

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OMOLO, AKIWUMI & PALL, JJ.A.)
CIVIL APPLICATION NO. NAI. 284 OF 1997 (UR.120/97)

BETWEEN

EZRA ODONDI OPARAPPLICANT
AND
TOTAL KENYA LIMITEDRESPONDENT

(Application for an order of a temporary injunction to restrain the Respondent from retaking possession of the Kendu Bay Total Service Station the subject matter of the Applicant's intended Appeal and to Restrain the Respondent from interfering with the Applicant's possession of and business in the said station pending the hearing and determination of the Applicant's Appeal from the ruling and order of the High Court of Kenya at Kisumu (Justice Wambilyangah) dated 15th October, 1997

in
H.C.C.C. NO. 93 OF 1997)

RULING OF THE COURT

The application fails on merit as it has not been shown as it must in an application of this sort, that if it is not granted the applicant's intended appeal if successful would be nugatory. The dispute between the parties arises out of the applicant's allegation that the respondent has wrongfully terminated his contract to run the petrol station of the respondent. This contract provides which is for a stated period provides for its termination and the damages which the applicant will suffer if it is shown that the respondent had wrongfully terminated the contract, can be easily assessed.

In the result the application must be dismissed with costs.

It is so ordered.

Dated and delivered at Nairobi this 10th day of November, 1997.

R. S. C. OMOLO

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JUDGE OF APPEAL

A. M. AKIWUMI

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JUDGE OF APPEAL

G. S. PALL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.