



IN THE COURT OF APPEAL
AT NAIROBI

CIVIL APPEAL NO. 338 OF 2000

TOPEN INDUSTRIES LTD APPELLANT

AND

AFROLITE INDUSTRIES LTD RESPONDENT

**(An appeal from the decision and the order of the High Court at Milimani(Justice P.J. Hewett)
dated the 31st October 2000**

in

Milimani Civil Case No. 619 of 2000)

ORDER OF THE COURT

Miss Wanjiru Nduati, for the appellant concedes this appeal, properly so in our view. The superior court despite objection from the appellant's counsel extended a temporary injunction without any proper basis for doing so. The suit was for declaratory and injunctive reliefs, and the learned trial Judge could not properly extend the temporary injunction without hearing the parties on the merits. Besides, the order for a temporary injunction which he extended had been granted without any proper basis.

In the circumstances we allow the appeal with costs.

Made at Nairobi this 15th day of October, 2001.

J.E. GICHERU

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR