



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Civil Appeal 103 of 2004**

**THE HEADMASTER MR. DONALD KAHINDI  
KIEMBENI BAPTIST PRIMARY SCHOOL**

**MUNICIPAL COUNCIL OF MOMBASA .....APPELLANTS**

**- Versus -**

**THE PASTOR OF KIEMBENI (BAMBURI) BAPTIST  
CHURCH – JAMES KITUKU**

**THE SECRETARY OF KIEMBENI (BAMBURI) BAPTIST  
CHURCH – BENARD JUDWA**

**THE TREASURER OF KIEMBENI (BAMBURI) BAPTIST  
CHURCH – SACCHAEUS MUNYAO**

**THE CHAIRMAN, CHURCH COUNCIL KIEMBENI (BAMBURI)  
BAPTIST CHURCH – GERALD NYAMBU ..... RESPONDENTS**

**R U L I N G**

On 1st March 2005 this court, on the Appellants' application, granted a stay of execution of the Senior Resident Magistrate's order of injunction issued in Mombasa CMCC No. 5465 of 2003 on 24th September 2004 for three months by which time the Appellants were to have had their appeal heard and determined. The appeal has not been heard. On 31st May 2005 the Appellants came back to court seeking, under sections 3A and 95 of the Civil Procedure Act and Order 49 Rule 5 of the Civil Procedure Rules, an extension of time to have the appeal heard.

The reason they gave for seeking an extension is that the lower court proceedings which they have had typed in their advocates' offices have not been certified to facilitate the hearing of the appeal. Their advocate Mr. Mutubia submitted that if the extension is not granted the status quo will be changed radically and the appeal will be rendered nugatory.

Opposing the application Mr. Gikandi for the Respondents submitted that the application for extension of time being made on the last day of the three months period allowed has not been brought in good faith and that it is yet another attempt by the Appellants to delay this matter. He further submitted that if the application is refused the pupils will not suffer as the Respondents are ready with teachers to run the school.

I have considered the application. An appeal cannot be heard without the lower court proceedings. The Appellants have caused them to be typed in their Advocates' office and they are pending certification by court. In the circumstances and because of the High Court vacation in the first part of August, I extend the period up to the 31st August 2005.

Costs of the application shall be costs in the appeal.

**DATED and delivered this 14th day of June 2005.**

**D.K. MARAGA  
JUDGE**