

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 166 OF 2003

ARCADE STATIONERS LIMITED PLAINTIFF

VERSUS

PAUL MBWEKA KINUSU DEFENDANT

RULING

This is an application under Order 41 Rule 4 of the Civil Procedure Rules for stay of proceedings in the lower court pending the determination of this Appeal. It arises out of the lower court's refusal to set aside default Judgment entered against the Appellant (defendant in the lower court). Clearly, the case before the lower court has not been heard on merit, Judgment having been entered in default of entering appearance.

Although this application was made one year after the lower court's order, it has sufficient merit. The applicant has shown the seriousness in filing the Record of Appeal, and in taking steps to set it down for directions. It ought to be heard on its appeal against the lower court's decision, and not to grant stay would render the appeal nugatory, and result in substantial loss to the Applicant. Accordingly, I allow the application dated March 15, 2004 as prayed. Costs shall be in the cause.

Dated and delivered at Nairobi this 17th day of May, 2004.

**ALNASHIR VISRAM
JUDGE**