



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT MOMBASA  
CORAM: OMOLO, BOSIRE & OWUOR, JJ.A.  
CIVIL APPLICATION NO. NAI 403 OF 2001 (214/01 UR)  
BETWEEN

ALI MAHMUD SHEIKH MOHAMED  
SALEM SHEIKH OMAR  
JAMAL MAHMUD SHEIKH MOHAMED ..... APPLICANTS  
AND  
KENYA COMMERCIAL BANK LIMITED ..... RESPONDENT

(An application for injunction pending appeal against the  
ruling of the High Court of Kenya at Mombasa  
(Khaminwa, Comm/Assize) dated 28th September, 2001  
in  
H.C.C.S. NO. 455 OF 2001)

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RULING OF THE COURT

The applicants admit that money is owed to the respondent bank. They admit that upto now, they have not made any payment and have not made any arrangements to pay the sum owing. All they are saying is that there is no evidence that the three months statutory notice was posted to them. The Commissioner of Assize found it was posted. We do not, on the material before us, think that that is such an arguable point in the intended appeal. The suit was filed on 13th September, 2001. Upto now, no payment has been made. With respect to Mr Wameyo, we do not think that the intended appeal is arguable and that being so, we do not need to consider the second point of whether it would be rendered nugatory. There is no merit in this motion and we order that it be dismissed but we make no order as to the costs thereof.

**Dated and delivered at Nairobi this 27th day of November, 2001.**

**R. S. C. OMOLO**  
**JUDGE OF APPEAL**

**S. E. O. BOSIRE**  
**JUDGE OF APPEAL**

**E. OWUOR**  
**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**