

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO.458 OF 200

AMIN LADAK PLAINTIFF
Versus
ROTHMAN'S HOLDINGS LTD 1ST DEFENDANT
NAUSHAD JIWA 2ND DEFENDANT

R U L I N G

By Notice of Motion dated 24/1/2002 the Plaintiff seeks order to extend time for Stay order which was granted for a period of 6 months and was due to expire on 27/1/2002. The stay is pending hearing of a proposed appeal. The reason for the delay of the appeal is that the certified proceedings have not been supplied by the court to enable the appellant to prepare record of appeal.

The merits of the application for stay have already been considered by court and the only concern is that the proposed appeal should be prosecuted without delay. As it is there is delay caused not by the applicant but by the court process. The court has discretion to extend time under Order 49 rule 5.

“The court shall have power to enlarge such time upon terms if any as the justice of the case may require and such enlargement may be ordered although application of the same is not made until after expiration of the time appointed”

In the present case the applicant is in possession of the premises in dispute. I also note that the court ordered deposit of Shs.40,000/- as a condition of stay.

In the circumstances I hereby extend the time granted for a further period of fifteen months from the date of expiration of the order.

Costs shall be bone by the applicant in any event.

Dated at Mombasa this 10th Day of May, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE