



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT MOMBASA

CORAM: OMOLO, PALL, J.J.A. & BOSIRE AG. J.A.  
CIVIL APPEAL NO. 100 OF 1995

BETWEEN

KISUMUWALLA OIL INDUSTRIES LIMITED ..... APPELLANT

AND

PAN ASIATIC COMMODITIES PTE LIMITED ..... 1ST RESPONDENT

EAST AFRICAN SHORTAGE COMPANY LIMITED ..... 2ND RESPONDENT

(Appeal from an order of the High Court of Kenya at Mombasa  
(Justice Mbaluto) dated 25th May, 1993

in

H.C.C.C. NO. 84 OF 1993)

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**JUDGMENT OF OMOLO, J.A.**

I had the advantage of reading in draft form the judgments of Pall, J.A. and Bosire, Ag. J.A. I am in entire agreement with them. Mr. Inamdar for the appellant, strenuously pressed upon us that this Court's recent decision in CORPORATE INSURANCE COMPANY VS LOISE WANJIRU WACHIRA, Civil Appeal NO. 151 OF 1995. (Unreported), was erroneous and that the Court ought to depart from it. That decision was a reserved and well considered verdict of this Court. It considered Section 6 of the then Arbitration Act in relation to what are commonly known as SCOTT VS AVERY arbitration clauses. The Court concluded in the CORPORATE INSURANCE COMPANY case, *Supra*, that such clauses though framed in wide and mandatory terms, are nevertheless subject to the provisions of Section 6. That is undoubtedly correct and I personally find it strange that Mr. Inamdar should contend to the contrary. As Bosire, Ag. J.A. correctly points out in his judgment, in England SCOTT VS AVERY clauses have assumed the status of long-standing common law and can only be altered by direct legislation by Parliament. In Kenya, common law is only applicable subject to statutes passed by the National Assembly and subject to the circumstances of the inhabitants of Kenya.

The courts in Kenya are not obliged to apply wholesale the substance of the common law as applied by their counter-parts in England. In my view, it is very brave of anyone to ask this Court to overturn a well considered decision of its own merely because the party against whom the decision has been rendered thinks that the decision is in conflict with some long-settled interpretation given by English courts. We will continue to give English or any other foreign decisions, particularly on commercial matters, their due place of honour, but it is unreasonable for any one to expect that we will slavishly apply those decisions without looking at our own statutes and circumstances. I have myself no doubt that the CORPORATE INSURANCE COMPANY Case was correctly decided in accordance with our law as it then stood. That being the unanimous view of the three of us and further that being the only substantial point raised before us, this appeal fails and the order of the Court shall be that it be dismissed with costs as proposed by Bosire, Ag. J.A.

Dated and delivered at Nairobi this 14th day of February, 1997.

R. S. C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR