

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI

(CORAM: BOSIRE, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAL30 OF 2000 (16/2000 UR)

BETWEEN

NATIONAL OIL CORPORATION OF KENYAAPPLICANT

AND

YESS HOLDINGS LIMITEDRESPONDENT

(An application for stay of execution pending the intended appeal from the Order of High Court of Kenya at Kisumu (Justice Wambilyangah) dated the 12th day of January, 2000

in

H.C.C.C. No. 152 of 1999

RULING

On 12th January, 2000, Wambilyanga J., granted a mandatory injunction to the respondent in the instant application directing that it be put back in possession of a fuel service station on plot No. Block 3/163, Kisumu, owned by the applicant. The applicant was aggrieved and promptly filed a notice of appeal declaring its intention of challenging that decision on appeal. It contends that pending the filing and determination of its intended appeal the execution of the order should be stayed, and that its application for such order should be heard as a matter of urgency to obviate its intended appeal being rendered nugatory. Mr Siganga for the applicant who urged the applicant's application for an urgent hearing of the stay application submitted that the respondent having not given an undertaking as to damages as it was obliged to, is unlikely to compensate the applicant if it eventually succeeds in its intended appeal.

Mr Otieno for the respondent does not think the application is urgent. In his view the respondent has the financial ability to compensate the applicant in the event that its intended appeal eventually succeeds.

The dispute between the parties is over an alleged tenancy over the suit property and an alleged fuel dealership licence. The applicant contends that it at no time granted a tenancy and dealership licence to the respondent. The respondent contends otherwise. The trial Judge agreed with the respondent as Plaintiff in the suit.

The affidavit in support of the application for an urgent hearing does not have grounds for seeking an early hearing of this application. Mr Siganga in his submission concentrated on the merits of the applicant's intended appeal, but as a single Judge my jurisdiction under rule 47 of the Court of Appeal Rules, does not extend specifically to the merits of the application or intended appeal. It was the applicant's duty to lay before me material upon which my discretion under the said rule would be exercised, but because it failed to do so, I cannot properly speculate on that. The rule is clear that all the applicant is required to do is to show that there are matters which when viewed objectively show the application should be heard without delay.

In the result, I have no basis for certifying this matter as urgent and dismiss the application for an urgent hearing with costs.

Dated and delivered at Nairobi this 24th day of February, 2000.

S.E.O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR