



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: OMOLO, BOSIRE & O'KUBASU, JJ.A.

CIVIL APPLICATION NO. 189 OF 2001

DAVID MORTON SILVERSTEIN APPLICANT

AND

ATSANGO CHESONI RESPONDENT

(An application for stay of proceedings in an intended appeal from a ruling of the High Court of Kenya at Nairobi (Aganyanya & Rimita JJ) dated 26th April, 2001

in

H.C.C.A. NO. 105 OF 2000)

ORDER OF THE COURT

We have raised with counsel the issue of whether there is any provision in the Civil Procedure Act, the rules made thereunder or any other provision, eg. case law, which permits the High Court, on an application made by way of a notice of motion, to strike out an appeal, that is, can a party apply to the High Court on a notice on motion to strike out an appeal and if so, under what provisions? This matter was not raised in the High Court and we appreciate that counsel were not prepared to deal with it. We want the point to be fully argued before us in connection with the issue of whether the applicant has an arguable appeal. We accordingly adjourn the motion to a date to be refixed in the registry and as the matter is partly heard, it will have to be refixed before this particular bench. The motion is to be refixed on a priority basis. The costs of today shall be in the motion.

Made at Nairobi this 5th day of November, 2001.

R. S. C. OMOLO

JUDGE OF APPEAL

S. E. O. BOSIRE

JUDGE OF APPEAL

E. O. O'KUBASU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR