



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: LAKHA, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 117 OF 2000

BETWEEN

TRADE BANK LIMITED (IN LIQUIDATION) .....APPLICANT

AND

L.Z. ENGINEERING CONSTRUCTION LIMITED..... 1ST RESPONDENT

YAYA TOWERS LIMITED ..... 2ND RESPONDENT

*(Application for extension of time for lodging a Notice of Appeal and Memorandum and Record of Appeal in the matter of an intended appeal from the Judgment & Decree of the High Court of Kenya at Nairobi (Pall, J.A.) delivered on the 9th day of January, 1998*

In  
H.C.C.C. NO. 3791 OF 1993)

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**RULING**

No application has been made before me in this application for my disqualification. Nor has any material been placed before me, by consent or otherwise, to enable me to decide on such an issue. If, however, it was taken, my decision on this issue in the earlier application applies. Quite apart from all that, in my judgment, the intended appeal is bound to fail on the following grounds:-

**(a) No appeal having been preferred from the preliminary decree of 28 November 1997, an appeal from the final decree as is intended is barred by section 68 of the Civil Procedure Act; and/or**

**(b) The intended appeal is also barred by res judicata because of the findings already made in the preliminary decree of 28 November 1997: See MBURU KINYUA V. GACHIMI TUTI [1978] KLR 69.**

For the reasons above stated in addition to those given in my ruling delivered this morning in **Civil Application No. NAI 115 of 2000 KAPLAN & STRATTON V. L.Z. ENGINEERING CONSTRUCTION LTD & 2 OTHERS**, I also dismiss this application with costs.

**Dated and delivered at Nairobi this 14th day of August, 2000.**

**A.A. LAKHA**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**