



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 37 OF 2013 (OS)**  
**IN THE MATTER OF CHANDRAKANT DEVCHAND MEGHJI SHAH (DECEASED)**  
**PRIYAT SHAH AND MONA SHAH..... EX-PARTE APLICANTS**  
**AND**  
**1. MUKESH MANCHAND SHAH**  
**2. HARISH RAICHAND SHAH.....RESPONDENTS**

**RULING**

Before court is the Notice of Motion dated 4<sup>th</sup> August, 2014. The Appellant/Applicant seeks *inter alia* orders that:

“(1) (c) After the said inter-partes hearing [of the application] to order that all proceedings in this suit be stayed pending the hearing and determination of the appeal filed by the respondents against the whole of the ruling made by the Honourable Lady Justice Maureen Odero delivered on 23<sup>rd</sup> July, 2014.

(2) **THAT** costs of this application be provided

for.”

On 6<sup>th</sup> August, 2014 the court granted interim orders of stay. The application was argued inter-partes on 30<sup>th</sup> October, 2014. **MR. MARU** Advocate appeared for the applicant whilst **MR. ABEID** represented the respondent.

The appeal arises from the ruling of this court delivered on 23<sup>rd</sup> July, 2014. By that ruling I did dismiss the Preliminary Objection dated 18<sup>th</sup> February, 2014 by which the applicants had submitted that the High Court had no jurisdiction to entertain the Originating Summons dated 19<sup>th</sup> September, 2013. Being dissatisfied with my ruling on that Preliminary Objection the applicants have filed an appeal.

I have carefully considered the submissions made by both counsel on the question of stay. I am mindful of the fact that the question of jurisdiction is one which goes to the very root of any matter. Without jurisdiction a court cannot take one more step. Jurisdiction as they say is everything. The applicants are challenging the jurisdiction of the High Court to entertain, hear and determine the Originating Summons

dated 19<sup>th</sup> September, 2013. As a court I have made my decision on that point. The applicant has exercised his right to appeal. Given the subject matter of the intended appeal being jurisdiction, I am inclined to allow the stay so as not to render said appeal nugatory. As such I do allow the prayer for stay pending appeal in terms of prayer 1(c) of this Notice of Motion and direct that costs will be in the cause.

**Dated and Delivered in Mombasa this 28<sup>th</sup> day of November, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

No Appearance by either party

Court Clerk Mutisya