



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 26 OF 2001**

**PETER N. GICHIA ..... PLAINTIFF**

**VERSUS**

**PATRICK K. GICHIA ..... DEFENDANT**

**R U L I N G**

In this Notice of Motion dated 28th August 2002, the Applicant, Peter N. Gichia prays for a stay of execution of the Orders of 10th July 2002 and any further proceedings in Thika Succession Cause No. 117 of 1998. Those Orders were made following the dismissal of the Applicant's appeal by this court and together with that stay therefore the Applicant, in prayer number 3 of the Notice of Motion before me wants his dismissed appeal reinstated under Order 41 Rule 4(1) and Rule 16 of the Civil Procedure Rules.

The Applicant has changed advocates and has come back to this court with a new advocate Mr. Wambugu Kariuki, instead of Mr. Mburu Machua. Although I have been told that Mr. Mburu Machua failed to come to court because he was sick, I have not been given better evidence on that claim than what I was given on the day I heard and dismissed the Appellant's (now Applicant's) appeal. Mr. Mburu Machua has not even filed an affidavit to say indeed he was sick. I rejected that claim on that day and do hereby maintain same position now.

This notice of motion is opposed by the Respondent who has pointed out that that appeal was not dismissed for want of prosecution. That is correct. I heard that appeal and decided it on its merits and my findings were that the appeal had no merits. I cannot therefore to-day contradict myself and agree with the Applicant to grant the stay asked for and reinstate the appeal because it has merits. It does not.

From what I am saying therefore, this Notice of Motion dated 28th August 2002 lacks merits and the same should be and is hereby dismissed with costs to the Respondent as even if there is a third party claimant to the suit parcel of land and there are cautions or injunctions in the relevant land register, those do not affect the outcome of the appeal which was before me on 8th May 2002.

**Dated this 8th Day of October 2002.**

**J.M. KHAMONI**

**JUDGE**

**Present:**

**Mr. Kariuki for the Applicant.**

**The Respondent in Person.**

Further Order:

Leave to appeal granted and copies of the proceedings may be provided to the Applicant in the normal manner.

**J.M. KHAMONI**

**JUDGE**