

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 65 OF 2017

TAHIR SHEIKH SAID

GRAIN MILLERS LIMITED (Under Administration).....PLAINTIFF

VERSUS

1. NIC BANK LIMITED

2. GARAM INVESTMENTS AUCTIONEERS LIMITED.....DEFENDANTS

R U L I N G I I

1. The only natural consequence of granting stay of the orders I have just made that the hearing proceeds today is that the matter with stand adjourned.

2. I think if I proceed that way I shall have reversed my own decision without a basis being laid. I also believe that there is need to seek leave to appeal because there exist no right of appeal against an order refusing an adjournment.

3. That article 164 of the constitution gave right to appeal from decisions of the high court to the Court of Appeal is not absolute. That provision has been authoritatively interpreted by the Court of Appeal in CACA No. 16 consolidated with 19 of 2013 *Jared Odoyo Okelo vs I.E.B.C and Others [2014] eKLR* not to be all encompassing.

4. With that in mind, it would be not be proper to grant stay on an intended appeal before leave is granted. The second reason I am unable to grant stay under Order 42 Rule 6(3) is that the Order I have given this morning refusing an adjournment is a negative order incapable of execution and to grant stay would be to act gratis and for the sake of it.

5. The application for stay is declined.

Dated and delivered at Mombasa this 25th day of January 2019.

P.J.O. OTIENO

JUDGE