



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT KISUMU**

**CORAM: KEIWUA, J.A. (IN CHAMBERS)**

**CIVIL APPLICATION NO. NAI. 396 OF 2001 (UR.209/2001)**

**BETWEEN**

**ZACHARIA AMENYA ..... 1ST APPLICANT**

**CLEMENT RATEMO NYAMBATI ..... 2ND APPLICANT**

**AND**

**POLLICUP MBOYA AGUTU ..... RESPONDENT**

**R U L I N G**

The applicants have appealed from the decision of the superior court delivered on September 28, 2001. The certificate of urgency indicates that they had sought to challenge the decision of the Chief Magistrate's court which prohibited them from tendering evidence in that court. That suit is fixed for hearing on November 29, 2001 before the Magistrate's court.

The applicants are therefore in danger of having the suit in the Magistrate's court heard without the benefit of what they say to be crucial evidence in a test case because the applicants had been absolved from blame for the accident by one of the claimants in the Magistrate's Court.

The respondent opposes the application because it does not merit to be certified urgent. The evidence the applicants wish to produce was by one of the victims of the same accident who had instituted proceedings for damages.

The particular suit by that witness has been described to be a non-starter by the superior court, which found that the applicants had not been diligent in the matters giving rise to the application for stay of proceedings they wished certified urgent. On my part I do not find any basis upon which the application can be certified urgent.

Dated and delivered at Kisumu this 23rd day of November 2001.

**M. OLE KEIWUA .....**

**JUDGE OF APPEAL I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR**



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