



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(Coram: Omolo, Shah & Lakha, JJ.A.)**  
**CIVIL APPLICATION NO. NAI. 175 OF 1998**

JOHN NDUNGUNGETHE.....APPLICANT

AND

1. PATRICK MURIMA GITAU

2. EDWARD NGANGA KAMAU

3. PETER NJOROGE  
RIBIA.....RESPONDENTS

**(An application for stay of execution of the judgment and  
decree of the High Court of Kenya at Nairobi (Khamoni,  
J.) dated 14th of July  
in  
H.C.C.C. NO. 4259 OF 1989)**

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**RULING OF THE COURT:**

The applicant before us was ordered to vacate the suit premises by the superior court. He did not do so, although his other three co-defendants vacated the suit premises, presumably pursuant to the orders of the superior court.

This court ordered, at one stage, maintenance of status quo, as the appeal in question (pending the hearing of which the stay of

execution was sought) was to be heard on 28th April, 1998. That appeal, Civil Appeal No. 217 of 1997, was struck out.

The issue of eviction of the applicant came up before the superior court on 26th May, 1998 when the applicant merely sought

further time to move out and a consent order to that effect was recorded as follows:

***"1. That hearing be and is hereby stood over to 4th June, 1998 at 2.30 p.m. to allow time for the Respondents (one of them being the applicant) to give possession or move out if he is still on the said piece of land."***

The superior court, on 4th June, 1998 ordered that the respondents be put into possession of the suit land (Land Parcel Dagoretti/Riruta 2218).

It was thereafter that this application was filed. The applicant is using the machinery of the court (that is normal delays in execution of eviction orders) to perpetrate his alleged possession of the suit premises.

We are not able to say that the applicant is deserving of the exercise of the equitable jurisdiction of this court, under rule 5(2)(b) of the Rules of this Court and we accordingly dismiss this application with costs.

Dated and delivered at Nairobi this 17th day of July, 1998.

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**A.B. SHAH**

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**JUDGE OF APPEAL**

**A.A. LAKHA**

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**JUDGE OF APPEAL**

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR