

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
(CORAM: KWACH, OMOLO & SHAH, J.J.A.)
CIVIL APPLICATION NO. NAI. 282 OF 2000
BETWEEN

STANLEY KAIYONGI MWENDA APPLICANT
AND
CYPRIAN KUBAI RESPONDENT

**(Application for stay of execution in an intended appeal
against the Ruling and Order of the High Court of Kenya
at Meru (Mr. Justice Tuiyot) dated 20th day of July, 2000**

**in
H.C.SUCC.C. NO. 219 OF 1999)**

RULING OF THE COURT

We have listened to Mr. Kirugara for the applicant, and this being an application for stay under Rule 5(2) (b) of the Court's Rules, the applicant must satisfy us that:-

(i)he has an arguable appeal, i.e. an appeal which is not frivolous;

(ii)that unless a stay is granted, the intended appeal, if successful, will be rendered nugatory.

We agree that once a valid objection to the making of a grant is on record, a court should deal with that objection first, whether the objection be valid or invalid. The applicant's main point is that he was not heard on his objection. That would be an arguable point but we see from the record that the Judge was prepared to hear the objection but the conduct of the applicant himself seems to have made it impossible for the Judge to hear the objection in the presence of the applicant. We are not called upon to determine the issue finally, but we are not prepared to say that the point is a particularly arguable one. The other matters raised by Mr. Kirugara are in the same vein and can be answered in the same way.

It seems to us that the applicant is not serious with his appeal. He has had more than sufficient time to lodge the appeal and it appears no appeal has been lodged. But the main thing must be that if there is no arguable appeal, as we have found, then the question of whether the appeal will be rendered nugatory does not arise. The issue of the appeal being rendered nugatory only arises where there is an arguable appeal whose success will be rendered nugatory. We are satisfied there is no merit in the motion before us and that being our view, we order that the motion be and is hereby dismissed with costs to the respondent.

Dated and delivered at Nairobi this 26th day of October, 2001.

R.O. KWACH

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JUDGE OF APPEAL

R.S.C. OMOLO

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR