



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 56 OF 1997

AHMED KHALIFA.....PLAINTIFF

=V E R S U S=

OMAR ALI HEMED.....RESPONDENT

R U L I N G

In this application the Applicant is seeking to file a second appeal against the judgment on appeal from subordinate court. Section 72 Civil Procedure Act, Cap.21 provides for second appeals to the Court of Appeal. The grounds upon which such a second appeal may be made are set out therein and numbered (a) – (c) inclusive.

Again, Section 79D prohibits any appeals on second appeals on grounds other than those set out under Section 72 aforesaid The Notice of Appeal to the Court of Appeal is filed by the Applicant but it is delayed by one day. This application seeks extension of time. The grounds of this application are set out in the application and also in the Affidavit in Support sworn by Omar Ali Hemed the Applicant. I have perused both documents carefully and although it appears this court had dismissed an application for leave to file an appeal, no ground is set out to satisfy the requirements set out under Section 72 of the Act. This was pointed out by this court in its ruling dated 8/9/2003

. Although the appeal may be as of right, the grounds specified under Section 72 must be complied with. It is therefore necessary for the Applicant to demonstrate that the intended appeal falls under the provisions of the said section either by exhibiting a memorandum of appeal or stating in the application what grounds he relies upon. As it is this court is unable to consider that there is an arguable second appeal at all in order to consider extending time or granting stay sought.

For these reasons I find no merit in this application and the same is dismissed with costs.

Dated at Mombasa this 19th day of March, 2004.

JOYCE KHAMINWA

J U D G E

Read in presence of :-

Mr. Khatib and

Mr. Munyithia Justus

Mr. Munyithia

I apply for certified copies of proceedings and Ruling.

Court: Let it be supplied.

I also apply for stay pending filing of formal application.

Mr. Khatib

I oppose the application. Let them give security.

Court:

Stay shall be granted for a period of 14 days upon payment by the

Applicant of the decretal amount in a joint account in both Advocates names within the next 7 days.

JOYCE KHAMINWA

J U D G E