



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO.391 OF 2001**

**ABDIKARIM SALEH MUHSIN.....PLAINTIFF**

**V E R S U S**

**JOSEPH SEMPA.....DEFENDANT**

**A N D**

**1. F.J. CHURCH & SONS LTD**

**2. P & O NEDLLOYD.....OBJECTORS**

**R U L I N G**

There is a Ruling made by Hon. Commissioner J. Khaminwa on 28/6/2002 following an application by Objectors on release of container No. POCU 0519999972/3 together with goods therein. The container cum goods had been attached. A stay was granted for 7 days to enable the Plaintiff to appeal if need be. Nothing appears to have been done until 23/7/02 when the Plaintiff filed an application for stay of execution pending:

*“determination of the appeal preferred against such ruling on such terms as this court deems fit”.*

The application for stay is opposed by Mr. Omolo for the Objectors and Mr. Sifuna for Defendant.

As far as I can see there is no appeal pending though a Notice of Appeal has been given – but out of time. It is incompetent. Appeal is deemed to have been filed if, under the Rules of that court, Notice of Appeal has been given. The Court of Appeal Rules provide that Notice must be lodged within 14 days of the date of that decision against which it is desired to appeal.

The order which is intended to appeal against was made on 26/6/02 and notice was lodged on 16/7/02. This was out of time. The party can of course apply for extension of time but then, this was not done.

Mr. Omolo for the Objectors further informs me that if the court is inclined to order a stay, such order would be nugatory as the subject matter has been released and exported and no longer within this court's jurisdiction. I would agree with both Mr. Omolo for Objectors and Mr. Sifuna for the Defendant that the Plaintiff is guilty of laches. They should have lodged Notice of Appeal within 14 days and not one month later.

**This application is dismissed with costs.**

**Dated at Mombasa this 28th day of March, 2003.**

**L. P. OUNA**

**J U D G E**

