

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1165 OF 1999

FINA BANK LIMITED PLAINTIFF
VERSUS
JAGDISHBHAI CHATURBHAI PATEL T/A
MWANANCHI AUTO PAINTS & HARDWARE 1ST DEFENDANT
CHARULATTA J. PATEL 2ND DEFENDANT

RULING

This is an application for stay of execution of a ruling made by this court on 18.12.2000 whereby judgment was entered in favour of the plaintiff against the defendants as prayed in the plaint. The applicants now say that they intend to appeal against the ruling to the Court of Appeal and a stay of execution should be granted because the intended appeal has very high chances of success; that they will suffer substantial loss if a stay is not granted and that the intended appeal shall be rendered nugatory if an order of stay of the ruling is not granted.

The affidavit in support of the application is sworn by Mr. Anil Joshi, the applicant's advocate and confines itself to the issue of the provision of certified copies of proceedings and ruling regarding which he depones that the documents have so far not been supplied to him.

The application is opposed by the respondent, Fina bank Limited. This application is made under O. XLI Rule 4 of the Civil Procedure Rule. Under that Rule, no order of stay of execution shall be made unless the court is satisfied that substantial loss may result to the applicant, if the order is made. There is not a single piece of evidence tendered by the applicant to show that any such loss will result and clearly no basis has been established for the grant of the orders sought in the application. For that reason, the application must fail and is dismissed with costs.

Dated at Nairobi this 23rd day of March, 2001.

T. MBALUTO
JUDGE