10th January 2013 in which the amount now claimed was Shs. 2,045,603.90 made up as to Shs. 1,969,603.90 unpaid interest and Shs. 516,000/-being the outstanding balance on fee notes. Finally, Mr. Mburu made a plea to this Court that the continued withholding of the title documents by the Defendant had denied the Plaintiff opportunity of benefiting from financial accommodation offered by financial institutions, as they did not have a title to offer as security therefore.
5. The Replying Affidavit of **Mercy Nduta Mwangi** advocate practising in the name and style of the Defendant firm was sworn on 1st February 2013. She noted that the said Mr. Mburu had requested her to offer legal services in a joint-venture undertaking with a consortium of investors. Such involved the 1st Plaintiff amongst others. She maintained that the value of the joint-venture project was estimated to be Shs. 3,284,056,895/-based on the presentation by the Quantity Surveyor detailed in a Meeting held on 7th March 2011. The deponent went into great detail as to the make-up involved of the investors in the joint-venture. By paragraph 18 of her said Replying Affidavit she detailed some 17 pieces of legal work that she had undertaken on behalf of the joint-venture project. She had kept the Plaintiffs and their partners fully informed as to the work that she had been employed to undertake. Then on 31st October 2011, she submitted her fee notes for work done in accordance with the terms of reference as set out in her letter of 7th March 2011. She had submitted a total of 16 fee notes in relation to the joint-venture project. She had forwarded the same to the Plaintiffs but later had received a visit from the Plaintiff's Financial Consultant seeking information as to how she had arrived at the various figures detailed in the fee notes. She maintained that she gave the Financial Consultant the requisite clarification and explained to him the schedules of charges that she had applied in the computation of fees. She had received the sum of Shs. 2 million from Mr. Mburu 16th December 2011 by way of part payment. She had sent reminders in January 2012 but in February 2012 she had a meeting with two of the joint project investors who informed her that they would only pay Shs. 12 million for the work she had done plus VAT and disbursements. She detailed that she had denied their request and they eventually agreed to pay her a further Shs. 2 million over and above the similar amount that she had received on 16th December 2011. She had expressly notified the Plaintiffs that upon any delay in the payment of her fee notes beyond 30 days from the date of their being rendered, interest would be levied at the rate of 14% per annum until payment in full. The deponent reiterated that there was never any agreement to cap her fees at Shs. 12 million as alleged. All in all, she maintained that the fees that she had charged were reasonable taking into account the nature of the work and the services rendered to the Plaintiffs.
6. On 18th February 2013, the said Mr. Mburu swore a Supplementary Affidavit in response to the Defendant's Replying Affidavit. The deponent emphasised that the legal services to be rendered by the Defendant were not based on the subject matter of the intended project and thus the issue of the value of the project did not arise in this connection. He accused the Defendant of duplicating the agreed services to be provided and thereafter purported to charge fees on such duplicating services with an aim to unjustly enrich herself. He maintained that some of the work which the Defendant had been instructed to carry out was incomplete and remained so to date. He listed some 4 documents which had been drafted outside the instructions and specifications of the

Plaintiffs which were returned to the Defendant but such had never been completed by her in terms of incorporating the instructed amendments thereto. Similarly, five other documents had been prepared by the Defendant but had not been executed and/or stamped. Further, the Defendant had not finalised the transaction relating to the sale, purchase and transfer of the suit property. The deponent noted that the Plaintiffs had now been compelled to finalise the transaction at an added cost despite the fact that the Defendant had charged full fees therefore. The deponent concluded his said Supplementary Affidavit by reiterating that it had been agreed that the Defendant would be paid Shs. 12 million for the services rendered to the Plaintiffs.

7. The Defendant swore a Further Affidavit on 27th February 2013. Such was a bulky document made so by her attaching thereto copies of the 16 documents which the Defendant maintained she had prepared on the instructions of the Plaintiffs. She maintained that the value of the proposed project was relevant as regards this suit as it demonstrated the importance of the matter. She stated that the interests of the parties could be gleaned from the minutes of the meetings held by the investors and the analysis studies carried out by the Quantity Surveyor to determine the viability of the project. She maintained that she had to bear such in mind when she crafted the various instruments to govern and protect the interests of the multiple parties involved in the joint-venture project. She reiterated that by letter dated 7th March 2011, she had expressly informed the Plaintiffs that she would charge legal fees in accordance with the Advocates Remuneration Order which recognised the value of the subject matter, the importance and the interests of the parties thereto as well as the important components to be taken into account when determining reasonable fees to be charged by the Defendant. Further, the Defendant denied duplicating agreed services and charging double fees as contended by the Plaintiffs. She also denied the return of documents as detailed by Mr. Mburu in the Supplementary Affidavit. The Defendant went into great detail as to how she had incorporated the amendments required by the Plaintiffs that it was quite wrong for them to blame her for the non-execution and non-stamping of documents. Finally, the Defendant noted that after the disagreement on fees arose, the Plaintiffs had instructed her to hand over the title documents to the firm of J. K.Mwangi & Co. Advocates and that when that firm called for the deeds and documents, the Defendant maintained that she rightfully withheld the same until her fees were paid. She stated that she was entitled to exercise her lien on such documents pending payment.
8. The Plaintiffs' skeleton submissions were filed herein on 25th April 2013. They set out the Plaintiff's' claim by way of the Originating Summons before Court. They detailed the documents that the Plaintiffs had required the Defendant to prepare as well as acting for them in the sale, purchase and transfer of the suit property. The Plaintiffs sought a declaration that the agreed professional fees payable to the Defendant were Shs. 12 million plus VAT and disbursements. The Plaintiffs were claiming from the Defendant a refund of the sums paid to her over and above the agreed figure of Shs. 12 million. The Plaintiffs also asked that their title deeds in relation to the suit property be delivered up to the Plaintiffs or their advocates. The Plaintiff noted that the Respondent did not challenge and/or deny the scope of the services to be rendered. The submissions of the Plaintiffs reiterated much of what had been contained in Mr. Mburu's two Affidavits filed herein in relation to the preparation of documents, the non-execution of the same as well as the refusal of the Defendant to take the instructions of the Plaintiffs as regards to amendments required to various documents. In this regard, the Plaintiffs referred this Court to **Halsbury's Laws of England, 4th Edition paragraph 114** as to solicitors undertaking to finish the business for which they were retained as well as **Underwood Son & Piper v Lewis** **(1894) 2 QB 306** in which **Lord Esher** had stated:

> **"A solicitor is a skilled person, and it would be of no use to employ him except for the purpose of taking all the steps necessary to bring the suit to an end. If that is the nature of his employment, his contract is an entire one to carry on the action to its conclusion."**

9. Turning to the question of instruction fees and fees agreement, the Plaintiffs maintained that they had negotiated the legal fees payable with the Defendant and by letter dated 20th February 2012 they had confirmed their acceptance to pay Shs. 12 million plus VAT. Prior to that letter, the Plaintiffs had dispatched an email to the Defendant in similar vein. Section 45 of the Advocates

Act provided for agreement on fees and the Plaintiffs maintained that pursuant to that provision, the parties herein had agreed on the fees payable for the project. The Plaintiff maintained that they had already paid a sum in excess of Shs. 23,000,000/- to the Defendant on account of legal fees. Having submitted that the Defendant was only entitled to Shs. 12 million, the Plaintiffs maintained that they were entitled to a refund. The Defendant had demanded the extra sum of Shs. 2,485,603/90 being what she claimed was the outstanding balance of her fees. Such amount had been paid into Court as ordered and the Plaintiffs submitted that the amount should be released to them. Thereafter, the Plaintiffs submitted as to the justification or otherwise of the Defendant purporting to exercise a lien over the title documents to the suit property. In view of this Court having already ordered, on 22nd January 2013, that the Defendant do release such title documents to the Plaintiffs or their advocates, this claim by the Plaintiffs is already spent. Finally, the Plaintiffs submitted that should this Court fail to uphold their position on the existence of the agreement for fees, then it should review the fee notes presented to the Plaintiffs for payment which they considered exorbitant and direct the Defendant to present her bills of costs for taxation. The Defendant advocate had failed and/ or refused to render her services as agreed and some of the services for which she was contracted were still pending. The Plaintiffs maintained that the amount paid to and claimed by the Defendant was excessive, unfair, illegal and unreasonable.

10. The Defendant filed her submissions herein on 10th May 2013. She opened the same by suggesting that the Originating Summons of the Plaintiffs was wrongly expressed to be brought under **Order 37 (4)** of the *Civil Procedure Rules*. Such Order did not deal with the disputes arising as between advocate and client but rather with the disputes between vendors and purchasers of immovable property and their representatives. However, the Defendant conceded that the suit was correctly grounded under the provisions of **Order 52 Rule 4 (1) and (2)** as well as **section 47 (1)** of the *Advocates Act*. The Defendant set out the full details of the instructions/tasks that she had received from the Plaintiffs. She submitted that the first issue was whether those instructions had been carried out and maintained that there was ample evidence on record to prove that the Plaintiffs not only instructed the Defendant to carry out the tasks enumerated but also other tasks in respect of which she was entitled to charge fees on scale. She detailed that the scope of the work and the method of charging fees were set out in her letter dated 7th March 2011 annexed to her Replying Affidavit filed herein. Following that said letter, the Defendant was formally appointed through the 2nd Plaintiff’s letter dated 16th May 2011. She maintained that in that letter, the author, Mr. Mburu not only acknowledged her letter of 7th March 2011 but also informed her that she had been appointed the legal consultant for the project, her terms of reference were to be as per her said letter. She had specifically detailed in that letter that her fees would be charged in accordance with the Advocates Remuneration Order. She detailed that the fee notes in respect of the contract documents, the tasks having been completed, were sent to the Plaintiffs on 31st October 2011. After the submission of the fee notes, the Plaintiffs had made a payment of Shs. 2 million on account. The Defendant maintained that the Plaintiffs not only instructed the Defendants to provide legal consultancy services to the project but acknowledged the billed fees when they commenced settlement thereof.
11. The Defendant then accused the Plaintiffs of making statements deliberately to mislead the Court both as to the nature of the services rendered by the Defendant to them but also as to the method agreed for fixing her fees. She submitted that there had been no such agreement to pay a lump sum of Shs. 12,000,000/- + VAT and disbursements in respect of her fees. Reading through the Defendant’s submissions, the Court found that pages 6, 7, 8, and 9 were basically a repeat of the Defendant’s earlier submissions but she went on to say that as there was evidently a dispute as to the fees that she ought to have been paid, the proper and legal way to proceed would be as provided under **section 47 (1)** of the *Advocates Act* as read with **Order 52 (4) (3)** of the *Civil Procedure Rules*, in that she expected this Court to direct that she delivered her bills of costs for taxation. However, the Defendant pointed out that any agreement between client and Advocate as regards fees would be invalid if the Advocate agreed to be paid less than the minimum fee provided under the Advocates Remuneration Order in contravention of **section 46 (d)** of the *Advocates Act*. The Defendant maintained that as the Advocates Act was silent on what form agreements for fees in respect of non-contentious matters should take, the relevant law governing such issue was English Law as imported to Kenyan by virtue of **section 3 (1)** of the *Judicature Act* and **section 2** of the *Law of Contract Act*. Under English Law the position would seem to be

that a solicitor and his client could make a special agreement as to the former's remuneration as regards non-contentious business. However such agreement should be in writing and signed by the party to be bound or by his agent, citing **Halsbury's Laws of England Vol. 36 Para 175** as well as the case of **In Re Frape (1893) 2 Ch 297**. The Defendant submitted that there was no such agreement in this case. What the Plaintiffs had set out was an oral agreement which they said had been reached at a meeting held on 10th February 2012.

12. As regards the advocate's lien, the Defendant submitted that the Court had already secured the same by ordering that the sum of Shs. 2,485,603/90 should be deposited in court. However, as the Defendant had handed over the said documents, this prayer of the Plaintiffs was now spent. Turning to the entitlement of an advocate to charge interest at 14% per annum on any Bill that remains unpaid after 30 days of being rendered, the Defendant referred the Court to paragraph 7 of the Advocates Remuneration Rules. The Defendant had clearly indicated to the Plaintiffs that any Bill remaining unpaid beyond 30 days would attract interest. In this regard the Court was referred to the case of **Walton v Egan & Ors (1982) 13 All ER 849**. Moving on to comment upon the Plaintiffs' submissions, the Defendant detailed that there were several falsehoods therein which she enumerated as follows:

> **"(i) That the Defendant was retained in the year 2012 and the scope of work was as set out in the letter of 29/2/2012.**
>
> **(ii) That the figure of Kshs. 12,000,000 was mutually agreed between the Plaintiffs and the Defendants prior to the commencement of the tasks.**
>
> **(iii) That the Defendant reneged on that agreement and billed the Plaintiffs an amount in excess of the Kshs. 12,000,000/=.**
>
> **(iv) That the Defendant did not complete the tasks.**
>
> **(v) That the Defendant delayed in performing the tasks and caused the Plaintiffs losses.**
>
> **(vi) That the Defendant abandoned the tasks midstream".**

13. The Defendant reiterated her position that she had performed all her obligations under the terms of reference set out in the letter of 6th March 2011 as read with the Plaintiffs' letter dated 16th May 2011. She maintained that the correct position was that no documents were sent back to the Defendant and no evidence had been put before court as to the nature of what the alleged corrections that were required of the Defendant. As to the documents alleged to be neither executed nor stamped, such was upon the Plaintiffs who had not caused the documents to be executed and as a result, they could not be stamped. There had been no fundamental error in the documents and such had been unsubstantiated by the Plaintiffs. The Defendant maintained that such allegation was no more than a malicious afterthought and a mere excuse by the Plaintiffs not to pay the billed fees. As regards the Defendant's entitlement to full fees, she referred the Court to the cases of **Kellar & Anor v Williams (2004) UKPC 30** and **Hayanga & Co. Advocates v Rayai Garden Development Misc. Appl. No. 305 of 2004 (unreported)**.

The Defendant concluded her submissions by praying that the Plaintiffs' suit be dismissed with costs and that the sum of Shs. 2,045,603/90 which had been deposited in court do be released to her. She also prayed that the Court direct that she should file her bills for taxation pursuant to **section 47 (1)** of the *Advocates Act* in view of the Plaintiffs' claim that the fees billed were exorbitant.

14. **Order 37 rule 4** as referred to by the Defendant in her submissions herein do not deal with questions as between vendors or purchasers of immovable property as she has detailed but involve a summons by a mortgagee, mortgagor and others. The Plaintiffs' Application before this Court is in fact expressed to be brought under the provisions of **Order 37 rule 3** which reads:

> **"A vendor or purchaser of immovable property or their representatives respectively may, at any time or times, take out an originating summons returnable before the judge sitting in chambers, for the determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation; or any other question arising out of or connected with the contract of sale (not being a question affecting the existence or validity of the contract)."**

I tend to agree with the Defendant that **Order 37** is perhaps not the best way in which the Plaintiffs should have approached this Court. It would perhaps have been more practical for the Plaintiffs to have pursued their Application under the provisions of **Section 47 (1)** of the *Advocates Act* which, in fact, is also detailed in the heading to their Originating Summons. Further, the Application is brought under the provisions of **Order 52** of the *Civil Procedure Rules, 2010* covering applications before Court under the provisions of the Advocates Act.

15. There would seem to be equanimity as between the parties hereto as regards the professional work that the Defendant was to carry out on behalf of the Plaintiffs and the other investors in the project. It is somewhat unfortunate that the impression given to the Court from the contents of the Affidavit in support of the Application was that a composite fee had been agreed with the third Defendant in February 2012. This was not the case for, from the correspondence and evidence put before the Court, the professional work done and carried out by the Defendant was in fact performed in the year 2011. I go along with the Replying Affidavit of the Defendant and accept that she had been approached by the said Mr. Mburu in November 2010 requesting her to offer her legal services for the joint-venture project. There would seem to be little doubt that the Defendant attended a number of meetings in connection with the joint-venture project. Indeed, copies of minutes annexed to the Replying Affidavit as exhibit "MNM-3" detail that the Defendant was present certainly at meetings held on 8th February 2011, 21st February 2011, 28th February 2011, 7th March 2011, and 14th March 2011. Further, it exhibits "MNM-4" and "MNM-5" being copies of letters addressed to the 1st and 2nd Plaintiffs dated 30th November 2010 and 7th March 2011 seeking for the Defendant's firm to be appointed as the joint-venture project's advocates and setting out the scope of the legal work required to be done. That leads onto when the Defendant actually performed in the legal services required of her by the Plaintiffs. From the documents annexed to the Further Affidavit of the Defendant dated 27th February 2013, it is quite apparent that they are all dated on various dates in 2011. This would explain why the Defendant rendered the series of fee notes that she did in respect of work done and which are annexed to her Replying Affidavit dated 1st February 2013. The list scheduled at paragraph 22 of that said Affidavit details a total of 16 fee notes having been rendered to the Plaintiffs. The total of those fee notes comes to Shs. 24,534,435/-. To this Court, it is obvious that the Plaintiffs having been faced with that total bill resolved to enter negotiations with the Defendant aimed at substantially reducing the same.
16. Those negotiations from the Affidavits of both parties took place in and around February 2012. They seem to have resulted in the Email from Mr. Gitoho to the Defendant (amongst others) dated 10th February 2012 at page 2 of the annexure to the Affidavit in support of the Plaintiffs' said Application before Court. Such was followed up with the letter at page 2 of the annexure being the letter from the 2nd Plaintiff to the Defendant dated 29th February 2012. Such prompted the response of the Defendant dated 6th March 2012 at pages 3 and 4 of the said annexure. I have thoroughly perused that letter and nowhere does it state that the Defendant has accepted the proposed composite fee of Shs. 12 million for the legal work which she had undertaken on behalf of the Plaintiffs. This is borne out by the letter dated 12th March 2012 from the 2nd Plaintiff to the Defendant when in paragraph 1 it detailed:

> **"In our letter of 29 February 2012 we had to ask you to clearly confirm in writing that you have accepted the negotiated settlement of Ksh 12M for the work you are doing to full completion and to our satisfaction. Your letter has not indicated this."**

Indeed, the Defendant responded to the above on 15th March 2012 at pages 7 and 8 of the said annexure in terse terms as follows:

> **"TAKE NOTICE that we no longer wish to engage in protracted rhetorical discussions, which has so far been the case on this matter and we are passing on this matter to our advocate who shall contact you shortly."**

To this Court's way of thinking, the Defendant had summarily rejected the "negotiated settlement of Ksh 12M". As a consequence, the correspondence that followed as between the parties and latterly with the Plaintiffs' new advocates J. K. Mwangi & Co., in no way resolve the question of the Defendant's fees. The latter held on to the title deeds of the property L. R. No. 209/309/1, Nairobi by way of Lien as against the payment of her outstanding fees. Such was obviously to the frustration of the Plaintiffs who required those title deeds for security borrowing purposes. As a result, this led to the execution of the Indemnity Agreement as between Mr. Mburu and the Defendant as well as the claim by the Defendant for interest on unpaid fees. Indeed, the Plaintiffs were more or less obliged to execute the said Indemnity Agreement as well as pay the demanded interest in order for this Court to order the release of the said title deeds.

17. Accordingly, this Court finds that there was no agreement with respect to remuneration as between the parties in relation to section 45 of the Advocates Act. In any event, that section refers to agreements as regards contentious business which the Defendant was not involved with as regards the legal work done for the Plaintiffs. With regard to the prayers of the Plaintiffs' Notice of Motion dated 22nd January 2013, the Court notes that prayers 1, 2, 3 and 4 are now spent and/or have been complied with. That leaves prayers 5 and 6 as regards further directions/Orders of this Court and the costs of the Application. In that regard, the Court takes cognizance of and fully appreciates the statement in the last paragraph of the Defendant's submissions dated 10th May 2013 to the effect:

> **"We also pray that the court directs the Defendant files her bills for taxation pursuant to section 47 (1) of the Advocates Act in view of the Plaintiffs claim that the fees billed are exorbitant."**

18. In all the circumstances, it seems only fair to both parties that this Court do so order. As a result, this Court directs that the Defendant will file 16 bills of costs herein for taxation purposes in relation to the fee notes that were raised and which were included in the annexure to the Defendant's Replying Affidavit dated 1st February 2013 from pages 69 to 102. The attitude of the Courts in this regard can be gleaned from the case of **In the Estates of Ogilvie: <u>Ogilvie versus Massey (2)</u> (1910) P. 243** at p. **245**,where **Buckley LJ** found:

> **"On questions of quantum the decision of the taxing master is generally speaking final. It must be a very exceptional case in which the court will even listen to an application to review his decision. In questions of quantum the judge is not nearly as competent as the taxing master to say what is the proper amount to be allowed; the court will not interfere unless the taxing master is shown to have gone wholly wrong. If a question of principle is involved it is different; on a mere question of quantum in the absence of particular circumstances the decision of the taxing master is conclusive. I think that the learned judge ought not to have interfered."**

It seems therefore, that in matters relating to taxation, the Court's taxing officers are considered to be the gurus and this Court has no hesitation in referring the fees dispute as between the parties to the, no doubt, wise decision of the taxing officer of this Court. The authorities referred to by both parties in their submissions before Court are best considered in taxation proceedings before the taxing officer. In the meantime and pending the taxing officer's decisions on the 16 Bills of cost, the monies deposited in Court shall remain there. This Court has no doubt that after the said bills have been taxed, a reconciliation as to the monies paid and received will be required. Orders accordingly.

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

J. B. HAVELOCK

JUDGE