



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
Civil Suit 143 of 2005

ELIPHAS NJUE MUKINDIA.....1ST PLAINTIFF  
JOHN M'REWA MUKINDIA.....2ND PLAINTIFF  
FREDRICK NGIGE MUKINDIA.....3RD PLAINTIFF  
VERSUS  
CONSOLIDATED BANK OF KENYA LIMITED.....DEFENDANT

RULING

At the hearing of the Notice of Motion of 10/2/2005 Miss. Kabage for the Applicants referred to Rules 9 and 10 of the Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Protection and Procedure Rules 2001, (the Rules). That this being a constitutional matter it should be referred to the Chief Justice to assign a judge or judges to hear the application.

Why this was not raised when the matter came before me on the 24/2/2005 and I fixed today for hearing of the application I am not advised.

Under Rule 9 and 10 of the Rules there is no requirement for this matter to be referred to the Chief Justice for direction and I decline to do. So far as stay is concerned in **Gichuhi Kimura Vs Samuel Ngunua Kimotho & Others HCCC NO. 880 OF 1977** I found that the stay referred to in Rule 9 was discretionary and not mandatory.

In a case like this where the application, although given today for the hearing of the Constitutional Reference is not ready to proceed it would absolutely be unjust for a stay to be in place as the Respondent's rights are being eroded by reason of the injunction. In this case I do not extend the stay which is in place at present. If Miss Kabage wishes to proceed now I will hear her.

**DATED and DELIVERED at NAIROBI on 7th March 2005**

**P. J RANSLEY**  
**JUDGE**

Miss Kabage:

I want leave to appeal

Mr. Ogunda

I leave it to the court. I want injunction dismissed.

Court:

Leave to Appeal granted. The Injunction granted on the 10/2/2005 is discharged.

**P.J RANSLEY**  
**JUDGE**