REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISCALLANEOUS CIVIL APP. NO.527 OF 2013

MWANGI KENG'ARA &

CO. ADVOCATES.....ADVOCATE/RESPONDENT

VERSUS

UPWARD SCALE INVESTMENT CO. LTD.....1ST CLIENT/APPLICANT

LINMERX HOLDINGS LIMITED.....2ND CLIENT/APPLICANT

MASTERBILL INTEGRATED PROJECTS.....3RD CLIENT/APPLICANT

RULING

(1) Before the Court is the Chamber Summons Application dated **24th August 2018** by which **UPWARD SCALE INVESTMENT CO. LTD** (the 1st Client/Respondent), **LINMERX HOLDINGS LIMITED** (The 2nd Client/Applicant) and **MASTERBILL INTEGRATED PROJECTS** (the 3rd Client/Applicant), seek the following orders:-

> **"1. SPENT**
>
> **2. THAT the Ruling of the Taxing Master dated 10th August 2018 be set aside and the Bill of costs dated 10th December 2013, be struck out and or dismissed with costs.**
>
> **3. THAT in the alternative the Advocate/Client Bill of Costs dated 29th November 2013 be remitted back for taxation before any other Taxing officer.**
>
> **4. THAT the costs of this Reference be awarded to the 1st, 2nd and 3rd Client/Applicants".**

The application was supported by the Affidavit sworn on even date by **JOSEPH GITAU MBURU**, a Director of the 1st Client/Applicant.

(2) The Advocate/Client **MESSRS MWANGI KENG'ARA & CO. ADVOCATES** filed a Replying Affidavit dated **24th August 2018** sworn by **MERCY NDUTA MWANGI**, an Advocate of the High Court of Kenya in opposition to the Chamber Summons. Pursuant to directions of the Court, this reference was canvassed by way of written submissions. The Client/Applicant filed their written submissions on **31st October 2018** whilst the Advocate/ Respondent filed their submissions on **19th November 2018.**

BACKGROUND

(3) The reference herein arises from the Ruling of **Hon Claire Wanyama** delivered on **10th August 2018** in which she taxed the Bill of Costs dated **27th November 2013**, which Bill was filed in Court on **10th December 2013**. The Hon Taxing master taxed the said Bill at **Kshs.419,984**.

(4) In challenging that taxation the Client/Applicant contends that the Taxing Master erred in taxing the Bill of costs as a single entity. They aver that the three Clients ought to have filed different Bills which ought to have then been taxed separately. They contend that the Advocate charged all three Clients yet the work was conducted on behalf of the 1st and 3rd Clients only. It is further contended that the taxing master did not identify who out of the three Clients was responsible to pay the fee.

(5) The Client/Applicants maintain that there existed no proof of instructions issued to the Advocate and aver that the taxing master failed to give reasons for reaching her decision. It was further contended that the Advocate did not complete the task in question as the documents which were prepared were of no value to the Clients. They also contend that the certificate of taxation cannot be executed for want of specification. They finally submit that the Taxing Master erred in allowing a charge of 16% Value Added Tax (VAT) as no evidence was adduced to show that any monies were remitted to the Kenya Revenue Authority. This they posit unjustly enriched the Advocate.

(6) On her part the Advocate/Respondent opposes this reference. She avers that the 1st and 2nd Client/Applicant did come to her in the year 2010 and gave instructions regarding a joint venture to purchase the property known as **LR NO.209/30911**; in order to develop a block of offices for eventual sale. Based upon the instructions given to her the Advocate/ Respondent avers that she proceeded to prepare a Memorandum of Agreement for Engagement and Appointment of a Quantity Surveyor where the 1st Client/Applicant was the employer and the 3rd Client/Advocate was the consultant. The value of said contract was **Kshs.16,000,000/=** plus 16% VAT bringing the total to **Kshs.18,560,000/=.** The Advocate/Respondent forwarded the Agreement she had prepared to the Clients vide the letter dated **28th October 2011**.

(7) The Advocate averred that the 3rd Client/Applicant professional fees were to be paid by the 1st Client/Applicant upon the development and sale of the Office blocks on the 2nd Client/Applicant's property. She went on to state that at the time instructions were given, the 2nd Client/Applicant was the registered owner of the property in the joint venture and was also the majority shareholder of the issued shares of the 1st Client/Applicant.

(8) The Advocate/Respondent submits that the Clients are not being honest in raising the issue of misjoinder and lack of instructions given that they have sworn several Affidavits indicating that they jointly instructed her firm to act as joint counsel. The Advocate/Respondent further submits that this application is but one in a long list of applications which have been filed by the Client/Applicants in an attempt to scuttle and prevent the conclusion of the taxation of her Bills of Cost. The various applications which have been filed by the Client/Applicants are set out in the Replying Affidavit dated **24th September 2018** (all of which were dismissed by the court).

(9) The Advocate/Respondent cites the Ruling delivered by **Hon Justice Havelock** on **19th November 2013** in **HCCC NO.14 of 2013 (OS)** in which the court ordered that the Advocates costs be secured by depositing the unpaid fees into Court when the Client/applicant sought release of their title documents; which the Advocate had held as a lien due to her unpaid legal fees. That she had been greatly prejudiced by the numerous frivolous applications filed by the Client/Applicants and the matter has remained unresolved for the past six (6) years. That the Client/Applicants are seeking to re-litigate matters which have already been determined contrary to the principle of **"res judicata**". Finally the Advocate/ Respondent submits that this reference has been brought in bad faith, is vexatious and urges the court to dismiss the same with costs.

Analysis and Determination

(10) I have carefully considered the submissions filed by both parties as well as the relevant statute and case law. The principles which are to guide the Court in considering whether or not to allow a reference from taxation are well settled. The High Court will not interfere with the exercise of discretion by a taxing officer unless it is demonstrated that said taxing officer erred in law or in principle in assessing the costs. In the case of **PREMCHAND REICHAND –VS QUARRY SERVICES OF E.A LTD & others [1972] E.A, 162** it was held as follows:-

> **"(1) (a) That costs be not allowed to rise to such a level as to confine access to the Courts to the wealthy.**
>
> **(b) That a successful litigant ought to be fairly reimbursed for the costs that he has had to incur.**
>
> **(c) That the general level of remuneration of advocates must be such as to attract recruits to the profession and**
>
> **(d) That so far as practicable there should be consistency in the awards made.**
>
> **(ii) The court will only interfere when the award of the taxing officer is so high or so low as to amount to an injustice to one party:**
>
> **(iii) In considering bills taxed in comparable cases allowance may be made for the fall in value of money."**

(11) Similarly in **STEEL CONSTRUCTIONS PETROLEUM ENGINEERING E.A LTD –VS- UGANDA SUGAR FACTORY [1970]** E.A 141 it was held:-

> **"…Although a judge undoubtedly has jurisdiction to re-tax a bill himself he should as a matter of practice do so only to make corrections which follow from his decision and that general rule is that where a fee has to be reassessed on difference principles, the proper cause is to remit to the same to another taxing officer. I would agree that, as a general statement, that is correct adding only that it is a matter of juridical discretion."**

(12) The principles which are to guide a taxing officer in the exercise of his duty were set out in the case of **JORETH LIMITED –VS-KIGANO & ASSOCIATES [2002] E.A** as follows:-

> (a) Care and labour required by the advocate.
>
> (b) The number and length of the pages to be perused.

(c) The nature and importance of the matter.

(d) The value (where ascertainable) of the subject matter.

(e) Interest of the parties.

(f) Novelty of the matter

(13) With the above principles in mind I will proceed to analyze the submissions of counsel. In this matter the following issues arise for determination:-

(i) Was there an Advocate/Client relationship between the parties?

(ii) Should the Advocates have filed a separate Bills of Costs for each Client?

(iii) Did the Advocate earn Instruction Fees?

(iv) Were the Instruction Fees properly calculated?

(v) Was Value Added Tax applicable?

Advocate/Client Relationship

(14) Order 2 of the Advocates Remuneration Order provides as follows:-

> **"This Order shall apply to the Remuneration of an advocate of the High Court by his client in contentious and non-contentious matters, the taxation thereof…"**

Clearly then in order for a taxing officer to embark on the task of taxation it must be shown that an Advocate/Client relationship existed between the parties. The Client/Applicants dispute the fact that the Advocate/Respondent acted for them. They state that although the Bill of Costs was lodged as against all three of them it was not entirely clear on whose instructions the Advocate was acting. In refuting the above, the Advocate/Respondent avers that the Clients have severally admitted to having instructed her.

(15) In **HCCC NO.14 of 2013 (OS)** when the matter was before **Hon Justice Havelock** (retired) the Client/Applicants did concede in an Affidavit deponed on their behalf that they were clients of the Advocate/Respondent. In his ruling delivered on **19th November 2013**, the Honourable Judge noted as follows:-

> 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 the 1st 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 Richood 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 <u>including the instructions given to the Defendant firm of Advocates</u>**. [own emphasis]

(16) Having deponed in a sworn Affidavit on **22nd January 2013**, that they had engaged the Advocate/ Respondent to act for them in this particular transaction the Client/Applicants are estopped from now denying the fact of having instructed said Advocate. The Court went on to direct that the Defendant (the Advocate/Respondent herein) file 16 Bills of Costs for taxation in relation to the fee notes raised. It was arising out of this ruling of the High Court that the Bill of Costs dated **27th November 2013,** the subject of this reference was filed.

(17) The doctrine of "**res judicata"** is provided for in **Section 7 of the Civil Procedure Act Cap 21 Laws of Kenya** as follows:-

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."

(18) The essence of this doctrine was succinctly captured by this Court in **JOHN FLORENCE MARITIME SERVICES LIMITED & ANOTHER VS. CABINET SECRETARY FOR TRANSPORT AND INFRASTRUCTURE & 3 OTHERS [2015]eKLR** as follows:-

"The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably."

(19) Likewise **Nyamweya J.** in the case of **Tom Ojienda Associates Vs Nairobi city County [2018] eKLR** stated as follows:-

"27. When a plea of res judicata is raised, the doctrine of estoppel becomes applicable, and in particular estoppel by record, as is explained in Halsbury's Laws of England, Fourth Edition (2001 Reissue) Volume 16(2) at paragraph 976:

"<u>A prior judgment may give rise to cause of action estoppel or issue estoppel</u>. In order to prove cause of action estoppel it is necessary to show that the subject matter in dispute is the same, namely that everything that is in controversy in the second suit as the foundation of the claim for relief was also in controversy or open to controversy in the first suit; while in order to prove issue estoppel it is necessary to show that an issue which arose in the previous proceedings has been raised in the current proceedings.

The cause of action or the issue must have come in question before a court of competent jurisdiction; the result must have been conclusive (or final) so as to bind every other court; and the parties to the judicial decision or their privies must have been the same persons as the parties to the proceedings in which the estoppel is raised or their privies." [own emphasis]

(20) This issue of representation was raised before **Justice Havelock** when he was seized of the matter. The Clients in that matter freely conceded to having instructed the Advocates/Respondent. That concession was made in a court of concurrent jurisdiction with the present court. Accordingly the Client/Applicants are precluded from denying the fact of instructions here.

(21) Moreover this question of instruction was not an issue which was before the Taxing master for determination. The directions from the High Court was for taxation of the 16 Bills in order to determine the quantum of legal fees payable. In **MWANGI KENGARA & CO ADVOCATES –VS- UPWARD SCALE INVESTMENT COMPANY LIMITED [2019]KLR** which was an application involving the same parties as the present case, my learned brother **Hon Justice A. Makau** held as follows:-

"….I find there is no option for striking out or dismissing of the Bill of costs in this matter simply because the court's order herein above (referring to the orders of Justice Havelock) specifically directed that the fees has to be assessed for purposes of determining the fees due to the advocate. The Court having expressed itself in unambiguous terms, the taxation of the Bill of Costs was an exercise that required the taxing officer to carry out. In view of the foregoing, I have no hesitation in stating that the <u>issue of whether the Bill of Costs was capable of being taxed was settled by the decision of the High Court and by a Court of equal status to this Court. This court cannot sit on appeal on a decision of a court of equal status</u>. I find no basis for this court to find otherwise.." [own emphasis]

(22) The Clients claimed that the Taxing Master failed to specify which of the three clients would be responsible to pay the Advocates fees. Contrary to this allegation, I note that the Taxing Master did in her ruling dated **10th August 2018** specify who was to pay the legal fees. In that ruling the Hon taxing Master stated:-

> **"The agreement dated 11th August 2011 is between Upward Scale Investment and Masterbill Integrated Projects where the consideration was Kshs.16,000,000/= Linmerks Holdings is not a party to the agreement and is wrongly joined in this bill."**

By this the lower court excluded the 2nd Client/Applicant from any responsibility in meeting the legal costs for the Advocate/Respondent.

(ii) **Filing of separate Bills of Costs**

(23) The Client/Applicants submit that since they are separate and distinct legal persons and are capable of being sued in their own individual capacities, none can be deemed liable for the debt of the other. As such they posit that separate Bills of Cost ought to have been filed against each Client/Applicant. It is submitted that by charging the Client/applicants jointly for services rendered to any one of them amounts to a mis-joinder of persons and is therefore a miscarriage of justice.

(24) In **MWANGI KENG'ARA & CO. ADVOCATES –VS- UPWARD SCLAE INVESTMENT COMPANY LIMITED & ANOTHER [2019] eKLR,** which was an application involving the same parties as the present one my learned brother **Hon Justice A. Makau,** stated as follows:-

> **"24 On the issue of misjoinder of the parties the Respondent demonstrated that both Applicants instructed her and the High Court in HCC NO.48 OF 2013 found that was so.**
>
> **25 This Court has noted that the Court ordered that the Bill of Costs shall be taxed by one Taxing Master as per the ruling dated 27/6/2014 in this suit.**
>
> **26 Under Order 3 Rule 5(1) of the Civil Procedure [Rules] provides for joinder of action. In the instant matter the cause of action was one. That a suit shall not fail for misjoinder as court is empowered to make any order regarding the joinder of parties. I find that as parties agreed by jointly instructing the Advocate and the cause of action is the same non is prejudiced by the joinder of the parties."**

(25) I am in full agreement with the above finding. Further I take cognizance of **Order 1 Rule 9** of the **Civil Procedure Rules 2010,** which provides:-

> **"No suit shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of parties actually before it."**

(26) The Client/Applicants submit that Schedule 1 of the Advocates Remuneration Order provides for different charges for either a vendor or a purchase separately. They further submit that **Rule 29** of the **Advocates Remuneration Order** provides that where an advocate represents both, the advocate is to charge the vendor the vendor's Advocates charge and vice versa for the purchaser and in each case reduced by a sixth. They maintain that the rule illegitimatizes a joint bill as against both parties. I find that this contention holds no basis as the transaction in issue herein was not a land transaction between vendor and purchaser. In the circumstances the Client/applicant's argument is not valid.

INSTRUCTION FEES

(27) The Client/Applicants contend that no instruction fees were earned by the Advocate/Respondent as she did not complete the assigned task. They insist that the document drawn were of no value and claim that they had to engage another Advocate to complete the work. The Advocate/Respondent maintained that she prepared the Memorandum of Agreement for Engagement and for the Appointment of the Quantity surveyor. She avers that the Agreement was forwarded to the Clients vide the letter dated **28th October 2011.**

(28) In **HAYANGA & CO. ADVOCATES –VS- RAYAL GARDEN DEVELOPERS LTD [2006]eKLR**, the Court held thus:-

> **"On his part, the learned taxing officer did not award the full instruction fees because the work had been substantially completed. The reason given by him, for awarding the fees is that the advocate had been instructed to complete the transaction within 2-3 weeks. In my considered view, the fact that the transaction was supposed to be completed within 2-3 weeks, was not reason enough to warrant the award of full instruction fees. The proper consideration, whether or not the position prevailing in England applies here, is the ascertainment of the work actually done vis-a-vis the nature and extent of the instructions. In effect, if an advocate was instructed to prepare an Agreement for Sale, he would have earned his full instruction fees, as soon as the said Agreement for Sale was ready**. [own emphasis]

The Bill of costs raised in this matter was for the preparation of the Memorandum of Agreement for Engagement and for the Appointment of the Quantity Surveyor. It was not for carrying out the entire raft of instructions. Based on the above authority, I find that the Advocate/Respondent earned and was entitled to be full instruction fees upon completion of the Memorandum of Agreement.

Calculation of Instruction Fees

(29) The Client/Applicant took issue with the manner in which the Taxing Master calculated the Instruction Fees due submitting that the fee

as assessed was highly exorbitant and that the learned taxing master failed to give reasons for the amount awarded as instruction fees. They also took issue with the allowance of the instruction fees at 1% without any reason founded in law and on the failure by the taxing Master to render a finding as to who among the three Respondents was responsible for payment of the taxed costs.

(30) In **REPUBLIC –VS- MINISTRY OF AGRICULTURE & 2 others Ex Parte MUCHIRI W'NJUGUNA & 6 others [2006] eKLR Hon Justice J.B Ojwang** (as he then was) held as follows:-

> **"The taxation of costs is not a mathematical exercise; it is entirely matter of opinion based on experience. A court will not, therefore, interfere with the award of a taxing officer, particularly where he is an officer of great experience, merely because it thinks the award somewhat too high or too low; it will only interfere if it thinks the award so high or so low as to amount to an injustice to one party or the other…the 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 manifestly excessive as to justify an interference that it was based on an error of principle. Of course it would be an error of principle to take into account irrelevant factors or to omit to consider relevant factors. And according to the Advocates (Remuneration) Order itself, some of the relevant factors to take into account include the nature and importance of the case or matter, the amount or value of the subject matter involved, the interest of the parties, the general conduct of the proceedings and any direction by the trial judge. Needless to state not all the above factors may exist in any given case and it is therefore open to the taxing officer to consider only such factors as may exist in the actual case before him."**

(31) I have carefully perused the Ruling of the learned Taxing Master delivered on **10th August 2018**. I find that she clearly indicated the manner in which she conducted the taxation and also gave succinct reasons for the assessment of the instruction fees. In her ruling the Taxing officer stated as follows:-

> **"The agreement dated 11th August 2011 is between Upward Scale Investments Company Limited and Masterbill Integrated Projects where the consideration was Kshs.16,000,000/= Linmerks Holdings Limited is not a party to the agreement and is wrongly joined in this bill."** [own emphasis]

By this it was made clear who out of the three clients would be liable to pay the instruction fees.

(32) The agreement was made in August 2011, thus the **Advocate (Remuneration) Order 2009** was applicable.

Rule 18(f) of the Advocates Remuneration Order provides as follows:-

> **"In respect of any business referred to in this paragraph which is not completed, and in respect of other deeds or documents, including settlements, deeds of gift inter vivos, assents and instruments vesting property in new trustees, and any other business of a non-contentious nature, the remuneration which has otherwise not been provided for, the remuneration is to be that prescribed in Schedule 5."**

43. **Schedule 5** provides as follows:-

> **"PART I – AGREED HOURLY RATE**
>
> **1. Fees to be assessed under this Schedule may either be charged in accordance with paragraph 2 of this part or assessed in accordance with Part II**
>
> **2. An advocate may charge his fees at such hourly rate or rates as may be agreed with his client from time to time.**
>
> **PART II – ALTERNATIVE METHOD OF ASSESSMENT**
>
> **1. INSTRUCTIONS**
>
> **Such fee for instructions as, having regard to the care and labour required, the number and length of the papers to be perused, the nature or importance of the matter, the amount or value of the subject matter involved, the interest of the parties, complexity or the matter and all other circumstances the case, may be fair and reasonable, but so that due allowances shall be given in the instruction fees for other charges raised under this Schedule.**

(33) In assessing the instruction fees the Taxing Master in her ruling stated as follows:-

> **"The instruction fees is calculated on the consideration of Kshs.16,000,000/= since the advocate was acting for both parties the amount is reduced by 1/6 making the basic amount to be Kshs.133,333/= per client. In regard to the work done, interest of the parties and documents prepared the amount is increased to Kshs.170,000/= per Client."**

From the above I am satisfied that the learned Taxing Mater did take into account the relevant laws and principles in coming to her decision on quantum. The amount awarded as instruction fees was not in my view so exorbitant as to merit the interference of this Court.

(34) In **THOMAS JAMES ARTHUR –VS- NYERI ELECTRICITY UNDERTAKING [1961] E.A 492** it was held that:-

> **"Where there has been an error in principle the court will interfere, but questions solely of quantum are regarded as matters with which the taxing officers are particularly fitted to deal and the court will intervene only in exceptional cases."**

I find that there was no misdirection on the part of the taxing master in assessing the instruction fees. The amount awarded was neither exaggerated nor excessive as the minimum scale fees were applied.

VALUE ADDED TAX

(35) The Client/Applicants challenge the 16% VAT allowed by the taxing master on the basis that no receipts have been annexed to prove that payments for tax were made. In **AMUGA & CO. ADVOCATES –VS- ARTHUR GITHINJI MAINA 2013 eKLR, Hon Justice R. Ougo** held thus:-

> **"The Advocate relied on AM Kimani & Co. Advocates –Vs- Kenindia Assurance Co. Ltd where Koome J held that under the Value Added Tax Act an advocate is entitled to charge VAT on instruction fees and also disbursements.**
>
> **In J.P Macharia T/a Macharia & Advocates –Vs- MDC Holdings Ltd & 2 others where Ringera held that "As regards VAT it is a statutory requirement that legal services are chargeable with VAT. The statement in the encyclopaedia of Forms and Proceedings which counsel for the defendants relies upon to the effect that if VAT is not mentioned in the quotation for cost it is presumed that the sum quoted is VAT inclusive cannot apply to a situation where what is in issue is not a quotation for costs but a duly taxed bill of costs.**
>
> **I hold the same view as Koome J held in AM Kimani & Co. Advocates –Vs- Kenindia Assurance Co. Ltd. The applicants entitled to VAT after the taxing master has taxed item 1 as per the provisions of Section 46(d) of the Advocates Act."** [own emphasis].

Therefore the award of 16% VAT was both procedural and correct.

(36) Finally on the basis of the foregoing, I find that the taxing master did follow the law and in fact awarded the minimum fees prescribed by the Advocates Remuneration Order. I find no evidence of an error, in principle made by the taxing master in arriving at her decision of **10th August 2018**. Consequently I find that this reference lacks merit. The same is hereby dismissed with costs to the Advocate/Respondent.

Dated in Nairobi this 5th day of July 2019.

Justice Maureen A. Odero