

REPUBLIC OF KENYA

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

CIVIL CASE NO. 285 OF 1999

OMAR MAKONDE MTURI PLAINTIFF

- Versus -

BENSON MWADZOMBO HANGA DEFENDANT

R U L I N G

This is an application for stay of execution pending appeal. The judgment the Applicant seeks to appeal against was delivered on the 27th July 2003 on which date the court also granted a temporary stay of execution for seven days to enable the applicant make a formal application for stay. The application was not made until 6th November 2003 when the decree holder was taking steps to execute the decree. No good reason has been given for this inordinate delay. Besides that the Applicant filed the Notice of Appeal on 23rd September 2003 more than one and half months out of time. He says he has applied to Court of Appeal to enlarge time. There is, however, nothing on record to prove that assertion. As far as this court is concerned there is no Notice of Appeal filed as required by Order 41 Rule 4 of the Civil Procedure Rules.

In circumstances does the Applicant expect this court to take him seriously? If he does he is seriously mistaken. The application has no merit and is hereby dismissed with costs.

DATED this 10th day of June 2004.

**D.K. Maraga
Ag. JUDGE**