



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**MISCELLANEOUS CIVIL APPLICATION NO.255 OF 2010**

MOHAMMED ALI OMAR.....1<sup>ST</sup> APPELLANT  
MUNIR ALI OMAR.....2<sup>ND</sup> APPLICANT  
TUHFA ALI OMAR.....3<sup>RD</sup> APPLICANT

**VERSUS**

FARID ALI OMAR.....1<sup>ST</sup> RESPONDENT  
SAID A. AZUBEDI.....2<sup>ND</sup> RESPONDENT/INTERESTED PARTY

**RULING**

The application before me besides being poorly drafted is incompetent for the following reasons:

It has been brought by three applicants, Mohammed Ali Omar, Munir Ali Omar and Tuhfa Ali Omar who claim that they are aggrieved by the decision of the Kadhi's Court in Nakuru Petition No.56 of 2005 and consequently seek:

**“...stay of proceedings in petition No.56 of 2005 in the Kadhi's court at Nakuru.”**

It does not state what the applicants intend to do once a stay is granted. An interim relief is sought and granted pending an event or action. It is, however, apparent from the affidavit in support of the application that the applicants allege that they have filed Appeal No.42 of 2010 without linking that appeal to this application, by, for instance stating that pending the hearing and determination of the appeal there be a stay of proceedings. With regard to Appeal No. 42 of 2010, a copy of the Memorandum is annexed from which it is clear that the appellant is Farid Ali Omar, the 1<sup>st</sup> respondent and not the applicants.

**Section 8(2) of the Kadhis' Court Act** provides that until the Chief Justice makes rules of procedure and practice for proceedings in the Kadhis' courts, the Civil Procedure Rules shall apply in the same way they are applied in the subordinate courts under the **Civil Procedure Act**. It follows that this application ought to have been brought under **Order 41 rule 4** of the revoked **Civil Procedure Rules** now **Order 42 rule 6** of the **2010 Rules**. The court under these provisions must be satisfied that unless the order of stay is granted, the applicant will suffer substantial loss, that the application for stay has been brought within unreasonable delay and that the applicant will provide security as may be ordered by court.

Two of these conditions have not been satisfied. The applicants have annexed a copy of an order in Nakuru Kadhi's Court Petition No.65 of 2005 issued on 14<sup>th</sup> April, 2010 in which the applicants were ordered to deposit with the court the title documents in respect of NAKURU MUNICIPALITY BLOCK 5/126.

The applicants have not demonstrated how they will suffer substantial loss by complying with that order. Although this application was brought timeously, the applicants have not offered any security.

For these reasons, the application fails and is dismissed with costs to the respondent.

**Dated, Delivered and Signed at Nakuru this 12<sup>th</sup> day of April, 2011.**

**W. OUKO  
JUDGE**