Mwanje v ICS Technical College & another (Judicial Review Application E154 of 2024) [2025] KEHC 8116 (KLR) (Judicial Review) (10 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8116 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E154 OF 2024

RE ABURILI, J

JUNE 10, 2025

BETWEEN

HELLEN MUHONJA MWANJE ..... APPLICANT

AND

ICS TECHNICAL COLLEGE ..... 1ST RESPONDENT

KENYA NATIONAL EXAMINATION COUNCIL ..... 2ND RESPONDENT

RULING

1. On 13th March 2025, the Deputy Registrar of this Court who is also the Taxing master under the Advocates Remuneration Order, taxed the exparte applicant's party and Party Bill of costs dated 20th January 2025 at Kshs 136,685.
2. Aggrieved by the said taxation, the applicant filed Chamber Summons dated 20th March, 2025 challenging items Nos. 2,65,66,67,68 and VAT in the ruling on taxation delivered on 13th March, 2025 in the Bill of costs dated 20th January 2025 and urging this court to set aside and tax afresh the said Bill of Costs.
3. In the alternative, the applicant also urges this court to order that the said bill of costs with respect to the items 2,66,67,68 and VAT be taxed afresh before another taxing master.
4. The applicant also prays for costs of the chamber summons.
5. In the grounds supporting the chamber summons, the applicant asserts that the taxing master erroneously denied her the getting up fees and preparing for trial on the grounds that the matter was withdrawn and that it was never set down for hearing contrary to the material on record and that she also denied the applicant VAT.

6. The application is supported by the undated affidavit sworn by Zephania Onchiri Okenyo Advocate restating the grounds on the face of the chamber summons.

7. Opposing the chamber summons, the 1st respondent filed grounds of opposition dated 7th April 2025 asserting that the application was filed out of time and that the application lacks merit and is brought in bad faith.

8. The application was argued orally on 6th May, 2025.

9. Mr. Onchiri reiterated the prayers and the grounds, submitting that contrary to the ruling of the taxing master that the matter was withdrawn without going to a hearing, the matter proceeded to full hearing after the two respondents denied liability and that a judgment was delivered.

10. Counsel submitted that the applicant challenges items 65, 66,67 and 68 and that he has court filing fees receipts from the Case Tracking System as annexed to the affidavit in support of the chamber summons, that VAT was taxed off on the ground that it was not chargeable on party and party costs which was erroneous.

11. The applicant's counsel relied on Four Farms Ltd v Agricultural Finance Corporation [2015] e KLR where the court is said to have stated that costs are to reimburse a successful party. further reliance was placed on EABS Ltd v DeSousa and another *CA 59 of 1995* [1998] e KLR where the Court of Appeal is said to have stated that VAT is chargeable on costs as a lawful disbursement hence VAT is claimable on costs. He further relied on Fredrick Onyango vs Mary Onyango Were [2022] eKLR where the court is said to have that VAT was chargeable on instruction, fees and disbursements.

12. In response, Mr. Okello counsel for the 1st respondent submitted relying on the grounds of opposition dated 7th April 2025. Counsel agreed with the ruling of the taxing master that party and party costs do not attract VAT as per the decision in Pyramid Motors Ltd v Lang'ata Gardens Ltd [2015]e KLR. Counsel further submitted that this court's jurisdiction in a reference is settled. That the court will not interfere with the discretion of the taxing master unless it is proved that she erred in principle in the taxation, which is not demonstrated in the present case. That the taxing master properly exercised judicial discretion hence this court should not interfere with that judicial discretion.

13. In a rejoinder, Mr. Onchiri for the applicant submitted that the reference was filed in time as the ruling was rendered on 13th March 2025 and posted to the CTS on while the reference was filed on 26th March, 2025 which was within the timelines. Counsel urged the court to allow all the other items in the reference since the respondent only challenged the VAT aspect. However, Mr. Okello was quick to state that they opposed the entire reference.

14. I have considered the chamber summons and the opposition thereto as argued by both parties' counsel and the issues for determination are whether the reference was filed out of time and secondly, whether the court should interfere with the discretion of the taxing master.

15. The principles for setting aside the decisions of Taxing Master were well established by the Court of Appeal in the case of Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board [2005] eKLR that:

> " On reference to a Judge from the Taxation by the Taxing Officer, the Judge will not normally interfere with the exercise of discretion by the Taxing Officer unless the Taxing Officer, erred in principle in assessing the costs."

16. The proper exercise of discretion by the Taxing Officers was restated in the case of Kamunyori & Company Advocates v Development Bank of Kenya Limited [2015] Civil Appeal 206 of 2006, where it was held that:

> "...Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle. Authorities on taxation show that a Judge will normally not interfere with the Taxing Officer's decision on taxation unless it is based on an error of principle. Where it is shown that the sum awarded was so manifestly excessive as to justify interference, an error of principle can be inferred. If instructions fee is arrived at on the wrong principles, it will be set aside."

17. On whether the chamber summons was filed within the statutory timelines. It is not in dispute that the ruling on taxation was rendered on 13th March 2025 and that the chamber summons was filed on 26th March, 2025 which latter date was the 13th Day of the 14 days within which such reference could have been filed under Paragraph 11 of the Advocates Remuneration Order.

18. On the getting up fee, the taxing master held that no such fee was allowable under schedule 6 of the Advocates Remuneration Order because Schedule 6(2) disallows such fee, and noted that the matter herein proceeded was withdrawn and as such, it was never set down for hearing.

19. Schedule 6(2) of the Advocates Remuneration Order provides that:

> 2. Fees for getting up or preparing for trial
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> In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:
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> Provided that—
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> (i) this fee may be increased as the taxation officer considers reasonable but it does not include any work comprised in the instruction fee;
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> (ii) no fee under this paragraph is chargeable until the case has been confirmed for hearing, but an additional sum of not more than 15% of the instruction fee allowed on taxation may, if the judge so directs, be allowed against the party seeking the adjournment in respect of each occasion upon which a confirmed hearing is adjourned; be satisfied that the case has been prepared for trial under this paragraph.

20. As to whether the getting up fees in this matter was justified, I note that the matter was opposed by the filing of a replying affidavit sworn by Judith Ngene Musyoka on 22nd July 2024. Thereafter, directions were given on the mode of disposal of the substantive motion and after the parties filed written submissions, they attended court on 1/10/2024 and highlighted their submissions upon which judgment was slated for 8/11/2024 but was posted in the Case Tracking System on 13th January, 2025.

21. Accordingly, I find and hold that the taxing master erred in principle when she held that no fee for getting up for trial was chargeable in view of the above court record showing that the matter was opposed and it proceeded to full hearing. It was never withdrawn as stated in the ruling for taxation. Again, under Schedule 6(2) of the Advocates Remuneration Order, the fee for getting up for trial is chargeable. The Schedule provides that:

> 2. Fees for getting up or preparing for trial

> In any case in which a denial of liability is filed or in which issues for trial are joined by the pleadings, a fee for getting up and preparing the case for trial shall be allowed in addition to the instruction fee and shall be not less than one-third of the instruction fee allowed on taxation:
>
> ...

22. The taxing master awarded Kshs 100,000 as instructions fees. Fees for getting up cannot be less than 1/3 of the instructions fee allowed on taxation. I hereby set aside the order declining getting up fees for trial and substitute it with an order allowing 1/3 of the instructions fees already awarded. Actual figures to be calculated by the Taxing Master and added to the total amount taxed.

23. On the items 65, 66,67 and 68 of the bills of costs which are in respect of the Court filing fees, court filing fees, once paid, is reimbursable and the 1st respondent conceded as much in its submissions dated 12th February 2025 opposing the bill of costs.

24. I observe that on 10/7/2024, the applicant paid Kshs 3750 covering application under certificate of urgency covering Kshs 2250 and application for leave to file judicial review Kshs 1500.

25. On 12.7.2024 when the substantive notice of motion was filed, Kshs 1,500 was paid, which was an underpayment by Kshs 8,500 as the full fees for the substantive notice of motion is Kshs 10,000 not Kshs 1500 and all parties know and ought to know this fee payable but some of them select, in the self-assessment, the least amount payable.

26. Therefore, whereas these sums are reimbursable, the applicant defaulted to pay full court fees.

27. For that reason, I allow the items 66 and 67 of the bill of costs dated 20th January 2025 but direct the applicant to pay into court Kshs 8,500 before accessing the certificate of costs for execution purposes. This order is pursuant to section 96 of the *Civil Procedure Act* which provides:

> 96. Power to make up deficiency of court fees
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> Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court fees has not been paid, the court may, in its discretion, at any stage, allow the person by whom such fee is payable to pay the whole or part, as the case may be, of the fee; and upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

28. Item 65 on court fees for filing certificate of costs is disallowed as there is no such fees paid and the certificate of costs of costs is usually extracted after the taxation, not before. I uphold the decision of the Taxing Master.

29. On item 68, there is no amount indicated therefore nothing could have been awarded. In any event, the certificate of costs is a future item which is issued following taxation of the bill. I find no reason to interfere with the taxing master's decision to disallow this item 68 which is bare.

30. On the much controversial issue of whether VAT is awardable on the total taxed costs, generally, there is no issue with VAT being awarded in advocate client bills of costs since the advocate supplies or provides legal services to clients and when they pay him/her the legal fees, the advocate who is a registered vatable payer is the agent of Kenya Revenue Authority and merely collects the VAT on behalf of Kenya Revenue Authority and remits the collection at the end of each month as provided for in the value Added Tax.

31. However, as regards VAT on party and party costs, there are decisions which hold that only instructions fees and disbursements are vatable if the party is able to demonstrate that they are vatable and that they

are collecting such tax on behalf of Kenya Revenue Authority and not for themselves since tax is only recoverable and payable to the Government.

32. In this case, the taxing master relied on section 6(1) of the VAT Act and held that there were no taxable services rendered by the applicant to the respondent to warrant the same to be subjected to VAT charge. She disallowed the item on VAT on the total sum and cited the holding in Pyramid Motors Limited v Lang'ata Gardens Limited [2015] e KLR where Onguto J (RIP) opined at paragraphs *30* and *31* that:

> " On the final issue of VAT, I hold the simple view that in allowing the same the Master erred under the *Value Added Tax Act*, 2013 particularly section 5 thereof. Value Added Tax (VAT) is chargeable in taxable supply made by any registered person. There was no taxable supply of either goods or services made to the Applicant herein by the Respondent herein. The Bills herein concerned Party and Party costs and VAT could then not apply as neither party fetched nor supplied services to the other. True, legal services were rendered but it is not the Advocate who was being compensated herein. The Master could only have awarded VAT if the Bills were Advocate-Client Bills or if there was tendered evidence before the Master that the Plaintiff had paid VAT and was consequently entitled to indemnity. But yet that again is also debatable whether the Plaintiff was a vatable person. I would vacate the award on VAT as the Master erred.
>
> In the result, I would not return the Bills to the master for re-assessment but would direct that the item of VAT be completely and wholly taxed off." [emphasis added]

33. The above decision has been cited severally with approval. I too agree with the holding by my learned brother Judge now resting in peace. However, most parties who cite the decision do not read the part of that ruling by the Hon. Judge which is that:

> " ...The Bills herein concerned Party and Party costs and VAT could then not apply as neither party fetched nor supplied services to the other. True, legal services were rendered but it is not the Advocate who was being compensated herein. The Master could only have awarded VAT if the Bills were Advocate-Client Bills or if there was tendered evidence before the Master that the Plaintiff had paid VAT and was consequently entitled to indemnity. But yet that again is also debatable whether the Plaintiff was a vatable person. I would vacate the award on VAT as the Master erred.[emphasis added]

34. Thus, the learned Judge was clear that VAT would only be chargeable on the party and party costs if there was tendered evidence before the Master that the Plaintiff had paid VAT and was consequently entitled to indemnity. The learned Judge doubted whether the Plaintiff was a vatable person. Situations where the party may have paid VAT are for example, where such party had already been billed by their advocate and had paid such VAT to their advocate.

35. The applicant on the other hand relied on Fredrick Onyango v Mary Onyango Were [2022] e KLR where this Court is stated to have held that VAT was chargeable on instructions fees and disbursements. It is true this court made the decision in the above case relying on several other cases that supported that proposition. However, the VAT awardable is only on instructions fees and disbursements, where it is proved that the applicant had paid VAT and was seeking reimbursement as was stated by Onguto J in the Pyramid Motors Limited Case (supra), not VAT chargeable on the whole award as is the case herein and the reasons are contained in the said case. This is what the court stated:

> " I will first consider whether the respondent herein is entitled to be paid VAT on instructions fees charged. It is the respondent's counsel's contention that he is entitled to VAT as he

is statutorily mandated to remit the same to the Government. The applicant on his part opposes the same stating that this is not provided for in schedule 7 of the Advocates Remuneration Order.

45. The relevant statute on this is the *Value Added Tax Act*, Cap 476, Laws of Kenya. Section 9(3) of the said Act provides that:

> "In calculating the value of any services for the purposes of Subsection (1) there shall be included any incidental costs incurred by the supplier of the services in the course of making his supply to his client provided that, if the Commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value."

46. Courts have dealt with this issue in Mereka & Co Advocates v New Kenya Co-Operative Creameries Limited [2018] eKLR, where the court stated that:

> "32. In regard to the question of whether VAT should be awarded when the same was not pleaded, the court's view is premised on the case of Amuga & Co. Advocates v Arthur Githinji Maina Miscellaneous Application No 265 of 2012 wherein the Honourable Judge made reference to the AM Kimani & Co Advocates v- Kenindia Assurance Co. Ltd holding that:
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> "...under the *Value Added Tax Act*, an advocate is entitled to charge VAT on instruction fees and also disbursements." In JP Machira t/a Machira & Co Advocates vs MDC Holdings Ltd & 2 others, Justice Ringera held that:
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> "As regards VAT, it is a statutory requirement that legal services are chargeable with VAT."
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> 33. The court is guided by the aforementioned authorities in reasoning that the Advocate is entitled to VAT. The Applicant's claims in this regard is therefore unfounded."

47. In Ngatia & Associates Advocates v Interactive Gaming & Lotteries Limited [2017] eKLR, the court observed that:

> "105. My view is that indeed; estoppel does not operate against the law. Equally, I am in agreement with the advocate that VAT is a statutory charge on legal services rendered to the client.
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> 106. However, I do not agree that VAT is chargeable on the entire award. Neither do I agree that VAT is chargeable only on instructions fees.
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> 107. VAT is a tax levy on advocates in respect of the professional fees they charge for legal services they render to their clients. It is a charge payable to the Kenya Revenue Authority and the advocate is only but a statutory agent for KRA. The levy once collected by the advocate for the legal services rendered is then remitted on a monthly basis to KRA."

48. From the above authorities, it is clear that VAT is chargeable on the instruction fees and also on disbursements. Therefore, in the instant case, VAT of 16% was indeed chargeable on the instructions fees. I find the objection thereto misplaced."

36. Indeed, VAT is an amount payable to the Government and the advocate only acts as an agent for the Government. The reason for awarding VAT on instructions fees as stated in my above decision is that the item literally is fees payable to the advocate although it is taxed in the party and party bill of costs.

37. However, the advocate must also prove that he was vatable by filing into Court a VAT Certificate, the same way process servers are required to file into court practicing licenses for the year of service or advocates being asked to prove that they have current practicing certificates.

38. On the other hand, where the advocate is simply collecting the fees in party and party costs for his client who has already paid him, then there would be no VAT chargeable on instructions fees unless it is proved that the client is a Vatable rater.

39. It is for that reason that the item is called Advocates Instructions Fees. Additionally, VAT would be chargeable on disbursements where such disbursements were made by the advocate in an advocate/ client bill of costs since the advocate will be receiving his fees and reimbursement for the supply of legal services to his client.

40. This is the reason I stated in the Fredrick Onyango case that: "...under the *Value Added Tax Act*, an advocate is entitled to charge VAT on instruction fees and also disbursements."

41. Section 2 of the *Value Added Tax Act* defines "supply" to include the sale or provision of taxable services to another person and "a taxable service" as that which has not been specified in the Third Schedule. Legal services are not listed amongst exempt supplies in the Third Schedule of the Act.

42. It follows that where a party seeks for VAT on the whole of the taxed bill of costs between party and party, as is the case here, the court must reject that request.

43. From the many decisions I have cited, it is clear that it is only in advocate/ client bill of costs that VAT would be charged on the whole award which includes disbursements and instructions fees, unlike in party and party costs where instructions fees is only allowable where there was legal representation by an advocate and there was proof that VAT was paid by the client to the advocate hence, the need for reimbursement.

44. At the same time, where a party only reads section 6(1) of the VAT Act, without reading section 9(3) of the same Act and the plethora of cases that I referred to in the Fredrick Onyango case, they would indeed be right to say that VAT is not chargeable on party and party bill of costs, specifically on Instructions fees.

45. On the whole, I find that in this case of party and party costs, VAT would be chargeable on instructions fees and that, the applicant would be entitled to 16% VAT on instructions fees awarded by the taxing master, had she established that she paid VAT to her advocate for remittance to KRA or that herself was vatable. There was none of that evidence adduced and moreover, the advocate did not file into court a VAT Certificate to demonstrate his VAT status.

46. To crown it all, I shall cite some cases where courts take the position that VAT is chargeable on instructions fees in party and party bill of costs, subject to proof of certain facts.

47. In the case of Four Farms Limited v Agricultural Finance Corporation [2015] eKLR, the High Court stated as follows, though persuasively, that:

> " The final point raised in the Reference was whether VAT was payable upon a Party and Party Bill of Costs. To answer this question, it is necessary to ask another question, namely, what is the basis of a Party and Party Bill of Costs. This question was answered by the learned Taxing Officer when she cited the decision of the court in Jasbir Singh Rai & 3 Others vs. Tarlochan Singh Rai & 4 Others [2014] eKLR where the court said:-
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> "The object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure. Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting the case."
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> The "fight" referred to by the court is conducted by counsel for the successful litigant. It is a service rendered by counsel. The supply or rendering of services is one of the activities which attracts V.A.T. under section 5 of the *Value Added Tax Act*, 2013 (No. 35 of 2013). It was properly charged on the basic instruction fee of Kshs. 332,675/=. The contention to the contrary has no basis, and this leg of the reference also fails."

48. In a recent Ruling by my brother Judge Kibunja of Environment and Land Court in Mathenge & *another v Belle Holdings Limited & 2 others (Environment and Land Miscellaneous Application 54 of 2022*) [2023] KEELC 15942 (KLR) (8 March 2023) (Ruling), the learned Judge was confronted with a similar situation and the question of whether VAT was chargeable on party and party costs and this is what he stated, citing a Court of Appeal decision that is binding on the High Court and Courts of equal status and subordinate courts:

> " The counsel for the 3rd respondent cited in their submissions the Court of Appeal case of E. A. Building Society Ltd versus A. C. A D'Souza & Another C.A. No. 59 of 1995, where the Court inter alia held that:
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> " I hold that VAT is a lawful disbursement properly claimable as such in the bill of costs and I allow 15% VAT …."
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> Though the above Court of Appeal decision was made years before that of the High Court in Pyramid Motors Ltd versus Langata Gardens Ltd [supra] and James Nyangaiye & Others versus Attorney General [supra], there is no indication whether it was brought to the attention of the courts dealing with those two cases. The decision of the Court of Appeal in the above case on the place of VAT in bill of costs is binding to this court, and I am in agreement with the position taken by the court on a similar issue in the case of the Four Farms Limited v Agricultural Finance Corporation [2015] eKLR. "

49. I however observe that in the EABS Ltd v Dsouza case, the Court of Appeal set aside the finding by a single Judge awarding the VAT on the taxed costs stating inter alia that the single Judge had no jurisdiction to do so although they were non-committal as to whether the VAT was chargeable or not.

50. In Family Bank Limited v Mwarania & 6 others; Mount Kenya University (Interested Party) (Civil Suit 201 of 2012) [2023] KEHC 21171 (KLR) (24 July 2023) (Ruling), Nyaga J citing Pyramid Motors

LimiteCase was of a similar view that in party and party bill of costs, a party must demonstrate that they paid VAT for the court to award the same. The learned Judge stated:

> " Similarly, the Claimants did not provide any evidence indicating that they had paid VAT on the legal fees they had paid to their advocates hence are not entitled to an indemnity. The Court in Kenya Commercial Bank Limited vs Stagecoach Management Limited [2017] eKLR cited by the Claimants held that a winning party should be allowed to recoup VAT on the party-to-party bill of costs where they paid out VAT to an advocate. As such, the taxing officer's decision to tax off VAT was sound in law and in principle.

51. In Kenya Commercial Bank Limited v Stagecoach Management Limited [2017] eKLR, my brother Tuiyot J (as he then was) was faced with the question of whether or not the Taxed Costs ought to have been subjected to a charge on VAT.

52. In resolving that issue, the learned Judge appreciated that there are divergent views on this issue and stated as follows, citing some of the cases that I have cited herein including the Four Farms Limited and Pyramid Motors Limited:

> " 13. There are divergent views as to whether Value Added Tax is chargeable on Party and Party costs. In Pyramid Motors Ltd Vs. Langata Gardens Limited [2015]eKLR Onguto J. took the following position:-
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> "On the final issue of VAT, I hold the simple view that in allowing the same the Master erred under the *Value Added Tax Act*, 2013 particularly section 5 thereof. Value Added Tax (VAT) is chargeable in taxable supply made by an registered person. There was no taxable supply of either goods or services made to the Applicant herein by the Respondent herein. The Bills herein concerned Party and Party costs and VAT could then not apply as neither party fetched nor supplied services to the other. True, legal services were rendered but it is not the Advocate who was being compensated herein. The Master could only have awarded VAT if the Bills were Advocate-Client Bills of if there was tendered evidence before the Master that the Plaintiff had paid VAT and was consequently entitled to indemnity. But yet that again is also debatable whether the Plaintiff was a vatable person. I would vacate the award on VAT as the Master erred".
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> 14. A different result was reached by Emukule J. in Four Farms Ltd Vs. Agricultural Finance Corporation [2015]eKLR when he held:-
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> "To answer this question, it is necessary to ask another question, namely, what is the basis of a Party and Party Bill of costs. This question was answered by the learned Taxing Officer when she cited the decision of the court in Jasbir Singh Rai & 3 Others Vs. Tarlochan Singh Rai & 4 Others [2014] eKLR where the court said:-
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> "The object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure. Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting the case".
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> The fight referred to by the court is conducted by counsel for the successful litigant. It is a service rendered by counsel. The supply or rendering of services

is one of the activities which attracts VAT under section 5 of the *Value Added Tax Act*, 2013 (No. 35 of 2013). It was properly charged on the basic instruction fee of Kshs.332,675/=. The contention to the contrary has no basis, and this leg of the reference also fails".

15. Both decisions are of persuasive value and at the "T"-junction I turn with Emukule J, but add as follows. As held by the Supreme Court in Jasbir Singh Rai (supra) costs are a means by which a successful litigant recoup amounts expended in fighting a case. If the successful Litigant has hired the services of an Advocate and has had to pay out VAT to the Advocate then that ought to be recouped by including a charge of VAT on the Party-to-Party Costs. That, however, cannot arise if the Litigant acts in person.

16. In the matter at hand, the successful party was represented by Counsel and since there is no argument that the said Counsel is not registered to pay VAT, I cannot fault the Taxing Officer's decision to allow VAT. However, there could be a small error on how the Taxing Officer applied the charge. She appears to have charged VAT even on Court Filing Fees."

53. The position of the court in all the above decisions is that VAT would only be chargeable on party and party bill of costs where there is evidence that the party paid such VAT to the advocate representing them and was seeking a reimbursement, not seeking for blanket VAT on all the items as was the case herein, where there was no such evidence of payment of VAT or whether the applicant and her advocate were VAT payers, there being no VAT Certificates filed in Court to support the item.

54. In the end, I partially allow the reference and order as follows:

a. The reference was filed within the 14 days of the date of the ruling on taxation

b. Getting up fees for trial at 1/3/of Kshs 100,000 instructions fees is hereby allowed. The Taxing Master shall calculate the actual 1/3rd and include the figure in the total taxed costs while issuing the certificate of costs.

c. Item 65 is declined as there is no evidence that as at the time the bill was being taxed, the applicant had incurred any costs on a certificate of costs which has not been issued to date.

d. Items 66 and 67 are allowed.

e. Item 68 is bare and a replica of item 65 hence nothing is allowed.

f. VAT @16% on the total sums awarded is declined and disallowed for want of proof of entitlement.

g. The applicant to pay into court Kshs 8500 court filing fees underpaid in respect of substantive Notice of motion within 10 days of this ruling and before obtaining a certificate of costs.

h. A fresh certificate of taxation be issued by the taxing master, taking into account the ruling herein on the awards allowed by this Court and conditional upon the applicant paying into court full court fees on the substantive Notice of Motion.

i. To avoid escalation of costs and to bring this litigation to an end, each party to bear their own costs of the reference which is partially successful.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF JUNE, 2025

R.E. ABURILI

JUDGE