



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**MISC CIV APPLI 23 OF 2003**

**NYAMOGO & NYAMOGO ADVOCATES ..... APPLICANT**

**V E R S U S**

**KENYA BUS SERVICES LTD. .... RESPONDENT**

**R U L I N G**

This is a Ruling on a reference made to this court by way of a Chamber Summons pursuant to paragraph **11(1)** and **(2)** of the **Advocates (Remuneration) (Amendment) Order 1983** from the decision of the Taxing Master E. O. Obaga made on 23-8-2005. The grounds on which the Reference was made are set out in the said Chamber Summons. The Applicant's grievance relates to items *14, 20, 22, 23, 26, 27, 28, 29, 30, 34, 36, 40 and 43* in the applicant's Bill of Costs dated 22-7-2005 which the Applicant avers were wrongly taxed and low figures of remuneration given as particularized in the Chamber Summons in grounds 1 to 13.

When the reference came up for hearing before me, the learned counsel for the Applicant, Mr. Ochieng Nyamogo, appeared. The Respondent was not represented although it was served.

In a nutshell, Mr. Nyamogo's submission in this matter was that the Taxing Master ignored or disregarded the submissions of the Applicant's advocate and the fact that the Bill was not opposed. He contended that the Taxing Master had no discretion to award less costs in item 1 as the Bill was under Schedule VI and the Motion was in the High Court and fees accrued to it. He referred to the case of **Joreth Ltd, C.A. Appeal No. 66 of 1999** and to **NKU HC MISC. Application No.86 of 2002** which, he said, demonstrate that instructions fees must be awarded as required by the Remuneration Order.

Mr. Nyamogo took issue with the decision of the Taxing Master on item **14** of the Bill as well as on items **20, 22, 24, 27, 28, 29, 34, 36 and 40**.

I have perused the application and considered the submissions of Mr. Nyamogo. I am persuaded that the decision of the Taxing Master was not in accord with the Advocates Remuneration Order. I hereby set aside the decision of the Taxing Master on the items complained of and order the items to be taxed again. It is so ordered.

*Delivered, dated and signed at Kakamega this 8<sup>th</sup> day of November, 2007*

**G. B. M. KARIUKI**

**J U D G E**