



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT
MILIMANI COMMERCIAL COURTS, NAIROBI**

HCCC NO. 1593 OF 2001

TOTAL KENYA LIMITED.....PLAINTIFF

V E R S U S

MARSMAM CONCRETE LIMITED.....DEFENDANT

R U L I N G

By a chamber summons application dated and filed on 7th April, 2005, and expressed to be brought under O.V rule 17 of the Civil Procedure Rules, and S.3A of the Civil Procedure Act, the plaintiff/applicant seeks from the court the following orders-

1. THAT the Honourable Court be pleased to grant leave to the plaintiff/applicant to serve the summons in this suit upon the defendant by way of an advertisement in a daily newspaper.
2. THAT the Honourable Court be pleased to order that the defendant do file and enter appearance within fifteen (15) days of the date of the advertisement.
3. THAT the Honourable Court be pleased to make all such further orders and/or directions as it deems fit and just to grant.
4. THAT the costs of this application be in the cause.

The application is supported by the annexed affidavit of REBECCA MBITHI, advocate, and is premised on the following grounds-

- (a) THAT the defendant has no fixed place of business known to the plaintiff.
- (b) THAT as a result of the foregoing the plaintiff, through their advocates, have been unable to effect service on the defendant
- (c) THAT there is no expectation that the defendant will be traced for purposes of service before the expiry of summons or at any time soon.

Canvassing the application before the court, Ms. Mbithi for the applicant traced the history of the suit from the date of filing to the date of extension of the summons on 31st January, 2005. In between, gallant efforts were made to serve the defendant, but they all went begging. An attempt was made to serve the defendant by way of registered post, and the letter was returned undelivered. Copies of the envelope duly addressed to the defendants and marked "RTS" and the certificate of registered postal article are attached to Ms. Mbithi's supporting affidavit and marked "RM-1". Consequent upon this state of affairs, I am satisfied for the above reasons that the summons herein cannot be served on the defendant in person. In

the circumstances, I am further satisfied that it is fair and proper to order substituted service.

I accordingly make the following orders-

1. That the plaintiff/applicant be and is hereby granted leave to serve the summons in this suit upon the defendant by way of an advertisement in the Daily Nation Newspaper.
2. That the defendant do file and enter appearance within fifteen (15) days of the date of the advertisement.
3. That the costs of this application be in the cause.

Dated and delivered at Nairobi this 12th day of May 2005

L. NJAGI

JUDGE