



**IN THE COURT OF APPEAL  
AT NAIROBI  
(CORAM: GICHERU, J.A. (IN CHAMBERS))  
CIVIL APPLICATION NO. NAI. 58 OF 2001 (UR. 36/2001)**

**BETWEEN**

**CREDIT BANK LIMITED.....APPLICANT**

**AND**

**JAYANTITAL GOPAL PATEL.....RESPONDENT**

**(An application to strike out a notice of appeal filed in  
Kisumu High Court (Wambilyangah, J.) dated 7/11/2000**

**in**

**H.C.C.C. NO. 222 OF 2000)**

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**R U L I N G:**

By its notice of Motion dated 2nd March, 2001, the applicant seeks to have the respondent's notice of appeal lodged in the superior court on 20th November, 2000 in Kisumu High Court Civil Case NO. 222 of 2000 struck out principally for the reasons that the respondent herein was not a party to the suit aforementioned and that he had not obtained leave to appeal. To this end, according to the applicant, the respondent's notice of appeal was fatally defective. Since the notice of appeal sought to be struck out is the basis of the respondent's application for stay of execution, it was necessary, according to the applicant, to certify its application urgent for the outcome of the same would determine the fate of the respondent's stay application.

The jurisdiction of this Court in an application for stay of execution under rule 5(2)(b) of the Court of Appeal Rules is founded on the existence of a notice of appeal lodged in accordance with rule 74 of the aforesaid Rules. Without such a notice of appeal, this Court would have no jurisdiction in an application for stay of execution under rule 5(2)(b), supra. Thus, the validity of a notice of appeal in such an application can be determined at the hearing of the same. Hence, my initial refusal to certify the applicant's application urgent under rule 47(2) of the Rules of this Court. The submissions of counsel for the applicant have not persuaded me otherwise. Consequently, the order declining to certify the said application urgent under the aforesaid rule stands. The costs occasioned by this informal application are awarded

Dated and Delivered on this 6th day of April, 2001.

**J.E. GICHERU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**