

GIMCO LIMITED 1ST APPELLANT

G. MBURU t/a HAKI TRADERS 2ND APPELLANT

VS.

CHARLES OKELLO RESPONDENT

RULING

There is an application on record seeking a stay of all the proceedings in CMCC No.12007 of 2005 pending determination of the appeal lodged against the ruling of the lower court delivered on 16th December, 2005.

It is the applicant's case that the defendant having been aggrieved by the said ruling he applied for leave to file an appeal which was granted. The orders cited by the learned advocate for the applicant are Order XLI Rule 4(1) and Order XLII rule 21 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

I have looked at the relevant orders and have not been able to find any order XLII rule 21 cited by the learned counsel. Order XLII of the Civil Procedure Rules has only three (3) rules and I am unable therefore to see what rule the learned counsel wanted to rely on in respect of that order. That notwithstanding, the annexures to the said application which are indeed part of the orders of the lower court have not been signed and any order that has not been signed or indicated to be a true copy of the original cannot be relied upon in an application of this nature.

It is my finding that in the absence of such crucial documents, this application has no foundation and therefore must be dismissed. It is so ordered. The costs shall be borne by the applicant payable to the respondent.

Orders accordingly.

Dated, signed and delivered at Nairobi this 21st day of October, 2009.

A. MBOGHOLI MSAGHA

JUDGE