



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Appeal 7 of 2002**

**JOSEPH GICHOHI MUKUHA & 122**  
**OTHERS.....APPELLANTS**

**VERSUS**

**MUNICIPAL COUNCIL OF**  
**NAIVASHA.....RESPONDENT**

**R U L I N G**

The appellants filed an application dated 14/1/2002 seeking to stay the judgment and execution of the decree dated 21/12/2001. They also prayed that this court be pleased to set aside the order of the trial magistrate dated 21/12/2001 rejecting an application for stay of execution of the judgment and preservation of the status quo. The application was supported by an affidavit sworn by Joseph Mukuha Gichohi.

Judgment in Naivasha PMCCC No. 194 of 2001 was delivered on 21/12/2001 and thereafter the appellants filed an appeal to this court. They claim that the respondent is now demanding exorbitant and outrageous rates and business licence fees from them and some appellants have been taken to court and charged on the basis of the outrageous charges. They fear that their appeal will be rendered nugatory if the respondent continues to demand the high rates and fees.

Mr. Kahiga for the applicant cited several authorities in support of the application.

In considering this application, I must firstly state that I am not persuaded that the appeal will be rendered nugatory if the order for stay is not granted. The matter related to increase in fees and rates by the respondent and in my view, if the appeal succeeds and it is found that the higher charges were unlawful, the respondent can refund the sums that it may have been charging unlawfully.

Secondly, substantial loss has not been shown on the part of the applicants. The applicants suit having been dismissed, the respondent is entitled to charge the increased fees and rates and I do not see how payment of the new charges can amount to substantial loss which is a mandatory prerequisite under Order XLI Rule 4 in an application for stay of execution pending appeal.

Thirdly, even though the application for stay of execution was filed within a period of less than 30 days from the date of the judgment now being appealed against, the application was heard more than two and a half years later. There is no good reason as to why the same could not be set down for hearing earlier.

If the respondent started charging the enhanced fees and rates nearly three years ago, it will not make any sense to make an order reinstating the status quo ante as I was urged to by our Kahiga in his submissions.

The appellants should instead take steps to list down the appeal for hearing as soon as possible.

The application dated 14/1/2002 is hereby dismissed with costs.

DATED at Nakuru this 27<sup>th</sup> day of October, 2004.

**DANIEL MUSINGA**

AG. JUDGE

**27/9/2004**