



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Civil Suit 260 of 2003**

**SHEIKH ALI TAIB ..... PLAINTIFF**  
**- V E R S U S -**  
**GEORGE ELLAM WEKESA .....DEFENDANT**  
**AND**  
**SELINA WEKESA .....INTERESTED PARTY**

**R U L I N G**

The applicant filed this Notice of Motion seeking orders for Review of Court Order made on 22/4/2005. The order is extracted and served upon the Respondents. The Notice of Motion is grounded on the new evidence which shows that the property in dispute is not yet transferred to the Plaintiff. The applicant says that the order is extracted as required under Order 44 CPC and that the applicant filed notice of appeal but not the Memorandum of Appeal as per Court of Appeal rules and that the applicant has abandoned the intended appeal. And therefore Preliminary Objection should be dismissed.

I find that the order was extracted and it is in file. I also find that although Notice of Appeal was filed no appeal has been filed in accordance with the Court of Appeal rules and even the period for filing such an appeal has expired . In the circumstances I do not uphold objections raised by both Respondents and the same are dismissed. Application of Notice of Motion to proceed to hearing.

**Dated this 15th July 2005.**

**J. KHAMINWA**

**JUDGE**

**15.7.05**

Khaminwa Judge

Court clerk – Winnie

Mr. Kiambiya for plaintiff/respondent – present

Notices already issued.

Ruling on Preliminary Objection read.

**J. KHAMINWA**

**JUDGE**

Mr. Kiambaya – I seek leave to file Replying affidavit to the Notice of Motion. Leave granted. Affidavit to be filed within 14 days and other parties at liberty to file response within 7 days of service thereafter.

Mr. Kiambiya application for leave to appeal.

Court – leave granted.

Certified copies of proceedings and ruling to be supplied on payment of copying charges.

**J. KHAMINWA**

**JUDGE**