



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

**Civil Appeal 197 of 2004**

**EZEKIEL MWENJA NGURE.....APPELLANT**

**VERSUS**

**TIMEX INSURANCE AGENCY.....RESPONDENT**

**JUDGMENT**

On 11<sup>th</sup> December 2003 the Senior Resident Magistrate entered judgment for the respondent in the sum of Kshs.48,863/- with costs and interest in Nakuru CMCC No. 1664 of 1992. Aggrieved by that judgment the appellant appealed to this court. His appeal was dismissed on 7<sup>th</sup> December 2007 by Lady Justice Koome. On 18<sup>th</sup> December 2007, the appellant's counsel filed a Notice of Appeal evincing the appellant's intention to prefer a second appeal to the Court of Appeal. On 24<sup>th</sup> March 2010 after the appellant's goods had been attached he applied for stay of execution pending the hearing and determination of his appeal to the Court of Appeal. This ruling is on that application.

In the affidavit in support of the application the appellant claims that his appeal has high chances of success and that if stay is not granted he will suffer irreparable loss. In his replying affidavit, Fred N. Nganga, the Managing Director of the respondent deposed that the appellant has not come to court with clean hands. He said this is because as a condition for the grant of stay of execution of the lower court decree the respondent had deposited the decretal sum of Kshs.48,683/- as security but he somehow mysteriously had it released to him in December 2009. In his submissions, besides accusing the appellant of laches, Mr. Githiru for the respondent dismissed this application as incompetent for the reasons that the appellant having been represented by counsel in this appeal has not obtained leave of court to act in person. He also said that the appellant's intended appeal to the Court of Appeal has no chance of success and urged me to dismiss this application.

Having considered these submissions I find that this application is doomed to fail for two reasons. One, I agree with Mr. Githiru that the appellant having been represented in this appeal required leave of the court under **Order 3 Rule 9** of the **Civil Procedure Rules** to act in person. He did not obtain that leave before filing this application. This application is therefore incompetent.

Two, this appeal was dismissed on 7<sup>th</sup> December 2007. The sixty days' period within which he should have preferred his appeal to the Court of Appeal has long expired. The appellant having not applied for a copy of the proceedings and copied his letter of application to the respondent he cannot avail himself of the provisions of **Rule 81** of the **Court of Appeal Rules** and get extension of time. So as it were there is no appeal pending in the Court of Appeal basis on which I can grant this application.

For these reasons I find no merit in this application and I accordingly dismiss it with costs.

**DATED and DELIVERED at Nakuru this 10<sup>th</sup> day of June, 2010.**

**D. K .MARAGA**

**JUDGE.**