



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

**Civil Appeal 118 of 2001**

**ABEL NYAGA WILSON ..... APPELLANT  
VERSUS**

**KENYA COMMERCIAL BANK LTD ..... RESPONDENT**

**RULING**

Abel Nyaga Wilson filed a Notice of Motion dated 15<sup>th</sup> October 2001. Although he described himself on the title of that Notice of Motion as the appellant strictly speaking, there is no appeal on record and he is therefore not an appellant. In that Notice of Motion, he sought stay of execution of Nyeri CMCC No. 445 of 1993. He also sought that an order be issued for his appeal to be filed out of time. An order was issued by this court on 23<sup>rd</sup> October 2001 staying the execution of the lower court matter in the interim pending *inter partes* hearing of the application on 8<sup>th</sup> November 2001. On that date, the application was not heard and was adjourned to 17<sup>th</sup> January 2002. The interim orders were extended to that date. The application was not heard on 17<sup>th</sup> January 2002. The record shows that on 28<sup>th</sup> January 2005 the respondent fixed the application for hearing on 7<sup>th</sup> June 2005. Again, it was not listed on that date. To date, that application has not been heard *inter partes* and accordingly the leave sought to file an appeal out of time has never been granted. There is therefore no appeal on record. The respondent has filed a Notice of Motion dated 8<sup>th</sup> September 2009 seeking for orders for the court to summarily reject the Memorandum of Appeal filed together with the application dated 15<sup>th</sup> October 2001. In the alternative, the respondent seeks the striking out of the Memorandum of Appeal filed herein. Further, the respondent seeks the vacation of the orders of stay granted on 23<sup>rd</sup> October 2001. The respondent, in his grounds, stated that the Memorandum of Appeal by the applicant was incompetent because it was filed 30 days after the judgment of the lower court in breach of Section 79G of the Civil Procedure Act. The application was unopposed by the applicant. It is obvious that there was no basis for Abel Nyagah Wilson to file the Memorandum of Appeal which was filed beyond the period of 30 days. It is, without a doubt, incompetent. It is also unjust for the applicant to continue to enjoy orders of stay granted *ex parte* on 23<sup>rd</sup> October 2001 to date. I find that the respondent application is merited and I grant the following orders:-

1. ***This cause is hereby dismissed and the Memorandum of Appeal hereof is hereby dismissed out with costs being awarded to the respondent.***
2. ***The orders of stay issued by this court on 23<sup>rd</sup> October 2001 are hereby vacated.***
3. ***The respondent is awarded costs of the Notice of Motion dated 8<sup>th</sup> September 2009.***

Dated and delivered at Meru this 19<sup>th</sup> day of March 2010.

**MARY KASANGO**  
**JUDGE**