



IN THE HIGH COURT OF MALAWI  
COMMERCIAL DIVISION  
BLANTYRE REGISTRY  
COMMERCIAL CAUSE NO. 141 OF 2021  
(Before Honourable Justice Msungama)

BETWEEN

CHINGOLA CHILINJARA.....CLAIMANT  
AND

X-INC COMPANY LIMITED.....DEFENDANT

Coram: E. Mvula	:	Assistant Registrar
R. Mjathu	:	Counsel for the Claimant
F. Chipembere	:	Counsel for the Defendant
B. Ntonya	:	Court Clerk

ORDER ON APPLICATION FOR REVIEW OF COSTS

On 10<sup>th</sup> June, 2022, the Court made an award of MK2,133,805.00 as costs of action to the Claimant. Being dissatisfied with the order that the Court made, the Defendant filed an application for review and argued that instruction fee is not payable since the matter did not proceed to trial. The Claimant stood by its position and insisted that instruction fee is payable even in cases where the matter did not proceed to trial.

In the matter between **The State (on the application of RAISE 1996 (Private) Limited t/a Multichoice Malawi v. Malawi Communications Regulatory Authority Civil Cause Number 55 of 2021** the court observed, at page 9, as follows;

*“Order 31 Rule 10 above is not ambiguous; it is very clear. Reading it with an open and sober mind, what one gets is that, once counsel has received instruction, and has begun acting on it to the extent that proceedings commence in the High Court, Instruction Fees are synonymous. Counsel for the Paying Party’s concern is trial. His understanding of the provision that, as long as permission to commence judicial review has been turned down, there is no trial, and consequently the legal practitioner cannot claim Instruction Fee is not correct. If the drafters meant that, I doubt if the fee would have been termed ‘Instruction Fee’; otherwise a better term would have been “Trial Fee”. In my view, a law firm or a legal practitioner that has duly received instruction from a party to act, and proceedings have been, by that reason, commenced in the High Court, is entitled to Instruction Fee.”*

Referring to the reasoning in the above cited case, this Court finds that instruction fee is payable since Counsel had instructions **from commencement** of the matter to the point when a default judgment was entered in favour of the Claimant. However, the Court will reduce the amount payable as instruction fee from MK600,000.00 to MK500,000.00. The total amount payable as costs in this matter is therefore MK2,033,805.00. The Defendant has the next 14 days within which to pay the amount awarded as costs in this matter.

Any aggrieved party is at liberty to appeal against the decision of this Court within 21 days from the date hereof.

Delivered in Chambers this 30 day of October, 2023 at High Court Commercial Division, Blantyre Registry.



E. Mvula

ASSISTANT REGISTRAR