



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC CIVIL CASE 360 OF 2001**

**ADXCESS LTD.....APPLICANT**

**VERSUS**

**COMMUNICATIONS COMMISSION OF KENYA.....RESPONDENT**

**JUDGEMENT**

The Applicants Notice of Motion for Judicial Review Order of Prohibition and Certiorari was dismissed with costs on 14th December, 2001. The Respondent then lodged its Bill of costs against the Applicant which was taxed by the Senior Principal Deputy Registrar on 18th October, 2002 for Kshs.139,000/= all inclusive. The Respondent had filed a Bill of costs for Kshs.1,680,000/= was taxed off.

The Applicant was aggrieved with the decision of the Taxing Master to award Kshs.120,000/= as the Instruction fees in the matter which he thought was fair and responsible. After the reasons for the decision were confirmed on application, the matter Applicant filed this references in the following terms:-

1. That the Honourable Court be pleased to order that the sum of Kshs.120,000/= awarded as instructions fees. On item No. 1 of the party and party bill of costs dated 3rd July, 2002 is excessive.
2. That further to prayer I hereof, the Honourable court be pleased to order that the reasonable sum for instructions fees on item No. 1 of the bill dated 3rd July 2002 is Kshs.20,000/= and the Honourable court do award the said sum instead of Kshs.120,000/= awarded by the Taxing matter.
3. That in the alternative to 2 hereof and upon declaring the sum of Kshs.120,000/= as being excessive as instructions fees, the Honourable court be pleased to refer to taxation of item No. 1 to another taxing officer to re-tax the same.
4. That the costs of this application he provided for.

The Applicant's Counsel Mr. Nyangau submitted that the Taxing Master erred in principle in awarding a sum of Kshs.120,000/= whereas the sum under the Advocates. Remuneration Order 1997 is Kshs.20,000/=. He further submitted that after finding that the application did not raise any novel point in law, the impact on the larger public was almost non-existent, no exceptional skill or dispatch was employed and the matter was not overly complex, the taxing master misdirected himself by awarding a sum four times the basic instructions figure. The Applicant complained that the taxing master referred to "taxations or Judicial review applications in the recent past" without disclosing them in the ruling.

The Application was opposed by the Respondent through its counsel Mr. Mwagona. It filed on Grounds of opposition stating master in awarding the fee of Kshs.120,000/= in item 1 of the Bill in respect of Instructions fees properly exercised his discretion taking into account the complexities and involvement required in Judicial Review Applications.

I have considered the submissions of counsel and all the issues raised. In my view the basic instruction fees set out in the advocate's Remuneration Orders 1997 of Kshs.20,000/= for judicial review application was intended to be a guiding amount or scale. It is not mandatory that the taxing master must apply the said rate. If anything it is a minimum or threshold amount to be given in respect of Judicial review orders.

Without doubt the taxing master has always discretion in assessing what the most reasonable appropriate and fair amount ought to be awarded in respect of instruction fees. The discretion of the taxing master is set out in various parts of the Advocates Remuneration Order including Rule 5 (2) which states:="

"5(2) In assessing such special fee regard may be had to –

- (a) the place at or the circumstances in which the business or part thereof is transacted**
- (b) the nature and extent of the pecuniary or other interest involved;**
- (c) the labour and responsibility entailed; and**
- (d) the number, complexity, and importance of the documents prepared or examined."**

I have carefully read the Ruling of Mr. C.K. Njai, the taxing master (as he then was) and I am of the view that substantially he was explaining, inter alia, why a claim of Kshs.1,800,000/= was not feasible. He stated:-

**"Under Item No. 1 the Respondent charges 1,800,000/=. I have considered and finally concluded under the law. The Advocates (Remuneration) Order provides for a basic instruction fee of Kshs.200,000/= for this type of litigation under Schedule VIA (j).**

**I have considered that the application did not raise any novel points in law and that its impact on the larger public was almost nonexistent. I have also considered that no evidence has been provided to demonstrate exceptional skill or dispatch and that the matter as a whole was not overly complex.**

**Having considered all the foregoing and having regard to taxations on judicial review applications in the recent past, I am persuaded that an instruction fee in the Order of Kshs.120,000/= would be fair and reasonable under item No. 1. I allow this amount on that item and tax off shs.1,680,000/= there from.**

"From the foregoing it appears to be that the taxing master was awarding off the high claim of Kshs.1,800,000/= on instructions fees. He was not strictly, justifying the award of Kshs.120,000/= in the entire ruling. Having shown why he could not award shs.1,800,000/=, he taxed off shs.120,000/=.

The Applicant herein in my view was therefore substantially successful in the said taxation. The Respondent did not appeal against the said decision. As regards the fairness and reasonableness of the amount of Kshs.120,000/=, it is trite law that on the questions of quantum the decision of the taxing office and exercise of discretion in that regard would in most cases hold and the High Court will only intervene in exceptional cases and in particular where it is shown that the decision was wholly wrong. This is different in situations where the taxing master is wrong on matters of law and principle. In this case, the taxing master exercised his discretion. He was aware of the minimum sum payable. He declined not to award kshs.1,800,000/= as claimed and applying his mind awarded the sum of Kshs.120,000/=. I do not

see anything wrong in law or principle that he made. He knew the issues in disputes and analysed their complexity, responsibility etc or otherwise He put his mind to it and disallowed a claim for a colossal sum.

He says that he had considered the pleadings and the and recent cases on judicial review. The court takes note that the taxing master was one of long standing and must have known the recent trends. He was not obliged to set out eccc and every case decided in the recent past. He took into account the trends in the recent past and to me, while it would have been useful to give a few four parables this omission does not render his decision to be wrong, improper or unreasonable.

I have looked at the Bill of costs and the record generally, and I find that there is no evidence that the amount of kshs.120,000/= is excessive, unreasonable or unfair.

I find no breach of any law or principle by the taxing master. I am of the view that there is no basis for any new assessment or remission of the bill of costs. I, therefore, do hereby dismiss the application herein with costs to the Respondent.

Dated and delivered at Nairobi on this 14th day of July, 2005.

**MOHAMMED K. IBRAHIM**

**JUDGE**

Coram: Ibrahim J.

Court clerk - Buoro

Mr. Nyangau for the Applicant.

Mr. Mwangona for the Respondent.

Ruling read in their presence.

**MOHAMMED K. IBRAHIM**

**JUDGE**