

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Misc Civ 467 of 2006

JOSEPH ODINGO OGOLA.....APPLICANT

VERSUS

VICTORIA COMMERCIAL BANK.....RESPONDENT

RULING

The applicant filed an ex parte application under **Rule 112** of the **Court of Appeal Rules** and **Section 3A** of the **Civil Procedure Act**. In the said application he urged the court to grant leave for an order of relief from fees and security in filing and lodging the record of appeal in an intended appeal from a decree in Nakuru HCCC No.324 of 1999 without paying the whole amount of Kshs.107,400/- which had been assessed as the court fees payable for the intended appeal.

In his affidavit in support of the said application he stated that on 5th May 2006 this court delivered a judgment wherein it ordered the respondent to pay him a sum of Kshs.2,600,000/- plus interest at court rates from the date of the judgment that is 5th May 2006 until the date of full payment. The applicant was ordered to pay the respondent a sum of Kshs.400,000/- and interest at court rates from 14th September 1993 upto the date of full payment. The court also awarded costs to the applicant. The applicant was aggrieved by the said judgment and instructed his advocates to file an appeal against the same. The filing fees for the intended appeal was assessed at Kshs.107,400/- but the plaintiff was not in a position to raise the said amount in view of the short notice that he was required to pay before the statutory period for filing the appeal lapsed. He said he was able to raise only Kshs.20,000/- and offered to pay the balance of the assessed court fees within a period of ninety days. He therefore urged the court to allow him to lodge the record of appeal without paying the full amount as hereinabove stated.

I am convinced that the application before this court is incompetent as the same can only be made before the Court of Appeal. In the Court of Appeal rules the word “**court**” is defined to mean “**the Court of Appeal and includes a division thereof and a single judge exercising any power vested in him sitting alone**”. This court therefore lacks jurisdiction to consider the application aforesaid and I strike out the same.

DATED, SIGNED and DELIVERED at Nakuru this 5th day of October, 2006.

D. MUSINGA

JUDGE

Ruling delivered in open court in the presence of Mr. Cheche for the applicant.

D. MUSINGA

JUDGE