



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPLICATION 335 of 93**

**SALOME NDUTA ..... APPELLANT**

**VERSUS**

**RUTH NJERI .....RESPONDENT**

**RULING**

This is an application for stay of execution under O. 41 R. 4 of the Civil Procedure Rules.

On August 11, 2000, Mr. Justice Amin dismissed this appeal on the grounds that it had been filed out of time (by eight years); that it was Res Judicata and that it was “devoid of merit”.

On August 24, 2000 the Appellant filed a notice of appeal in the Court of Appeal, and is presently before this Court to stay the execution of Justice Amin’s Judgment of August 11, 2000. His Counsel argued that the intended appeal has good chances of success, and cited the case of Khayadi V. Aganda (1988) KLR 204.

In an application for stay under O.41 R. 4, the Applicant would succeed if he demonstrates to the satisfaction of this Court that substantial loss will ensue if the Order of stay is not granted; that he has filed the application without undue delay; and that he has offered such security as may be ordered for the due performance of the decree. The onus is on the Applicant to discharge the above through a deposition.

The Applicant has not complied with the above conditions for this Court to exercise its discretion to grant the stay sought. The Applicant has not told this Court how and what substantial loss, if any, he will suffer if the order were not granted; he has made absolutely no offer of any security; and his application was filed 11 months late, which I regard as inordinate delay.

Accordingly, this application is dismissed with costs to the Respondent.

**Dated and delivered at Nairobi this 28th day of April, 2004.**

**ALNASHIR VISRAM**

**JUDGE**