

**REPUBLIC OF KENYA
IN THE COURT TO APPEAL
AT NAIROBI
(CORAM: KWACH, TUNOI & SHAH, JJ.A.)
CIVIL APPLICATION NO. NAI. 5 OF 1999**

BETWEEN

**KAMLESH MANSUKHLAL DAMJI PATTNI APPLICANT
AND
NASIR IBRAHIM ALI
DINKY INTERNATIONAL S.A.
WORLD DUTY FREE COMPANY LIMITED
T/A KENYA DUTY FREE COMPLEX RESPONDENTS**

(Application for stay of the ruling and all orders in the High Court of Kenya at Nairobi, (Ole Keiwua, J.) dated 31st December, 1998 in

H.C.C.C. NO. 418 OF 1998)

REASONS FOR RULING OF TUNOI, J.A.

The rulings prepared by Kwach and Shah, JJ.A. have set out fully the facts giving rise to this application and I find it unnecessary to repeat them.

I agree with them that there are serious misdirections in the ruling of the learned judge of the superior court and that he should not have made the orders that he did.

In the motion on notice the respondents only prayed that the court appointed receiver be removed. The learned Judge was in error in making the order for the return of the company's management to the first respondent when this remedy was not prayed for in the application nor could it possibly be a consequential or ancillary relief. A party should not be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party especially where substantial matters constituting the dispute have not been tested in evidence.

The learned Judge did not look at the substance of the claims in the application before determining the nature of the relief he granted. This was clearly a serious omission and has occasioned prejudice to the applicant.

Dated and delivered at Nairobi this 19th day of February, 1999.

P. K. TUNOI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR