

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL APPEAL 846 OF 2005

NELSON BICHANGA APPELLANT

VERSUS

JOHN MAGWA OBWERE RESPONDENT

RULING

In this application dated 11th November, 2005 and brought under Order 50 Rules 1 and 15 (2) of the Civil Procedure Rules and Sections 3 and 63 (e) of the Civil Procedure Act, the Applicant seeks discharge of the *ex parte* interim orders of stay of execution entered in favour of the Respondent.

Among other grounds, the Applicant argues that the Respondent has not obtained leave of the Court to file this appeal in accordance with the mandatory provisions of Order 42 Rule (2) of the Civil Procedure Rules. He submits that an appeal from the Ruling that gave rise to this matter is one which requires leave of the Court, and leave having not been obtained, this appeal is incompetent, and any Orders made pursuant to it are invalid, and ought to be discharged.

Now, the Ruling that gave rise to this Appeal, was in respect of an application to set aside an earlier Order of the lower Court dismissing the application dated 15th August, 2005. That application was made under Order 9 B of the Civil Procedure Rules. Any Appeal arising from a Ruling under Order 9 B aforesaid **is as of right** and no leave of the Court is required {see Order 42 Rule 1 (1) (h)}.

Accordingly, the Applicant's argument here that the Respondent required "leave" is completely untenable in law and misconceived, and his application is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 7th day of December, 2006.

ALNASHIR VISRAM

JUDGE