**AGIP (K) LTD V VORA**

**Division:** Court of Appeal of Uganda at Mombasa

**Date of judgment:** 18 February 2000

**Case Number:** 213/99

**Before:** Omolo, Lakha and Keiwua JJA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Land – Licence agreement – Construction of clauses – Agreement expressly excludes any proprietary interest to licensee – Whether equitable interest would be implied – Letter of termination – Whether previous correspondence would be examined to examine basis and effect of the letter.*

*[2] Land – Licence agreement – Petrol service station – Breach of agreement by licensee – Whether licensor entitled to terminate without notice – Injunction – Whether Order XXXIX, rule 1 would apply to restore a licensee who has no registrable interest in land.*

*[3] Practice and procedure – Injunction – Temporary injunction – Principles for grant – Licensee had not claimed any proprietary interest in the land – Whether grant of injunction appropriate – Whether mandatory injunction would be granted to restore licensee into occupation.*

**Editor’s Summary**

Since 1977 Vora had been operating a service station under various Operator Licence Agreements

(OLAs) with Agip (K) Ltd The current OLA was made and dated February 1993. One of the clauses in this agreement required Vora to maintain sufficient stocks of fuel. Agip (K) Ltd reserved the right to terminate the agreement without notice for breach of this clause. The only consideration to Agip (K) Ltd for the licence was a standard charge in the fuel supplied to Vora for sale. In February and March 1999

Agip (K) Ltd wrote two letters to Vora complaining that Vora was not maintaining sufficient stocks of fuel.

In June 1999 Agip (K) Ltd wrote a letter terminating the licence agreement, allegedly for non-compliance with the minimum stocks requirement. Agip (K) Ltd then without notice installed guards and security at the service station thereby bringing Vora’s business to a standstill. In response, Vora filed the suit herein and simultaneously brought an interlocutory application under Order XXXIX, rules 1, 2 and 3 seeking to restrain Agip (K) Ltd from evicting it or interfering with its operation of the business pending the determination of the suit.

The trial court held that the purported termination letter was inadequate in respect of notifying the Respondents of the reasons for the said termination. Further that the investments in the business by Vora created goodwill and an equitable right to possession of the licence property. The court therefore granted the injunction as prayed.

On appeal it was contended for Agip (K) Ltd that the termination letter, as read with previous correspondence between the parties, was clear and unambiguous. Further, that no application lay under

Order XXXIX, rule 1 as the OLA denied Vora any interest in the land, buildings or equipment therein. It was also argued that no equitable right could be created to oust the express provisions of a written

licence.

**Held** – To understand the termination letter one must of necessity look at the previous letters. Since no notice was required to terminate the agreement for non-maintenance of sufficient stocks, it was enough for the termination letter to identify this breach for the termination to be effective.

A temporary injunction under Order XXXIX, rule 1 could only be granted where the applicant had an interest in the land, or on the basis that the respondent threatened to dispose of the property in circumstances that could delay execution of any decree that would be passed against it. This situation did not apply in the suit herein.

In the present case, Vora was, by a clause in the licence, denied any interest in the land thereby preventing the creation of any equity upon which an application under Order XXXIX, rule 1 could be based*. Errington v Errington and Woods* [1952] 1 KB 290 distinguished.

*Per curiam*: (i)

On whether the order of restoration was appropriate: (a) where the licence has been effectively terminated, as in this case, an order of restoration would be improper unless the Applicant had prayed for a mandatory injunction; (b) this Court has held more than once that interlocutory mandatory injunction should only be granted with reluctance and in very special circumstances. *The Despina* *Pontikos* [1975] EA 38 approved. (ii) On whether damages could compensate the licensee: since the licensee was not given proprietary possession of the station, any losses that may have arisen on termination could be quantified in damages. *Gusii Mwalimu Investment Co Ltd and others v Mwalimu Hotel Kisii Ltd* [1995] LLR 396 (CAK) distinguished. (iii) The trial court erred in delving into substantive issues and making finally concluded views thereon. The court was only required to determine whether a *prima facie* case with a probability of success had been established.

Appeal allowed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Gusii Mwalimu Investment Co Ltd and others v Mwalimu Hotel Kisii Ltd* [1995] LLR 396 (CAK) – **D**

*The Despina Pontikos* [1975] EA 38 – **APP**

***United Kingdom***

*Errington v*