



**IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: GITHINJI, J.A (IN CHAMBERS)  
CIVIL APPLICATION NO. NAI. 225 OF 2003**

**BETWEEN**

**GEORGE GIKUBU MBUTHIA .....APPLICANT**

**AND**

**PETER NJERU MUGO**

**GEOFFREY KARIUKI MWENDA**

**HON. THE ATTORNEY GENERAL**

**CONSOLIDATED BANK OF KENYA LTD..... RESPONDENTS**

**(An application for stay of execution from the Decree of the High Court of Kenya at Milimani Commercial Courts Nairobi (Nyamu, J) dated 20th March, 2003**

**in**

**H.C.C.C. NO.1260 OF 2003)**

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**RULING**

This is an informal application under rule 47(5) of the Court of Appeal Rules for an order that the application dated 12.8.2003 and filed on 14.8.2003 be set down for hearing as a matter of urgency. That application seeks in effect an order of stay of execution of the decree given by Nyamu J. on 20.3.2003 pending determination of Civil Appeal No.159 of 2003. By the Ruling and decree given on 20.3.2003 Nyamu J. struck out applicant's suit against 2nd, 3rd and 4th defendants in the suit (i.e. H.C.C.C. No.1260/2002 – Milimani) with costs to the defendants.

The application dated 12.8.2003 for stay of execution of the decree was filed under certificate of urgency on the ground that 2nd respondent's (2nd defendant in the suit) bill of costs had been filed and that L.R. No. Nairobi Block 73/225 was sold by court in the absence of a valid statutory Notice of sale. The certificate of urgency was placed before Waki J.A on 14.8.2003 who declined to certify the application as urgent.

The applicant did not thereafter fix the application for stay of execution for hearing. Instead, on 19.11.2003, he wrote to the Deputy Registrar asking that the application be set down for hearing on the question of urgency under **rule 47(5)** of the Court of Appeal Rules now that the bill of costs had been taxed and a certificate of taxation issued.

The fact that the bill of costs of 2nd Respondent has now been taxed does not change the circumstances which were before Waki J.A when he declined to certify the application as urgent. When the certificate of urgency was rejected the applicant could have fixed the application for hearing. He had not taken a hearing date for 3 months before he applied that the question of urgency be heard.

Further, the 2nd respondent has brought to the attention of the court the fact that the applicant had filed a similar application, being Civil Application No. NAI.83 of 2003, for stay of execution of the same decision of Nyamu J. given on 20.3.2003. That first application was filed under certificate of urgency. It is clear from documents produced by 2nd respondent that the certificate of urgency was placed before Tunoi J.A who declined to certify the application as urgent and dismissed a subsequent application seeking certification of the application as urgent. It has also been disclosed that thereafter the applicant filed an application in the superior court dated 13.5.2003 under a certificate of urgency for stay of execution of the same decree.

This is the third time, therefore, that the applicant is asking the court to certify the application for stay of execution as urgent.

I am satisfied from the foregoing that this application is an abuse of the process of the court. The applicant should go ahead and fix the application for stay of execution for hearing in the normal manner.

I dismiss the application for certification of the application as urgent with costs.

**Dated and delivered this 20th day of February, 2004.**

**E.M. GITHINJI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**