

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 227 OF 2002

(From the Original Civil Suit PMCC 8 of 1998 of P.M's Court at Nyahururu

JOHN TENDENER & ANOTHER APPELLANTS

VERSUS

STEPHEN MUNGA MUTHIRA RESPONDENT

R U L I N G

This application has no merit, counsel who purported to swear an affidavit in support thereof was not competent to do so as he could not swear to matters of fact as to the applicant suffering substantial loss if the application is not granted. Moreover, this affidavit and the submissions in court have not demonstrated how the applicant will suffer the alleged substantial loss or in what form it is, if the application is not granted.

At the same time there are no averments in the affidavit or even in the submissions that if the appeal succeeds the applicant would be unable to recover the decretal amount from the respondent. This is a money decree and unless special circumstances are given why it should not be executed, the applicant should not be denied the enjoyment of the fruits thereof.

I dismiss this application with costs.

Delivered this 10th day of July, 2002.

D.K.S AGANYANYA

JUDGE