



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT O KENYA**  
**AT MOMBASA**  
**CIVIL APPEAL NO. 33 OF 2001**

**IMPERIAL BANK LTD..... APPELLANT**

**VERSUS**

**MUNIR KHAN MURAD KHAN ..... RESPONDENT**

**RULING**

The Appellant Bank filed an appeal on 26.4.2001 against the ruling by the Principal Magistrate Mr. Mushelle in CMCC No. 1046 of 2001 in which he granted mandatory injunction. A further application for stay pending appeal was granted on 21st May, 2001 but no other action was taken. It is this delay in prosecuting the appeal that prompted the respondent to apply for dismissal of the appeal for want of prosecution.

According to the Appellant, they are not able to fix the same as no directions have been taken and that no directions can be taken as no proceedings have been provided by the court.

Mr. Gakuo for the Respondent said the court only provides proceedings when the requisite fees has been paid and in this case, there was no evidence of the same having been done.

I have considered the submissions on both sides and as much as I agree that there is a long delay in prosecuting the appeal, the duty to provide certified copies of proceedings lies with the court. In the circumstances I order as follows:

- 1. The Registry to supply certified copies of proceedings and the E.O. in charge to ensure the same is done on payment of any requisite fees within a period of 30 days from today's date.***
- 2. Directions to be taken within 30 days thereafter and appeal set down for hearing 30 days thereafter the taking of directions.***
- 3. costs of the a pplication in any event to the Applicant.***

**Dated this 21st day o May 2003.**

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**

**Delivered this 6th day of June, 2003**