



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL OF KENYA  
AT NAIROBI**

**CIVIL APPEAL 156 OF 2005 (UR 95-2005)**

**RUSTAM HIRA ..... APPLICANT**

**AND**

**CHARLES MBAGAYA AMIRA .....1<sup>ST</sup> RESPONDENT**

**COMMERCE BANK LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(An application in an appeal from a Ruling of the High Court of Kenya at Nairobi (Ojwang, J) dated  
3<sup>rd</sup> June, 2005*

**in**

**H.C.C.C. No. 1169 of 1998)**

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**RULING OF THE COURT**

This is a somewhat peculiar application for stay. We say so because the applicant already has an order of stay granted by a Judge of the superior court (Ibrahim, J) . The other Judge who made the order stayed by Ibrahim, J ( i.e. Ojwang, J) does not appear to agree that another Judge of the High Court with concurrent jurisdiction should have stayed his order. It appears to us as Mr. Nowrojee says, that the order of stay granted by Ibrahim J. will only last until the hearing and determination of the constitutional reference made in the superior court by the applicant. We do not know that the reference will be heard and determined after the hearing and determination of the intended appeal; it may well be that the reference will be heard and completed long before the appeal is filed and heard. If that were to be the case, the applicant, who is a senior advocate of the High Court may run the risk of going to prison if the ruling in the reference were to go against him or if he were, by some misfortune, to appear before Ojwang, J. before the appeal is heard and determined. As we have pointed out Ojwang, J. does not appear to accept the orders made by Ibrahim, J. The intended appeal is clearly arguable and if Mr. Hira were to be committed to civil jail for his alleged contempt, that would clearly render his intended appeal nugatory.

We accordingly allow the motion asking us for a stay and we order that the orders of contempt of court made by Ojwang, J. shall be stayed pending the filing, hearing and determination of his appeal. The costs of to-day shall be in the intended appeal.

Dated at Nairobi this 28<sup>th</sup> day of June 2005.

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**E.O. O’KUBASU**

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**JUDGE OF APPEAL**

**W.S. DEVERELL**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**