



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(Coram: GICHERU, OMOLO & SHAH, J.J.A.)**

**CIVIL APPEAL NO.53 OF 1997**

**BETWEEN**

**JOSEPH INIMA. ....APPELLANT**

**AND**

**MARITA MUSULUVE .....RESPONDENT**

**(Appeal from the ruling of the High Court of Kenya at Kakamega (TANUI J.) Dated on 31<sup>ST</sup> October, 1996**

**In**

**H.C.C.C. NO.103 of 1996)**

**ORDER OF THE COURT:**

This is an appeal against the refusal by the superior court (B.K. Tanui, J.) to extend time to file an appeal out of time. That intended appeal was against the decree and orders of the senior principle magistrate's court at Kakamega in P.M.C.C. No. 83 of 1995. the appeal is also against the refusal by the learned judge to grant stay of execution of the said decree and orders. An appeal in this instance can only lie if leave to appeal was obtained.

There is yet another problem. A primary document, namely, chamber summons dated 23<sup>rd</sup> September, 1996 is not in record

Yet another problem is that the order appealed against is dated 29<sup>th</sup> November, 1996 whereas the orders were made on 31<sup>st</sup> October, 1996.

This appeal is therefore incompetent and is ordered struck out but with no order as to costs as the respondent did not move this court for such orders under rule 80 of the rules of this court.

**Made at Kisumu this 16<sup>th</sup> day of June, 1998**

**J.E. GICHERU**

**JUDGE OF APPEAL**

**R.S.C. OMOLO**

**JUDGE OF APPEAL**

**A.B.SHAH**

**JUDGE OF APPEAL**

I certify that this is

A true copy of the original.

**Deputy registrar**