



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: AKIWUMI, TUNOI & SHAH, J.J.A.)

CIVIL APPEAL (APPLICATION) NO. 109 OF 1995

BETWEEN

KENYA COMMERCIAL BANK LTD APPELLANT

AND

FISCO(KENYA) LIMITED 1ST RESPONDENT

PAUL OKELO ABAJA 2ND RESPONDENT

Appeal from the Ruling of the High Court of Kenya at Nairobi (Hon. Justice Shields) dated 17th day of July, 1996

in

H.C.C.NO. 2523 & 533 OF 1982)

RULING OF THE COURT

The present application seeks several orders namely that the appeal filed by the respondent be struck out, that contain proceedings and orders of the superior court to set aside, that a Receiver appointed in respect of the applicant company do file proofs of debt and stay of proceedings. The supporting affidavit of this application does not support way of the orders sought. For instance, no affidavit evidence has been adduced to show that the respondent has failed to take an essential step in respect of its appeal. If the applicant is dissatisfied with the previous orders and rulings of the superior court he should appeal against them, not by way of the present application. the failure by the Receiver to file proofs of debt is not sufficient to strike out the appeal, and none of the conditions which must be satisfied before we can grant stay in the appeal if that is what the applicant is really seeking, have been satisfied.

In the result, this overloaded application must fail and it is dismissed with costs.

Dated and delivered at Nairobi this 3rd day of June, 1996.

A.M. AKIWUMI

JUDGE OF APPEAL

P.K. TUNOI

JUDGE OF APPEAL

A.B. SHAH

JUDGE OF APPEAL

It is also hereby ordered the three appeals filed in this matter by the respondent be listed for hearing at the same time.

Dated and delivered at Nairobi this 3rd day of June, 1996.

A.M. AKIWUMI

JUDGE OF APPEAL

P.K. TUNOI

JUDGE OF APPEAL

A.B. SHAH

JUDGE OF APPEAL

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

DEPUTY REGISTRAR