



REPUBLIC OF KENYA



Rabe t/a Safari Plaza Limited v Total Kenya Limited (Civil Application E118 of 2025) [2025] KECA 1739 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1739 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E118 OF 2025
SG KAIRU, M NGUGI & WK KORIR, JJA
OCTOBER 24, 2025**

BETWEEN

MOHAMED RABE T/A SAFARI PLAZA LIMITED APPLICANT

AND

TOTAL KENYA LIMITED RESPONDENT

(Being an application for a temporary injunction pending and determination of the intended appeal from the Ruling of the High Court of Kenya at Nairobi (P. Mulwa, J.) dated 13th February 2025 in HC. Misc. Application No. E845 of 2024)

RULING

1. The applicant, Mohammed Rabe t/a Safari Plaza Limited is aggrieved by a ruling delivered on 13th February 2025. In that ruling the High Court (P. M. Mulwa, J.) dismissed the applicant's application dated 15th October 2024 in which the applicant had sought interim orders of protection under Section 7 of the *Arbitration Act* to maintain the applicant's status as a licensee of two petrol stations situated in South B and South C Nairobi and to restrain the respondent from evicting the applicant pending arbitration.
2. In dismissing that application, the learned Judge of the High Court stated:

“Section 7 of the *Arbitration Act* permits interim relief only in cases where there is a real threat to the subject matter of arbitration. Here, the applicant has not shown that eviction would impede the arbitration proceedings or cause irreparable harm. The issues raised, including product shortages and faulty pumps, are monetary claims that can be addressed in arbitration but do not justify the applicant's continued occupation of the premises.”
3. Aggrieved, the applicant lodged a Notice of Appeal dated 14th February 2025. Based on that Notice of Appeal, the applicant has moved this Court by his application dated 28th February 2025 made under



Sections 3A and 3B of the *Appellate Jurisdiction Act* and Rule 5(2)(b) of the Court of Appeal Rules. He seeks an order of temporary injunction to restrain Total Kenya Limited, the respondent, from interfering with his use and management of the petrol stations or from enforcing eviction notices against him pending the hearing and determination of the intended appeal.

4. The application is supported by an affidavit and further affidavit sworn by the applicant on 28th February 2025 and 9th May 2025 respectively. In opposition, the respondent filed a replying affidavit sworn on 14th March 2025 by its Legal Officer Soila Kigera.
5. We heard the application on 13th May 2025. Ms. Wanja Wanjuki, learned counsel, held brief for Mr. Issa Mansur for the applicant while Mr. Munyalo, learned counsel appeared for the respondent. We have considered the application, the affidavits and the written and oral submissions against applicable legal principles. See for instance Stanley Kangethe Kinyanjui vs. Tony Ketter & Others [2013] KECA 378 (KLR).
6. Based on the material before the Court, it is not disputed that the parties entered into Marketing License Agreements under which the applicant was granted licenses to operate the South B and South C Total Service Stations. A dispute between the parties arose and was referred to arbitration (the 1st arbitration) and an award published on 12th September 2023. During the pendency of that arbitration the High Court had granted the applicant an interim measure of protection. That arbitration award was, however, set aside by the High Court on 27th June 2024. In doing so, the High Court directed that the dispute be reconsidered afresh by a different arbitrator. Thereafter the applicant moved the High Court by his application dated 15th October 2024 seeking interim measure of protection pending arbitration (the 2nd arbitration). It appears that the Marketing Licence Agreements between the parties lapsed during the pendency of the 1st arbitration and thereafter, the respondent served eviction notices on the applicant to vacate the petrol stations.
7. It is the applicant's case that on 17th February 2025, the respondent's agents/employees descended on both petrol stations, disconnected electricity and proceeded to loot and paralyze the applicant's operations at the stations and the matter was duly reported to the police station. The applicant contends that unless the orders sought are granted, the applicant will lose its investments and suffer great loss that cannot be compensated.
8. The respondent on the other hand maintains that the petrol stations have since been taken over by different operators under Marketing Licence Agreements that have been exhibited.
9. Based on the material placed before us, we are satisfied that the applicant has sufficiently demonstrated that the intended appeal is not frivolous. There is for instance the complaint that the learned Judge failed to appreciate that the dispute between the parties was live before the arbitration tribunal. We are cognizant that an arguable appeal is not one that will necessarily succeed.
10. On the nugatory aspect, it seems that possession of the petrol stations has been taken over by other operators. Moreover, the loss of investment that the applicant claims is, in our view, quantifiable, and there is no demonstration that an award of damages would not compensate the applicant in the event of a favourable arbitral award.
11. Consequently, the application fails and is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER 2025.

S. GATEMBU KAIRU, C.Arb, FCI Arb.

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**JUDGE OF APPEAL
MUMBI NGUGI**

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**JUDGE OF APPEAL
W. KORIR**

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

