



**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: O'KUBASU, J.A. (IN CHAMBERS))

CIVIL APPEAL NO. 297 OF 2001

BETWEEN

KOBIL PETROLEUM LIMITED APPELLANT

AND

KENYA PORTS AUTHORITY RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Kenya at

Nairobi (Milimani Commercial Court) (Mr. Justice Ringera) dated the

16th day of October, 2001

in

H.C.C.C. NO. 83 OF 1998)

RULING ON TAXATION

This is a reference on taxation under rule 109 of the Court of Appeal Rules. Mr. Esmail for the applicant contended that the taxing master exercised his discretion on wrong principles as he based his assessment on another case which he referred to in his ruling.

Mr. Maingi for the respondent urged me not to interfere with the assessment by the taxing master since according to him there was no misdirection.

It would appear that the taxing master considered the submissions made and then made reference to Civil Appeal No. 59 of 1993 when he stated inter alia:-

“In a ruling on taxation in Civil Appeal No. 59 of 1993 the amount involved in the appeal was 90 million. The appeal was heard for two days and the submissions made included one similar to the present case on the point that the decision given in that appeal was a precedent establishing for the first time, that a decision of the Court can be a nullity. In that appeal KShs.200,000/= had been allowed as instructions fee. The appeal had 23 grounds of appeal but only ground 6 in the

appeal was relied on for the decision in that appeal. In a ruling on reference on taxation to the learned judge in that decision delivered on 8th April, 2003, KShs.300,000/= was allowed as instructions fee instead of KShs.200,000/= which had been allowed.”

Mr. Esmail submitted that reference to Civil Appeal No. 59 of 1993 was completely wrong and he handed me the papers which indicated that the appeal was heard for three hours and that the total amount allowed was KShs.500,000/= and there were 23 grounds of appeal. It was also contended that Civil Appeal No. 59 of 1993 was an interlocutory appeal while the present one was a final appeal.

Having given a careful consideration to the submissions made herein, I am satisfied that the taxing master adopted the correct approach in this matter and that his reference to Civil Appeal No. 59 of 1993 was not completely wrong as urged by Mr. Esmail. However, as the taxing master’s intention was to refer to and rely on Civil Appeal No. 59 of 1993 while that was the correct approach, there was only a slight omission in that Civil Appeal No. 59 of 1993 was an interlocutory appeal while the present one is a final appeal. I have now had the advantage of looking at the papers in Civil Appeal No. 59 of 1993 and having regard to what has been submitted before me, I am satisfied that Shs.400,000/= instruction fee would be reasonable. Hence I tax off KShs.200,000/= out of ground 6 of the bill leaving a balance of Shs.400,000/=.

Accordingly, the reference on taxation thus succeeds to that extent, with costs to the applicant.

Dated and delivered at Nairobi this 14th day of November, 2003.

E.O. O’KUBASU

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JUDGE OF APPEAL

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

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