

**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, TUNOI & O'KUBASU, JJ.A.
CIVIL APPLICATION NO. NAI 261 OF 2001 (UR 141/01)**

BETWEEN

**JOSEPH GICHOHI
JULIUS KAMAU
ELIUD NDUNGU NJOROGE
T/A IGWARE HARDWARE APPLICANTS
AND
LIMURU ROAD TYRES & AUTOMART
HAKI TRADERS RESPONDENTS**

**(Application for injunction pending the intended appeal
from the ruling and order of the High Court of Kenya
at Nairobi (Gacheche, Comm/Assize) dated 17th July,
2001**

in

H.C.C.C. NO. 1230 OF 2000)

RULING OF THE COURT

Even if we were to assume in favour of the applicants that their intended appeal is arguable - and we are far from satisfied that the intended appeal is arguable, - the applicants still had to satisfy us that unless we grant the injunction they seek, their intended appeal, if successful, will be rendered nugatory. The applicants concede that they have been evicted from the suit premises. Their motion before us does not contain any prayer for a mandatory injunction to reinstate them in the premises. What we understand from Mr Kahiga is that they are seeking an injunction to restrain the sale of their distrained goods.

Mr Kahiga agrees that if the goods are sold and they succeed in their intended appeal, they will be compensated by way of damages. The attached goods are valued at about Shs.60,000/=. We do not see how their intended appeal will be rendered nugatory if it succeeds and we have refused to grant an injunction. We are satisfied that these applicants are singularly not entitled to the orders they seek; there is no valid reason for granting to them those orders. That being our view of the matter, we order that this application be and is hereby dismissed with costs to the respondent.

Dated and delivered at Nairobi this 15th day of November, 2001.

R. S. C. OMOLO

.....
JUDGE OF APPEAL

P. K. TUNOI

.....
JUDGE OF APPEAL

E. O. O'KUBASU

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR