



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT NAIROBI

CIVIL APPEAL NO. 147 OF 1989

BETWEEN

HABIB BANK A.G. ZURICH ..... APPELLANT

AND

POP-IN (KENYA) LTD.

RAJNIKANT KHETSHI SHAH

HASMUKH DEVCHAND SUMARIA

RATILAL KHETSHI SHAH ..... RESPONDENTS

(Appeal from the order of the High Court of Kenya at Nairobi  
(Shields J) dated 27th October, 1986

in

H.C.C.C. NO. 2066 OF 1986)

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### **RULING ON TAXATION**

The bill of costs before me for taxation arises out of a successful appeal against an order of the High Court granting the respondents an interlocutory injunction restraining the appellant or its agents from selling the properties known as Land Ref. No. 209/2779/5 and 209/3397/3 situated in the city of Nairobi whether by auction or otherwise until determination of the suit.

Mr. Shah, counsel for the respondents, has strongly objected to item 5 of the bill instructions fee and item 19 only as regards time which he says lasted only 45 minutes but has no quarrel with the fee charged.

On item 5 Mr. Shah submitted only one ground, was argued and there were no complex points involved. The mistake was whether or not the interest was payable and Mr. Gautama never referred to the Authorities. He submitted that the amount claimed is completely out of proportions to the work done and suggested a figure of KShs.15,000/= to be a reasonable figure in this appeal. He said the appeal took 45 minutes hearing. Mr. Shah said the Court did not think right to use the Authorities cited instead they came out by their own two Authorities.

In support of the amount claimed Mr. Kapila, counsel for the appellant, said the appeal was of complex nature and several points of law were raised. Ten grounds of appeal were raised and the

appellant carried extensive search of law and prepared a list of Authorities setting eleven Authorities, made several copies and provided bundles to the Court for use. He said all the Authorities supported the grounds which had been raised and none of them had been struck out as being frivolous or of no consequence. Mr. Kapila said the Court in its own wisdom asked to be addressed on one issue. He said in those circumstances the appellant should not suffer prejudice and not be compensated. The said judgment was based on grounds c, d, e, f and h. He asked me to take into account the value of the immovable properties.

I have considered the submissions of both counsel in this taxation, read the notes of proceedings before the Court including the judgment.

I agree with Mr. Kapila that the appeal though interlocutory was complicated and needed proper preparation. In Civil Appeal No. 46 of 1991 Stephen Reuben Karunditu vs Canvas Manufacturers Ltd. the amount of KShs.100,000/= was allowed as instructions fee. The appeal arose from an injunction granted by the High Court restraining the prosecution of a winding up petition. The appeal took two days hearing and there were twenty lists of Authorities. However, I am aware every case has to be considered on its own merits and factors.

Considering various factors in this appeal and with regard to factors set out in rule 9 third schedule to the rules page 48 in addition to principles laid down in Premchand's case reported in 1972 EA, I am unable to agree with Mr. Kapila that instructions fee of KShs.1,000,000/= item 5 of the bill is reasonable in the circumstances of this appeal.

I agree with Mr. Shah that the fee is high and excessive and should be reduced. Mr. Shah made a suggestion that KShs.15,000/= would be reasonable. I am also unable to agree with him on this suggestion as the amount is inadequately low. In exercise of my discretion in this appeal I would consider a figure of KShs.130,000/= as a reasonable figure for instructions fee in this matter which I hereby do allow. KShs.870,000/= is taxed off.

As more than one quarter of the profit costs claimed in disallowed items 26, 27, 28, 31 and 32 of the bill of costs are also disallowed.

In the results the bill of costs filed by the advocates for the appellant on 31st October, 1996 is taxed at KShs.132,100/= to which is to be added a sum of KShs.1321/= being taxing fee making in all KShs.133,420/=.

Dated and delivered at Nairobi this 21st day of March, 1997.

**T. S. LUVUGA**

**DEPUTY REGISTRAR**

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

DEPUTY REGISTRAR