



**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**CORAM: OMOLO, SHAH & O’KUBASU, J.J.A.**  
**CIVIL APPLICATION NO. NAI. 173 OF 2002 (90/2002 UR)**

**BETWEEN**

**PETER NDIRANGU KINUTHIA.....APPLICANT**

**AND**

**OFFICER COMMANDING KIKUYU POLICE STATION**

**SENIOR RESIDENT MAGISTRATE’S COURT, KIKUYU .....RESPONDENTS**

**(An application for stay of proceedings in an intended appeal from a  
ruling of the High Court of Kenya at Nairobi (Ransley, C.A.) dated 9th  
May, 2002**

**in**

**H.C.MISC. APPLN. NO. 80 OF 2002)**

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**RULING OF THE COURT**

We have before us an application brought under rule 5(2)(b) of the Rules of this Court whereby the applicant, ***Peter Ndirangu Kinuthia*** , seeks stay of proceedings in ***Criminal Case No. 63 of 2002*** in ***Kikuyu Resident Magistrate’s Court*** , pending the hearing and determination of an intended appeal against the ruling of the superior court (***P.J. Ransley Esq. Commissioner of Assize, as he then was***) delivered on 9th day of May, 2002. The learned Commissioner declined to grant orders of certiorari to remove to the High Court and quash the decision of the first respondent, ***the Officer Commanding Kikuyu Police Station***, to charge the applicant with the offence of stealing contrary to ***Section 275 of the Penal Code*** . The applicant stands charged with the said offence as well as trespass to property contrary to ***Section 3(1) of the Trespass Act, Cap. 284, Laws of Kenya***. The Criminal charges were instituted against the applicant, his wife and their children whilst civil proceedings were pending against the complainant, Mary Njoki Karanja and two others which civil proceedings (Civil Suit No. 6474 of 2001 in the Chief Magistrate’s court at Milimani) were instituted prior to the time the criminal charges were brought against the applicant and members of his family.

The applicant alleges that the first respondent is acting unfairly and in blatant abuse of the powers of his office in charging him and his family. The applicant states that he is the owner as proprietor of plot known as Title NO. ***MUGUGA/GITARU/1705*** which parcel of land was carved out of original Title No. ***MUGUGA/GITARU/804*** after a decision in High Court Succession Cause No. ***1735 of 1995***.

What the applicant is attempting to do is to get orders to the effect that the defence he has against the criminal charges is such that no police officer ought to have charged him with those offences. He is putting the cart before the horse, so to speak. The learned commissioner said:

***“I am of the view that the relief claimed cannot issue as it is only after the court in the criminal proceedings has been heard (sic) that it can be ascertained whether or not the applicant is guilty of charges brought against him, and the other accused person. This court at this stage cannot say whether what the appellant (sic) states is right or wrong. Further the applicant’s remedy if any lies in Civil Proceedings and not in a suit of this nature .”***

We were informed that the criminal proceedings have not yet started, that is the trial itself and that the hearing is being adjourned for one reason or another. We do not see that the applicant has an arguable appeal and even if he has one we do not see how the success in the intended appeal will be rendered nugatory. There is nothing to stop the applicant from defending the criminal proceedings and establishing that the articles he is alleged to have stolen are his own.

We see no merit in the application and it is ordered dismissed with no order as to costs.

**Dated and delivered at Nairobi this 24th day of January, 2003.**

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**A. B. SHAH**

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**JUDGE OF APPEAL**

**E. O’KUBASU**

.....

**JUDGE OF APPEAL**

I certify that this is a

true copy of the original

**DEPUTY REGISTRAR**