

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, AKIWUMI & PALL, J.J.A.)

CIVIL APPLICATION NO. NAI. 62 OF 1998

BETWEEN

SHADRACK KITOLO KIOKO.....A.N.D.....APPLICANT

EASTERN COMPUTER SCIENCE INSTITUTE LTD.....RESPONDENT

**(Being an application for stay of execution of the ruling
and Order of the High Court of Kenya at Machakos by
Hon. Mr. Justice J. W. Mwera dated 29th January,
1998 in
H.C.C.C. NO. 206 OF 1997)**

RULING OF THE COURT

The respondent sought interim orders against the applicant for the return of equipment of the respondent removed by the applicant who is a director of the respondent company and from running a rival business to that of the respondent. The applicant did not deny that the equipment belonged to the respondent, but alleged that he had paid for the equipment which was the property of the respondent. The learned judge granted the orders sought against which the applicant has now appealed and also seeks stay. We do not think that the property in the equipment has been transferred from the respondent to the applicant, indeed the applicant does not really deny this. To our mind, this makes the appeal on this issue not arguable. Furthermore, the equipment removed by the applicant is being used by the applicant to run a rival company. But we think that in spite of the intimate connection between the removed equipment and the rival company, the order of the learned judge in restraining the applicant from running the rival company at all may be wrong. We also do not think that the appeal of the applicant would be nugatory if his appeal is to succeed particularly where the equipment removed by the applicant does not belong to him. In the result, we are not inclined to grant the order sought except with respect to the second order granted by the learned judge on 29th January, 1998. That is, we order a stay on order 2 made by the Judge.

The costs of this application to abide the appeal.

Dated and delivered this 31st day of March, 1998.

R.S.C. OMOLO

JUDGE OF APPEAL

A. M. AKIWUMI

JUDGE OF APPEAL

G. S. PALL

JUDGE OF APPEAL

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

DEPUTY REGISTRAR