



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 1528 OF 2001**

**KIMNGLAT ENTERPRISES ..... PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNCIL ..... DEFENDANT**

**RULING**

The bill of costs is dated 6th of February, 2002. It is brought by Mr. O.P. Nagpal advocates on behalf of the applicant/defendants, Panachand Jirrey Shah, Dipak Panachand Shah and Mrs. Dipk Shah. The respondents are represented by Machenja for the firm of Mohammed Madhani advocates for the respondent, deposit Protection fund Board.

The bill arises out of the ruling of the High Court dated on 18/12/201 in which his Lordship, J. Mbaluto dismissed the plaintiff's suit with costs. In hi submissions on the bill, Mr. Nagpal stated that the instructions fees is based on 1.9 billion. This is the main point of counter claim. The bill he says is brought pursuant to the provisions of Schedule VI of the advocates Remuneration Order. He asked the court to look at the plaint at paragraph 10 and given instructions fees of 28555,000 based on the figure of 1.9 billion. He states that the mention of 1.9 billion is avoided in the rpayers to avoid paying court fees.

The prayers, he explained, still point to 1.9 billion as the name of the subject matter.

He went further and stated that in the application before the court of appeal the respondents did acknowledge that the subject matter was worthy 1.9 billion. When they applied for an injunction the same thing was done. He specifically referred to the affidavit dated 27/9/99. Counsel explained that there was a defence filed. The causes of action for the defendants were different.

He explained that the defences had to be prepared with this in mind.

Investigations had to be done on each customers account.

This involved a lot of millions. They did go through a lot of messes of documents.

The case he says was extremely complex. It required a lot of research in law and facts. A lot of time has spent on the matter. The responsibility in defending the matter was great, on court from the applicant. He asked the court to double the fees on instructions fees.

Mr. Machenja stated that the Schedule VI (b) is not applicable. Even if it were, the figure of 56 million asked, he explained is not justifiable. He stated that a look at the plaint and pleading shows that the matter

is not complex. He stated that the figure of 1.9 billion mentioned in the paragraph 10 of the plaint is meant to buttress the allegations of fraud, against the defendants.

The figure, he states is undetermined.

It may be less or more. It cannot be used as a basis for taxation. He suggested that the proper section under which this taxation should come is Schedule VI (L) OF THE Advocates remuneration order. He submitted that the claim is not liquidated.

He explained that the court has the discretion to look at the nature of the matter, its complexity or otherwise and determine what to award. He stated that the figure of 57 million is outrageous excessive. He explained that the case is just as important as any other case. He asked that the court should not put a lot of importance on this matter. He added that the case did not proceed on full hearing. The court is unable to tell whether the matter was complex or not.

He quoted the fees of K.shs 2500 and K.shs 2500 asked by Mr. Nagpal when he appeared before the Judge for hearing of the applications.

The High Court and in one of the applications order for deposit of 5 million only as security. He asked that this should be considered in awarding only as security. He asked that this should be considered in awarding instructions fees. He did suggest a fee of 2 million as instructions fees.

There then are the submissions of both counsels. It is clear then that the only contentious issue in the bill before me is the instructions fees, which in the bill is put at K.shs57,080,000. In the journal of the Uganda Judicial Officers Association instructions fees is defined as “that part of the remuneration that a litigant is deemed to pay, or to be liable to pay, to his advocate generally for professional advice and skill, in the conduct of his case as a whole, excluding specific work which the rules provide for separately”.

And in the case of *Mayers and Amir –vs. Hamilton and Others* 1975 EAL5 13 it was stated that instructions fees grows as the case grows. This position then is what this court has to take in considering instructions fees.

For the court to get what instructions fees is, the taxing master as in will look at the judgment or if not, the pleadings.

Herein, the suit was dismissed before hearing. The court has therefore to look at the plaint. A look at the Plaint as a whole clearly shows that at paragraph 10, of the Plaint, the name of the subject matter was candidly stated. I would agree with Mr. Nagpal that perhaps the reason why this figure of 1.9 billion was not included in the prayers was to evade court fees, which trick seems to have worked. Thus in taxing this bill, the court finds that the sum claimed is definite. The figure of 1.9 billion could not have been used to buttress the allegation of fraud. It was truly and actually pleaded at paragraph 10 of the plaint and intended for all purposes that the court rely on it when dealing with this matter.

Having found so, I do find there that the applicants have rightly come under the provisions of Schedule VI (b) of the Advocates remuneration order.

Schedule VI (1) of the advocates (Remuneration) order provides as follows:

(1) Instructions fees.

(2) To but in any proceedings described in paragraph as what a defence or other denial of liability is filed, or to have an issue determined arising out of interpleader or other proceedings before or after suit, or to present or oppose an appeal whether the name of the subject matter can be determined for the pleadings, judgment settlement between the parties and – “

That Relie Exceeds But Does not Exceed

K.shs.	K.shs.	K.shs.			
500,000	100,000	35,000	750,000	750,000	45,000
Over 1,000,000	1,000,000	55,000			

Fees as for shs. 1,000,000 plus additional 1.5 per account.

Thus in determining instructions fees payable in this case, the court will involve the scale outlined above. As to whether the figure can be increased or not, the court has to consider, thinputence and nature of the case, it is complexity of otherwise, research put into it on legal matters, the time taken. In this case I have no doubts in my mind this case was a complex matter. It involved very huge sum of 1.5 per account.

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The allegations in the plaint clearly shows that the claim traversed many branches of the law. A lot of research into the applicable law had to be done. This, no doubt must have taken a lot of time and patience on the part of the counsels and parties involved.

I hasten to add there that it would be erroneous from this court to equate this case with just any other case. As much as all case are important before the courts of law, their gravity differ and the court taxing the matter has a duty to put some consideration on this issues. As per the scale quoted above, the minimum fees payable on the sum of 1.9 billion is 28.5 million. There are other items claimed in the plaint i.e. exempt any damages for which the court is not able to give a relie at his stage. This too has to be considered in awarding a sum for instructions fees.

For all the reasons I do agree with Mr. Nagpal that instructions fees needs to be increased.

However, in doing so, I do learn myself this court needs to keep a sense of proportion in doing so.

Thus I would allow an additional of K.shs 2,000,000 (2 million) on the basic instructions fees to cover for the rest of the expenses. Thus the instructions fees is allowed at K.shs 30,500,000 (30.5 million shillings only).

In addition, the defendants are allowed all the other items ot contested which come to K.shs 111,355.00.

The sum of K.shs 27,580,000 is taxed off. The bill is taxed at K.shs30,611,355 (ready thirty million, six hundred and eleven, three hundred and fifty five only). The respondents plaintiff will pay costs for these proceedings.

DATED and DELIVERED by me Owino N. – Deputy Registrar this 21st March, 2002

before Ms Waais for Mr. Nagpal and Mr. Machenja for respondent.

**N.A. OWINO (Mrs)**

**DEPUTY REGISTRAR**