



**University of Nairobi & another v Moses (Civil Appeal  
119 of 2020) [2022] KECA 45 (KLR) (4 February 2022) (Judgment)**

Neutral citation: [2022] KECA 45 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 119 OF 2020  
DK MUSINGA, RN NAMBUYE & J MOHAMMED, JJA  
FEBRUARY 4, 2022**

**BETWEEN**

**UNIVERSITY OF NAIROBI ..... 1<sup>ST</sup> APPELLANT**

**STUDENT ORGANIZATION OF NAIROBI UNIVERSITY (SONU) .... 2<sup>ND</sup>  
APPELLANT**

**AND**

**NABISWA WAKENYA MOSES ..... RESPONDENT**

*(Appeal from the ruling and decree of the High Court of Kenya (P. Nyamweya, J.) dated 21st November, 2018 in Nairobi J.R Misc Application No. 226 of 2016)*

**JUDGMENT**

1. This is an appeal arising from the ruling of P. Nyamweya, J. (as she then was) in Nairobi J.R Misc Application No. 226 of 2016, dated 21st November, 2018.
2. The background to the appeal, albeit in a summary form, is that the impugned ruling arises from a determination of two applications triggered by a ruling on taxation of a party and party bill of costs dated 20th December, 2017 filed by the respondent herein vide which the Taxing Master in a ruling delivered on 7th June, 2018 taxed the respondent's bill of costs at Kshs.5,419,547.00. The appellants were aggrieved by the ruling and filed a Chamber Summons dated 2nd July, 2018. In it, they sought an order for the court to vacate the Taxing Master's order of 7th June, 2018 taxing the respondent's bill of costs dated 20th December, 2017 at Kshs. 5,419,546.00; set it aside and or vacate it; and the matter to be remitted to another Taxing Master to retax the bill. In the alternative, the High Court to tax the bill together with an attendant order for provision for costs.
3. That application was opposed by the respondent's replying affidavit dated 3rd October, 2018. Simultaneously with the filing of the replying affidavit, the respondent filed a notice of motion dated the same date seeking judgment against the appellants in the sum of Kshs.5,419,546.00 forming the



amount of the bill of costs taxed in his favour as per the certificate of taxation dated 7th June, 2018 together with interest at appropriate court rates from the date of taxation till payment in full plus costs. There is observation by the Judge in the impugned ruling that the appellants filed no response to the respondent's application despite grant of leave to do so. Directions were given by the Judge on 9th October, 2018 for both applications to be heard and determined together, subsequently canvassed through oral submissions as directed by the court.

4. At the conclusion of the trial, the Judge evaluated the record and made observations thereon, inter alia, that the respondent had contended that the Taxing Master exercised his discretion judiciously in arriving at the amount forming the taxed bill of costs which should not be disturbed on the basis that the matter was complex; several applications which required legal research and authorities were filed; that the peculiar circumstances prevailing in the matter giving rise to the amount forming the taxed bill was distinguishable from the circumstances prevailing in the case law relied upon by the appellant in support of the application, to wit, *Nyangito & Company Advocates vs. Doinyo Lessos Cremaries Limited [2014] eKLR* and *National Oil Corporation Limited vs. Real Energy Limited & Another [2016] eKLR*. Lastly, that the appellants' application was incompetent, having been filed out of time and without leave of court because the reasons for taxation were given on 7th June, 2018 while the application was filed on 2nd July, 2018, beyond the fourteen (14) days within which to lodge an application of that nature.
5. Turning to the appellants' position, the Judge observed that the appellants had faulted the Taxing Master for: failing to properly subject the bill of costs to Schedule V by not justifying the basis for departing from what the law provides therein by finding that the matter was so important to warrant an award of Kshs.4,000,000.00 as instruction fees; failing to take into consideration all the relevant factors relating to the said bill as put forth by the appellants in their affidavit in support of the application for setting aside; taking into consideration irrelevant factors, namely, that the respondent was a student leader in a public university and therefore in the limelight; erroneously believing that their application had been filed out of time; and failing to appreciate that time started running from 20th June, 2018 when they were furnished with the reasons for the ruling.
6. Further, the appellants had relied on the case of *National Oil Corporation Ltd vs. Real Energy Limited & Another* [supra] and *Republic vs. Commissioner of Domestic Taxes Ex-Parte Ukwala Supermarket Limited & 2 Others [2018] eKLR* in support of their submission that the jurisprudential trend on constitutional review matters was that these should not attract an award of more than kshs.100,000.00 and urged the learned Judge to interfere with the figure arrived at by the Taxing Master, set it aside and substitute it with an award of kshs.150,000.00 as appropriate instruction fees in the circumstances.
7. Upon consideration of the above rival position, the Judge construed Rule 11 of the *Advocates Remuneration Order*, applying its contents to the uncontroverted position in the record and ruled that where both the taxed costs and the reasons for the ruling on taxation are contested, the filing of a reference has to be done within fourteen (14) days of the receipt of the reasons. The Judge further observed that the appellant had written a letter to the Deputy Registrar of the Judicial Review Division at the Milimani Law Courts who was the Taxing Master indicating their objection to the ruling delivered on 7th June, 2018 with respect to item I and seeking reasons for the amount allowed against the said item. The letter was received by the relevant registry on 11th June, 2018, which according to the Judge fell within the requisite fourteen (14) days' period. The appellant wrote another letter dated 13th June, 2018 seeking a copy of the ruling, which was received by the registry on 19th June, 2018, to which the appellant received no replies, prompting the filing of the reference dated 2nd July, 2018, on 3rd July, 2018.



8. The Judge also took into consideration the decision in the case of *Abmed Nasir Abdi Kadir & Co. Advocates vs. National Bank of Kenya Limited (2) [2006] 1 EAS* for the holding, inter alia, that sub rule (2) of rule 11 of the Advocates Remuneration Order was not intended to be ritualistically observed, even when reasons for the disputed taxation are already contained in the formal and considered ruling, and opined that given that there was no response to the appellants' letter to the registrar of 13th June, 2018 seeking reasons, there was no material before her on the basis of which the application before her could be vitiated and on that account proceeded to consider its merits.
9. On the merits of the application, the Judge found that only one issue fell for her consideration, namely, taxation with respect to Item I of the respondent's bill of costs dated 20th December, 2017 on instruction fees, the applicable law as regards taxation of a party and party bill of costs was Schedule 6A of the Advocates (Remuneration) Order 2014 paragraph 1(j) which explicitly states, inter alia, that to present and or oppose an application for a constitutional and prerogative order such fee as the Taxing Master's exercise of his discretion may require taking into consideration the nature and importance of the petition or application; the complexity of the matter and the difficulty or novelty of the questions raised; the amount or value of the subject matter; the time expended by the advocate in preparation and conduct of the proceedings, bearing in mind the permissible range for an award under the said rule, namely, not less than kshs.45,000.00 where the matter is not opposed and not less than Kshs.100,000.00 where the matter is opposed.
10. On the mode of exercise of the mandate of the court in determining an application of the nature that the Judge was confronted with, the Judge took into consideration the holding in the case of *First American Bank of Kenya vs. Shah and Others [2002] E.A.C.A 64* that a court has no mandate to interfere with a Taxing Master's decision on taxation unless it is shown that either the decision was based on an error of principle or the amount awarded was so manifestly excessive as to justify an inference that it was based on an error of principle. The case of *Joreth Ltd vs. Kigano & Associates [2002] 1 E.A 92* was cited for the holding, inter alia, that a Taxing Master in assessing costs to be paid to an advocate on a bill of costs exercises judicial discretion and that such judicial discretion can only be interfered with where there is demonstration that the discretion was exercised capriciously and or in abuse of proper application of the correct principles of law, or where the amount of fees awarded by the Taxing Master is excessive as to amount to an error in principle.
11. Turning to the applicable guidelines that the Taxing Master who rendered the impugned ruling was obligated in law to take into to consideration, the Judge adopted fully the guidelines enunciated by Ojwang. J. (as he then was) in *Republic vs. Ministry of Agriculture & 20 Others Ex parte Muchiri W'Njuguna & 6 Others [2006] eKLR* as approved by Odunga, J. in the case of *Nyangito & Co. Advocates vs. Doinyo Lessos Creameries Limited [supra]*. In summary, these may be rephrased that in purely public law proceedings, the consideration to be borne in mind by the Taxing Master is that the exercise of that mandate should be entirely free from any private business arrangements or income generated by the substratum of the proceedings; the advocate with the bill should seek no more than reasonable compensation for professional work done, the Taxing Master has to avoid any prospect of any semblance of an unjust enrichment for any particular party or parties, comparability should be applied in the assessment of advocate's instruction fees, objectivity should be sought when applying loose textures criteria in the taxation of costs, where complexity of the proceedings is a relevant factor, the specific elements of the same should be judged on the basis of the express or implied recognition and mode of treatment by the trial Judge where factors of the nature of the responsibility borne by an advocate and novelty of matters are taken into account, its nature is to be clarified; where account is taken of time spent, research done, skill deployed by counsel, the pertinent details are to be set out in summarized form and taken into account; and lastly, the Taxing Master must first recognize the



basic instruction fee payable before venturing into consideration as to whether to reduce or increase the instruction fees.

12. Applying the above threshold to the Taxing Master's reasoning in the impugned ruling before her, the Judge observed that from the record, the Taxing Master properly applied Schedule 6A of the Advocates Remuneration Order and took note of the provision that basic instruction fee was Kshs.100,000.00, of which the Taxing Master had a discretion to increase, taking into account the factors enunciated in the above authority. It was also evident from the record that the Taxing Master was not only alive to but had also taken into consideration the guidelines on taxation enunciated by Ojwang, J. (as he then was) in the *Republic vs. Ministry of Agriculture & 20 Others Ex parte Muchiri W'Njuguna & 6 Others* [supra]; that as for justification for awarding a sum in excess of the basic amount stipulated in the rule, the Taxing Master was explicit that she had looked at the nature of the case that was before the court and its importance to the respondent; the fact that the respondent was a student leader in a recognized University who bore great responsibility which placed him in the public limelight and several other avenues including politics, as one of the reasons as to why the court found in his favour and directed that he be sworn in office as a duly legally elected official of the 2nd respondent, on the basis of which the Taxing Master found basis for increasing the instruction fees from Kshs.100,000.00 to 4,000,000.00.
13. Upon due consideration of the reasoning the Taxing Master gave for increasing the above instruction fees, the Judge was satisfied that the Taxing Master had not only taken into consideration relevant factors specifically provided for in schedule 6A, but had also given reasons as to why she exercised her discretion to tax off the claim on professional fees from Kshs.5,000,000.00 to Kshs.4,000,000.00. Neither did the Judge find the enhanced figure excessive, considering the factors the Taxing Master took into consideration as more particularly set out in the reasoning of the Taxing Master, all of which the Judge found was sufficient justification for the increase in the instruction fee from the basic Kshs.100,000.00 to Kshs. 4,000,000.00 and concluded that the Taxing Master committed no error in her findings and sustained the ruling.
14. Turning to the respondent's application for enforcement of the taxed costs, the Judge took into consideration the decision in the case of *Daly & Figgis Advocates vs. Homelex Limited* [2013] eKLR, *Evans Thiga Gaturi Advocates vs. Kenya Commercial Bank Limited* [2012] eKLR and the case of *Abmednasir Abdikadir & Company Advocates vs. National Bank of Kenya Limited* [2007] eKLR in which section 5(2) of the *Advocates Act* donating power to the court to enter judgment in the Advocates favour on taxed costs, and also Rule 7 of the Advocates Remuneration Order which provides for the interest on costs at 14% until payment in full were construed and applied. She dismissed the appellants' application and allowed the respondent's application for enforcement of the certificate of costs granted by the Taxing Master but declined to award costs.
15. The appellants were aggrieved and are now before this Court on a first appeal raising nine (9) grounds of appeal that the trial Judge erred in law: In rendering a ruling that has no substratum in law as established; in substituting her opinion with the clear provisions of the law; in taking into account irrelevant factors in the taxation of the bill of costs; in agreeing with the decision of the Taxing Master; in failing to properly subject the Party & Party bill of costs dated 20.12.17 to Schedule VI; by purporting the matter to be so important to warrant Kshs. 4,000,00/= as instruction fees; in agreeing with the decision of the Taxing Master in erroneously attaching importance of the matter to the respondent as a student leader in a recognized public university and therefore bears great responsibility and also that he was in the public limelight; in agreeing with the decision of the Taxing Master who failed to subject the Party & Party bill of costs dated 20.12.17 to Schedule 6, particularly by not justifying the basis for departing from what the law provides for in principle and reached an erroneous



conclusion; the ruling violates the existing law and statute; and lastly, that the ruling be recalled and the reference upheld.

16. The appeal was canvassed via the Go-To-Meeting platform through written submissions and principles of case law fully adopted by Advocates for the respective parties herein in their presence but without oral highlighting. Learned counsel, Mr. Donald Kipkorir, appeared for the appellants while learned counsel, Mr. Nyangito, appeared for the respondent.
17. Supporting the appeal, the appellants submit that their claim on reference before the learned Judge was simply that: the respondent had not shown that the case involved any complexity, novelty and extra ordinary industry to warrant an increase of the instruction fees and the bill of costs as allowed by the Taxing Master, which according to them was a classic embodiment of an attempt to unjustly enrich the respondent; the impugned ruling is unsustainable for the Judge's failure to establish a legal basis for agreeing with the decision of the Taxing Master in attaching importance of the matter to the fact of the respondent being a student leader in a recognized public University when it is undisputed that the appellants bear greater responsibility and are also in the public limelight; failing to appreciate that the factual base for the ruling were merely matters of opinion of the respondent which were wholly unfounded; the appellants' position that allegations that the proceedings were urgent, time consuming and important to the respondent as they were affecting his leadership and political career in the appellants' organization were preposterous and lacked merit; the ruling is therefore fatally defective and a proper candidate for setting aside, and which they urged this Court to do.
18. Further, that while they appreciate that the exercise of the mandate of a Taxing Master is purely discretionary, said to be unfettered, the law demands that it be exercised within the principles set out in numerous case law as more particularly set out in the submissions, all of which the appellants assert were either overlooked, ignored or not properly appreciated, considered and applied in the circumstances of this appeal.
19. According to the appellants, the principles that ought to have guided the Judge on interference or otherwise of the Taxing Master's discretion and which are now well settled are demonstration that the Taxing Master did not exercise his/her discretion judiciously but improperly for example, disregarded factors which should have been properly considered; considering matters which it was improper to have considered; failing to bring his/her mind to bear on the question in issue; acted on a wrong principle; and lastly, where the Taxing Master was clearly wrong, all of which the appellant contends were demonstrated to exist in the circumstances giving rise to this appeal, but in respect of which the Judge abdicated her mandate to exercise same degree of supervision to upset findings in a taxation, which in their opinion was not only inordinately high but also not grounded on the law.
20. The appellants therefore have invited this Court to find and hold that the amount awarded to the respondent was exorbitantly high and thus not commensurate to the work done by the respondent, hence payment of the amount awarded would in the circumstances amount to an unjust enrichment to the respondent as in their opinion the same is not reflective of the costs incurred by the respondent.
21. To buttress the above submissions, the appellants rely on this Court's decision in *Vipul Premchand Haria vs. Kilonzo & Co. Advocates [2019] eKLR* in which the Judge was faulted for failure to vitiate the Taxing Master's ruling; set aside the Judge's ruling and remitted the matter for taxation before another Taxing Master, and the High Court Case of *Kanu National Elections Board & 2 Others vs. Salah Yakub Farah [2018] eKLR* for the holding, inter alia, that the High Court in the discharge of its supervisory mandate over a Taxing Master has power to correct the Taxing Master's ruling, not only if the decision is founded on malafides; ulterior and improper motive; not properly applying his/her mind to the matter or exercised the judicial discretion improperly; but also where there is demonstration of the



Taxing Master having disregarded the express provision of a Statute, and urged this Court to set aside the High Court's decision and allow the appellants' reference with costs.

22. In rebuttal, the respondent submits that the impugned ruling was well founded both in law and in fact borne out by the content of the record, which demonstrates clearly that the complexity of the proceedings was occasioned by the appellants' own conduct which prompted the respondent to seek the court's intervention severally and even after being served with court orders, the appellants did not heed and comply, necessitating the proceedings to be prolonged as more particularly set out in the submission.
23. It is against the above background that the respondent submits that the substratum of this appeal was not ordinary as it was of great public importance to the respective parties herein as the proceedings related to the elections of SONU representative, Kenyatta National Hospital Campus, hence the reason for increasing the instruction fees. The High Court cannot therefore be faulted for confirming the Taxing Master's finding that being a student leader in any recognized university as the 1st appellant, the student bears great responsibilities which propels him to the public limelight in the course of the discharge of his leadership functions. The Taxing Master therefore properly applied Schedule 6A of the Advocates Remuneration Order 2014, especially when it was not disputed that as a student leader, the respondent was entitled to draw student allowances owing to the fact that the 1st appellant was a reputable institution.
24. It is further the respondent's assertion that since the subject matter of the suit was an elective position in the appellants' organization, the proceedings were urgent and time bound as the respondent's leadership and political career were being affected. The Judge cannot therefore be faulted for sustaining the Taxing Master's reasoning and findings.
25. To buttress the above submissions, the respondent has relied on the case of *Mbogo and Another vs. Shah [1968] E.A. 93* on the principles that guide an appellate court in the exercise of its mandate when invited to interfere with the exercise of discretion by a lower court; and the case of *Joreth Ltd vs. Kigano & Associates [supra]* for the holding, inter alia, that a court cannot interfere with a bill of costs taxed in conformity with the laid down principles. Second, the Taxing Master has a wide discretion in awarding costs on a higher scale subject to compliance with the relevant factors to be applied, which according to the respondent were complied with by the Taxing Master herein.
26. We have considered the record on our own in light of the rival submissions and case law relied upon by the respective parties herein in support of their rival positions. Our take thereon is that the appellants were aggrieved by the Taxing Master's exercise of discretion in increasing the respondent's claim for instruction fees from the minimum applicable of Kshs.100,000.00 to Kshs. 4,000,000.00 for the reasons given by the Taxing Master.
27. In *Kipkorir, Tito & Kiara Advocates vs. Deposit Protection Fund Board [2005] eKLR* when similarly confronted, this Court expressed itself thereon, inter alia, as follows:

“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.”

We have considered the above threshold in light of the totality of the record as assessed above. Only one issue falls for consideration before us namely:

- 1) Whether the learned Judge exercised her discretion wrongly and therefore arrived at a wrong decision when she affirmed the taxing officer's certificate of taxation?



28. The approach we take in determining the above sole issue is that taken by this Court in *Joreth Ltd vs. Kigano & Associates* (*supra*) in which the court expressed itself, inter alia, that:

“...the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess such instruction fee as he considers just, taking into account, amongst other matters, the nature and the importance of the cause or the matter, the interest of the parties, general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

29. We have revisited the ruling and reasons for taxation that the Judge was invited to interfere with dated 7th June, 2018 and appraised it on our own. The record is explicit that the Taxing Master took into consideration the fact that the respondent had sought instruction fees in the sum of Kshs.15,000,000.00 on account of the alleged complexity, research done, the novelty of the legal issues raised and importance of the matter to the respondent, while the appellants argued that the matter raised no complex issue and that only a minimal amount payable as instruction fees is the proper amount that should be allowed in the circumstances.

30. The Taxing Master is on record as having appraised herself of the content of Schedule VII(j) that provides for a minimum of Kshs.100,000.00 to present or oppose Judicial Review and Constitutional Petitions. Further, the Taxing Master reminded herself of the threshold for the exercise of her mandate namely, that the Taxing Master has the discretion to increase the minimum amount after taking into consideration the nature and importance of the cause or matter, the amounts or value of the subject matter, the interest of the parties, the general conduct of the parties, the complexity of the issues raised and novelty of points of law involved, the time taken in the disposal of the matter, research and skills expounded in the brief and lastly, the volume of documents involved.

31. It is also evident from the record that the Taxing Master was alive to the need to be guided by principles of law delineating the parameters for the exercise of the said discretionary mandate, and in this regard she took into consideration the decision in the case of *Premchand Raichand Ltd vs. Quarry Services of East Africa Ltd* (No. 3) & Others [*supra*] and *Republic vs. Ministry of Agriculture & 20 Others Ex parte Muchiri W’Njuguna & 6 Others* [*supra*] and made observation thereon that the matter in its nature was not complex, neither did it raise novel legal issues, and the research allegedly carried out did not justify Kshs.15,000,000.00 as then sought by the respondent in his bill of costs.

32. The Taxing Master also took into account the High Court decision in the case of *National Oil Corporation Limited vs. Real Energy Limited & Another* [2016] eKLR for the holding that the mere fact that a party carries out research before filing a pleading is not necessarily indicative of the complexity of the matter, and then expressed herself thereon as follows:

“The court has however, looked at the nature of the case that was before the court, and importance of the same to the Applicant. It is Judicial (sic) noted that being a student leader in a recognized public university as the 1st Respondent, bears great responsibilities and places one in the public lime light and several other avenues including politics. The importance is more so as the trial court allowed the application and directed the Applicant be sworn in officer (sic) as the dully legally elected official of the 2nd Respondent. For this reason, to me this was not an ordinary case but a case which bore great importance to the Applicant. I am thus persuaded to enhance the minimum fees from Kshs. 100,000/= to Kshs



4,000,000/= having stated Kshs. 15,000,000/= is on the higher side. Kshs. 11,000,000/= is thus hereby taxed off from this item...”

33. It is the above Taxing Master’s enunciation that the learned Judge was invited on reference to interfere with. The reason the Judge gave for affirming the Taxing Master’s above decision and in respect of which the appellant has invited us to overturn and the respondent to affirm are as already highlighted above. The parameters we are enjoined to apply in deciding either way are the same as those applied by both the Taxing Master and the Judge as already highlighted. Our take thereon cumulatively is that indeed the matter was of great importance to the respective parties herein as it concerned elections to an office within the 2nd appellant’s establishment under the auspice of the 1st appellant. It was therefore in order for the respondent to pursue his rights to realize the fruits of being elected to an office within the 2nd appellant with a legitimate expectation that both appellants would respect and honour the will and or wishes of the electorate that had elected him to that office. Likewise, both appellants as public institutions were entitled to ensure that due process had been followed in the conduct of the election in respect of which the respondent was seeking recognition by the appellants before he could be sworn into office.
34. On the general conduct of the parties, it is evident from the record that the litigation was initiated in May, 2015 with the main motion being filed on 26th May, 2015. The subject matter of the litigation was elections conducted in April, 2015. Judgment was delivered on 27th June, 2016 slightly over a year. Since the cause was directed against the appellants, one would have expected them to move with speed to verify the correct position and then revert back to the court. It is apparent from the record displayed before us that it took time, necessitating the respondent to seek the court’s intervention on numerous occasions seeking relief, including the filing of contempt of court proceedings. The greater blameworthiness with regard to the party that occasioned the lengthening of the time the litigation took tilts against the appellants, who in our opinion, had control over the administrative structures of SONU.
35. On the complexity and novelty of issues, we find none as did the Judge. As for the time, research and skill expended in the resolution of the matter, it was slightly over one year from the time the litigation was initiated to the judgment date and another six months as at the time the bill of costs was filed. The skill involved was to ensure that pleadings are properly drafted and presented and documentary exhibits annexed thereto also properly arranged for presentation. There has been no attack on the respondent’s mode of preparation and presentation of his pleadings for consideration. Neither was any issue raised by the Judge over the same subject. As for time expended, it was not possible for the Judge to quantify, save for giving the duration the litigation took, neither are we going to attempt to quantify the amount of time expended by the respondent in the preparation of the documentation. It is sufficient for us to stand guided by the duration the litigation took, which is slightly over a year.
36. On the volume of the documentation, indeed, we just have one volume of the record before us. There has been no allegation by the respondent that any relevant material was omitted from the compiled record. The record is therefore one that cannot be said to be voluminous but nonetheless it required preparation by the respondent’s advocate at each stage of the proceedings.
37. Taking the totality of the above assessment and reasoning into consideration, it is our view that the Taxing Master as affirmed by the Judge was correct in opining that the nature of the litigation giving rise to this appeal was not one that would have attracted the Kshs.15,000,000.00 that the respondent had claimed as instruction fees hence settling for the Kshs.4,000,000.00 affirmed by the Judge. It is however our view that taking into consideration the totality of what we have assessed above, Kshs.4,000,000.00 was still on the higher side. We believe a sum of Kshs.2,000,000.00 would be not only appropriate but also a fair award as assessed instruction fees in the circumstances.



38. Lastly, on enforcement of the taxed costs, apart from seeking total reversal of the Judge's findings on the taxed amount, no reasons were proffered by the appellants for opposing of the respondent's request for an enforcement order as granted by the Judge. Having only revised the fees by scaling it down, we find no basis in declining to affirm the order for enforcement, and which we hereby do.

39. In the result:

1. The appeal partially succeeds. We set aside the order of the Judge affirming the Taxing Master's award of instruction fees in the sum of Kshs.4,000,000.00 and substitute it with an award of Kshs.2,000,000.00.
2. The order for enforcement granted by the Judge is affirmed bearing in mind the scaling down of the amount of costs to Kshs.2,000,000.00 revised above.
3. The remedy on interest on costs awarded effective the date of taxation is affirmed.
4. Each party shall bear its own costs of the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 4TH OF FEBRUARY, 2022.**

**D. K. MUSINGA, (P)**

.....

**JUDGE OF APPEAL**

**R. N. NAMBUYE**

.....

**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

