



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

Civil Appli 199 of 2009

MUSTAFA ADEN GEDI APPLICANT

AND

MOLEL arap KIRUI suing as personal representative

of the estate of the late GILBERT KOSKEIRESPONDENT

*(Application for stay of execution pending the hearing and determination
of an intended appeal from the Ruling of the High Court of Kenya at Kisii,*

(Muchelule, J) dated 18th June, 2009

in

H. C. C. C. NO. 225 OF 2006)

RULING OF THE COURT

This is an application under *Rule 5 (2) (b)* of the Court of Appeal Rules (“the Rules”) for stay of execution “of the judgment and decree in Kisii CMCC No. 589 of 2009”.

Clearly, the jurisdiction of this Court under Section 3 (1) of the Appellate Jurisdiction Act, Cap 9, does not extend to appeals from subordinate courts. There is no direct appeal from the decision of the Chief Magistrate’s Court in Kisii to this final appellate court. The application is a non-starter and must, on that ground alone, be struck out. In any event, even if the prayer before this Court had been correctly worded, the applicant would not have been entitled to any orders, as, indeed, there is nothing to “stay” from the orders issued by the superior court. What was before the superior court was an application to dismiss the appeal for want of prosecution. In its judgment dated 18th June, 2009 the superior court dismissed the appeal, and the applicant intends to appeal against that decision. However, there is nothing arising from that judgment, at this stage, to “stay” [See *Western College of Arts & Applied Sciences vs Oranga & Others* (1976) KLR 63].

Accordingly, the application before this Court dated 29th June, 2009 is incompetent, and the same is hereby struck out with costs to the respondent.

Dated and delivered at Nairobi this 16th day of October, 2009.

P. N. WAKI

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JUDGE OF APPEAL

J. W. ONYANGO OTIENO

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JUDGE OF APPEAL

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR