



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: GICHERU, LAKHA & O'KUBASU, J.J.A.)**

**CIVIL APPLICATION NO. NAI. 284 OF 1999**

**BETWEEN**

**DAVID KIBERIA ..... 1STAPPLICANT  
QUINSTAR (K) LIMITED ..... 2NDAPPLICANT**

**AND**

**MERU CENTRAL FARMERS CO-OPERATIVE UNION LIMITED .... 1STRESPONDENT  
NATIONAL BANK OF KENYA ..... 2NDRESPONDENT**

**(Application for stay of Execution of the Ruling and Order of  
the High Court of Kenya at Meru (Hon. Commissioner of  
Assize G.A. Omwitsa's) dated 11th August, 1999 and all  
consequential orders**

**in**

**H.C.C.C. NO. 328 OF 1994)**

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**RULING OF THE COURT**

This is an application by the unsuccessful defendants under **rule 5(2)(b)** of the Court of Appeal Rules (the Rules) seeking a stay of execution of the ruling and order of the superior court given on 11 August 1999 and of the decree therein pending an appeal and a further order for stay of proceedings in **Meru HCCC 328 of 1994** pending the appeal. The facts giving rise to this application may be briefly stated. On 16 June, 1998 the superior court, pursuant to an application made on behalf of the First Respondent, entered summary judgment against the applicants in the sum of **K.Shs.455,560/=** and costs and interest. A notice of appeal was filed against the judgment but no appeal has as yet been filed. Nor did the record of this application have a certified copy of the judgment included therein. The applicants then applied to the superior court by their application dated 10 December, 1998 to have the judgment set aside and alternatively for a stay. This application was brought under Order 41 rule 4 and Order 1 rules 16 and 22 of the Civil Procedure Rules. The same was on 11 August, 1999 dismissed.

We have carefully considered the application made to us for a stay. In the first place, no appeal has been preferred against the judgment entered on 16 June, 1998. We are not persuaded that such an appeal would, in any event, be arguable. Additionally no application for stay has been made pending an appeal against judgment of 16 June, 1998.

As for the ruling of the superior court given on 11 August, 1999 there is no right of appeal without leave. No such leave having been obtained, there is no right of appeal and there can be no stay pending an appeal if there can be no appeal. In any event, we have not been persuaded that there is any arguable appeal against the ruling of the superior court of 11 August, 1999.

For the reasons above stated, this application fails and is dismissed with costs.

**Dated and delivered at Nairobi this 11th day of February,**

**2000.**

**J.E. GICHERU**

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**JUDGE OF APPEAL**

**A.A. LAKHA**

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**JUDGE OF APPEAL**

**E. O'KUBASU**

.....

**JUDGE OF APPEAL**

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