

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: AKIWUMI, TUNOI & KEIWUA, JJ.A.)
CIVIL APPLICATION NO. NAI. 360 OF 2000 (177/2000 UR)
BETWEEN**

**ZULEIKHA MOHAMED NAAMAN APPLICANT
AND
GHARIB SULEIMAN GHARIBRESPONDENT**

**(Appeal from the judgment of the High Court of Kenya at
Mombasa (Commissioner Mrs. Khaminwa) dated 15th
November, 2000**

**in
GUARDIANSHIP CAUSE NO. 2 OF 1998)**

RULING OF THE COURT

The present application for stay by the applicant will as is usual, be granted not only, where the intended appeal is arguable but also, if stay is not granted, the appeal if successful, would rendered nugatory. The appeal we can say right away, is not frivolous. But can it be said that the decision from which the applicant intends to appeal, which granted the custody of the children from the applicant, the mother, to the respondent, the father, would be rendered nugatory if the appeal succeeds? We would say, no! Firstly, the children, two boys, who are aged 12 and 13 are not quite infants. Secondly, there is no evidence to support the proposition that the appeal if successful, would be rendered nugatory, and really what does that imply. It is not an easy proposition, but as we see it, there would be no serious and lasting emotional debacle that would be involved.

The practical problems as to the boys move to new schools will not be that crucial and lasting as to render the successful appeal nugatory. In the result, the application is dismissed with no order as to costs and we also hereby order that the appeal be set down for hearing on a priority basis.

Dated and delivered at Mombasa this 19th day of January, 2001.

A. M. AKIWUMI

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

M. KEIWUA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR