



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**CORAM: TUNOI, SHAH & OWUOR, J.J.A.**  
**CIVIL APPLICATION NO. NAI 202 OF 1999 (81/99UR)**  
**BETWEEN**

**PAULINE NDUTA KAGWE ..... APPLICANT**  
**AND**  
**DAVID KAGWE ..... RESPONDENT**

**(Appeal from the ruling and orders of the High Court of  
Kenya at Nairobi (Kuloba J) dated 14th July, 1997**

**in  
H.C.C.C. NO. 3725 OF 1994)**

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**RULING OF THE COURT**

The applicant does not challenge the consent order or the decree arising therefrom. Moreover, she has not appealed from the ruling and order of O'Kubasu, J delivered on 19th May, 1999 which sought similar orders as those sought before Kuloba, J.

As is well established, the two conditions which the applicant should satisfy in order to obtain the order she seeks, are that her intended appeal is not a frivolous one, in other words, that she has an arguable ground to canvass during the intended appeal; and secondly, that the intended appeal, if it succeeds, would be rendered nugatory if stay of the order of the superior court is not granted. The applicant has failed to satisfy the first test. We would think that the intended appeal would be frivolous in that the consent order did not incorporate an option to choose which title any party would take. Further, the respondent has not refused to execute the instruments to facilitate the transfer of the two properties to the applicant.

The learned Judge, in our view, is correct when he observed that the applicant is being vindictive and that the court should not entertain niceties and preferences in land matters such as these.

This application is without merit and is accordingly dismissed with costs.

**Dated and delivered at Nairobi this 18th day of August,  
1999.**

**P. K. TUNOI**  
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**JUDGE OF APPEAL**

**A. B. SHAH**  
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**JUDGE OF APPEAL**

**E. OWUOR**

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**JUDGE OF APPEAL**

I certify that this is a  
true copy of the original.  
DEPUTY REGISTRAR