



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL APPLICATION 38 OF 2012

**BETWEEN**

**SHIMMERS PLAZA LIMITED.....APPLICANT**

**AND**

**NATIONAL BANK LIMITED.....RESPONDENT**

*(An application for stay of execution pending the hearing and determination of an Intended Appeal against the Ruling and or Order of the High Court, Commercial & Admiralty Division Milimani Nairobi (Kimondo, J.) on 27<sup>th</sup> January, 2012*

*in*

*HCCC NO. 895 OF 2009)*

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**RULING**

On 9<sup>th</sup> February 2012 I declined to certify the Notice of motion dated 8<sup>th</sup> February 2012 as urgent. The applicant herein has applied for an order of stay of execution of the High Court Ruling and Order in HCCC No. 895 of 2009 dated 27<sup>th</sup> January 2012 dismissing the applicant's application for injunction pending the hearing of the suit.

I have now heard the certificate of urgency *inter partes* pursuant to Rule 47(5) of the Court of Appeal Rules.

I have taken into account the facts that the loan that the applicant secured as a guarantor was advanced over 14 years ago; that the dispute has been raging in court since 2001 when the applicant filed HCCC No. 229 of 2001 and obtained an order of injunction to restrain the respondent bank from exercising its statutory power of sale; that the respondent bank appealed against the order of injunction in Civil Appeal No. 26 of 2002; that on 3<sup>rd</sup> July 2009 the Court of Appeal confirmed the injunction until the respondent's bank issued a valid statutory notice on the applicant; that the respondent bank issued afresh a statutory notice dated 17<sup>th</sup> September 2009 demanding Shs.665,313,974 as at 17<sup>th</sup> September, 2009; that the applicant disputed the statutory notice and filed HCCC No. 895 of 2009 and the interlocutory application for injunction which was dismissed by the High Court on 27<sup>th</sup> January 2012 triggering the present application that HCCC No. 895 of 2009 is similar to the previous suit and that the respondent bank has not exercised its statutory of sale notwithstanding that there is no subsisting order of injunction.

Having considered those factors and recognizing that for the stability of the economy resolution of

commercial disputes should not be delayed, I am now of the view that it is in the interest of both parties that the pending application should be determined as a matter of urgency so that they can move forward.

Consequently, I now certify the notice of motion dated 8<sup>th</sup> February 2012 to be urgent.

Dated and delivered this 28<sup>th</sup> day of March 2012

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**