



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL APPEAL NO. 52 OF 2013**

**TOBIAS ODUNDO**

**t/a GIFT ASSOCIATES ..... APPELLANT**

**VERSUS**

**TYSON LIMITED**

**JAMES ONYANGO JOSIAH**

**t/a NYALUONYO AUCTIONEERS ..... RESPONDENTS**

**RULING**

This is an appeal from the ruling dated 15th November 2013 which dismissed the Appellant's Notice of Motion dated 16th July 2013. The application was brought under Order 22 Rule 22 and Order 51 rule 1 of the Civil Procedure Rules as read with Sections 1(a), 1(b) and 3A of the Civil Procedure Act. It sought a stay of an earlier ruling delivered on 4th July 2013. From the record that ruling had dismissed an application by the Appellant dated 2nd October 2012. The application dated 2nd October 2012 was for injunctive orders and was dismissed for "want of prosecution" the advocate for the appellant not having attended and the Court having declined to grant an adjournment.

This appeal was canvassed before me on 13th September 2016 with Mr. Oyuko appearing for the appellant and Miss Aron and Mr. Kirenga appearing for the 1st and 2nd Respondents respectively.

Although this Court heard the Advocates for the parties at length I note that this appeal is made under Order 22 rule 22 of the Civil Procedure Rules. Order 43 rule 1(2) of the Rules requires that leave to appeal be first obtained from the Court which gave the orders appealed from. Under Order 43 rule 1 the only orders made under Order 22 that would not require such leave are those made under rules 25, 57, 61(3) and 73. Rule 22 is not one them. Order 43 rule 1(2) states:-

***"(2) An appeal shall be with the leave of the Court from any other order made under these rules".***

Sub-rule 3 of the order provides how such leave is sought. There has not been exhibited any order granting such leave and in my considered view that is not a technicality that can be ignored. Accordingly I decline to consider this appeal and strike it out with costs to the respondents.

**Signed, dated and delivered at Kisumu this 29th day of September 2016**

**E. N. MAINA**

**JUDGE**

**In the presence of:-**

N/A for the Appellant

Mr. Odhiambo for the 1st Respondent

Mr. Okoyo for the 2nd Respondent

CC: Moses Okumu