REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

MISC CAUSE NO. 1010 OF 2008

MOHAMED & SAMNAKAY ADVOCATES…….....……..……...APPLICANT

- VERSUS -

TWIGA PAINTS LIMITED …….....…….……RESPONDENT

RULING

1. I have before me a chamber summons application dated 19th April 2011 by the respondent seeking to set aside or vary the taxation by the taxing master of the bill of costs dated 5th November 2008. The application is brought under rule 11(2) of the Advocates (Remuneration) Order. It is supported by an affidavit sworn by Kiingati Ndirangu on 19th April 2011.

2. On 11th March 2011, the taxing master, Hon. K.L. Kandet, Deputy Registrar of the court, dismissed a preliminary objection raised by the respondents to the bill and proceeded to tax the bill as drawn. That meant that items 1, 8 and 9 that were disputed by the respondent herein were allowed as drawn. The objection to those items was contained in a notice of objection dated 23rd March 2011. By a letter dated 24th March 2011 the respondent was notified by the court of the reasons for taxation as contained in the ruling of 11th March 2011. The ruling is attached marked "KW3".

3. I have studied that ruling. I am of the following opinion. The ruling considered the submissions of the respondent dated 31st January 2011 and the principal objections raised there. The principal objection was that under paragraph 62 A of the Advocates (Remuneration) Order, the applicant having taken over the conduct of the matter from another firm of advocates, S.S. Jowhal Advocate, ought to have attached a certificate setting out the dates during which the various firms acted for the respondent, any sums paid or agreements for remuneration and whether such sums were in full settlement. The taxing master thought that the objection, though merited, was a technicality and could not stand in the way of the taxation. He then proceeded to tax the bill item by item.

4. Paragraph 62 A (1) and (3) of the Advocates (Remuneration) Order reads as follows;

(1) "Where there has been a change of advocates or more than one change of advocates, the advocate finally on the record shall draw a single bill for the whole of the matter in respect of which costs have been awarded".

(3) "The bill shall be accompanied by a certificate setting out the dates during which all advocates acted, together with all agreements for remuneration made with them, all sums paid to them for costs and whether those sums were paid in full settlement".
The advocate – client bill of costs emanated from services rendered by the applicant in the bill in Nairobi RMCC 1692 of 1998. The applicant in the bill took over the conduct of that suit from M/s S.S. Jowhal & Company advocates.
Being the latest advocate on record in the lower court they were then entitled to file the bill of costs under paragraph 62 A (1). What they failed to do, and which the taxing master considered, is to attach the certificate required at subparagraph 3 aforementioned. The taxing master took into consideration that issue and in his view, although the section of that paragraph is couched in mandatory terms, it was a technicality that should not stand in the way of the taxation.

In my view, it must not be forgotten that the Advocates (Remuneration) Order and paragraph 62 A (1) are subsidiary legislation. They cannot stand in the way of a clear provision granting the court overriding objective or inherent jurisdiction to do justice found at section 3 A of the Civil Procedure Act. This has become more clearer with the passage of sections 1 A and 1 B of the Civil Procedure Act. If there is further doubt, it is cleared by article 159 of the constitution that requires courts to administer justice without undue regard to technicalities. To that extent, I am in full agreement with the taxing master's decision to disregard, in the interests of justice, the requirement of subparagraph 3 of paragraph 62 A of the Order.

5. With regard to the taxation on items 1, 8 and 9 of the bill, I note that the taxing master's decision is well within the scales in schedule VII of the Advocates (Remuneration) Order and he has explained the reasons for his discretion. In the case of *First American Bank of Kenya Vs Shah and others* [2002] E.A.L.R 64 Justice Ringera delivered himself thus at page 69
"First, I find that on the authorities, this court cannot interfere with the taxing officer's decision on taxation unless it is shown that either the decision was based on an error of principle, or the fee awarded was so manifestly excessive as to justify an inference that it was based on an error of principle"

See also *Steel Construction Petroleum Engineering (E.A) Ltd Vs Uganda Sugar Factory* [1970] E.A 141.

I am therefore unable to say that the sum of Kshs 18,000 awarded for item 1 or the increase thereof by half in items 8 and 9 to take care of client advocates fees are manifestly excessive. I cannot also say there is an error of principle as to warrant my interference with the discretion of the taxing master of the court.

6. The camber summons application of the applicant dated 19th April 2011 is thus devoid of merit. It follows that the prayers sought cannot be granted by court. In the result the application is dismissed with costs to the respondent.

It is so ordered.

DATED and **DELIVERED** at **NAIROBI** this 1st day of December 2011.

G.K. KIMONDO
JUDGE
Ruling read in open court in the presence of
Mr. Karanja for the Applicant
Mrs. Rawal for Samnakay for the Respondent.