



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL NO 308 OF 2004**

**ELDORET EXPRESS CO. LTD ..... 1ST APPELLANT**

**EDWARD MASINDE JUMA ..... 2ND APPELLANT**

**VERSUS**

**PAULINE WANGARI GITAU ..... RESPONDENT**

**RULING**

This is an application stated to be brought under Section 79B of the Civil Procedure Act (Cap 21), Order L Rule 1 of the Civil Procedure Rules and all enabling provisions of the law. In it the Respondent to the appeal seeks the following orders:

- “2. THAT the Memorandum of Appeal dated 3 rd May, 2004 and filed on 5 th May, 2004 be summarily rejected***
- 3. THAT the stay of execution granted to the Appellant on 10 th May, 2004 be set aside and the decretal sum of Kshs.74, 841/= deposited in court be released to the Respondent ... so as to satisfy the Judgment and decree given on 27 th October, 2003 in Milimani SPMCC (sic) 10147 of 2001 and bring this litigation to an end***
- 4. (sic) (Costs).”***

The Grounds upon which the application is brought are not clear at all. However, doing the best I can, I will summarise the matters leading to the application as I understood them.

It appears that the Respondent obtained Judgment against the Appellant in the lower court ex parte. The Appellant appears to have presented two applications in the lower court on 26th March, 2004 and 21st April, 2004. The first application was dismissed on 8th April, 2004 and the second one was dismissed on 29th April, 2004. The Appellant filed this appeal on 5th May, 2004 to challenge the two orders. I did not, therefore, understand Mr Gitau when he argued that this appeal was in respect of a decree issued on 27th October, 2003. As I have said, and it is worth repeating, the Respondent obtained a Judgment against the Appellant’s ex parte. What was there to appeal from an ex parte Judgment? The appeal against the two orders was filed within the prescribed time and the objection against it on the ground that it is time barred

must fail.

Mr Gitau also argued that the appeal should be rejected as the Appellant did not obtain leave to file it. I do not have the record of the lower court and I am not able to decide based on the scanty material available whether this is an appeal where leave was required or not. Summary rejection of an appeal is a serious matter and this court cannot do so unless it is completely certain that there is no sufficient ground in it (See Section 79 B of the Civil Procedure Act). The court can only determine that after considering all relevant matters in the appeal.

In the result, I do not find that the Respondent's application dated 11th June, 2004 is merited and I dismiss it with costs.

Dated and delivered at Nairobi this 12th day of July, 2004.

**ALNASHIR VISRAM**

**JUDGE**