



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: DEVERELL, J.A. (IN CHAMBERS)
CIVIL APPLICATION NAI 234 OF 2005 (KSM.27/05 UR)

BETWEEN

RICHARD AKWESERA ONDITI APPLICANT

AND

KENYA COMMERCIAL FINANCE CO. LTDRESPONDENT

*(Application to be allowed reliefs from payment of fees and
security for costs in an appeal from a judgment and decree
of the High Court of Kenya at Kakamega (Mr. Justice Tanui J)
dated 18th November, 2001*

**in
HCCC NO. 65 OF 1993)**

RULING

This is an application by Mr. Richard Akwesera Onditi who appeared before me in person. He seeks relief pursuant to **rule 112** of the Court of Appeal Rules from the payment of fees to the Court and from furnishing security for costs.

The respondent, Kenya Commercial Bank was represented by Miss Konuche.

The relief sought was in relation to two matters intended to be brought before the Court. The first was an application for extension of time to lodge an appeal and the second was the substantive appeal itself.

The applicant stated that his only source of income was his pension amounting to Shs. 2,975.80 per month. He claimed that he had many unemployed children and grand children. He said he had insufficient to pay for the inputs needed to make substantial money from the disputed land, which he occupies.

He had been told that the Court fees required for an appeal which involved in excess of Shs. 1.6 million would be about Shs. 100,000 which was confirmed by the Deputy Registrar Mr. Luvuga before me in accordance with **rule 112 (2)** of the Rules. Miss Konuche opposed the application in so far as it is related to the relief from the requirement to provide security for costs arguing that the applicant should be able to pay the court fees and provide security for costs out of the pension and the land but there was no affidavit filed by the respondents and it is difficult to see how this could be achieved.

Having heard the submissions of both parties and the Deputy Registrar, who said that if relief was granted

it should be conditional upon the applicant undertaking that he would pay the fees or the balance of the fees out of any money or property he may recover in or in consequence of the appeal, I am satisfied that the applicant lacks the means to pay the required fees or to deposit security for costs. Having read the affidavit of the applicant sworn on 28th July, 2005 and the proposed memorandum of appeal exhibited to that affidavit. I am satisfied that the appeal is not without reasonable possibility of success.

I therefore hereby direct that the appeal may be lodged without prior payment of fees of Court and without security for costs being lodged. The directions are conditional upon the applicant furnishing to the Deputy Registrar an undertaking signed by the applicant to pay the fees or the balance of the fees out of any money or property he may recover in or in consequence of the appeal. The costs of this application shall be in the appeal.

Dated and delivered at Kisumu this 1st day of December, 2005.

W. S. DEVERELL

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR