



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: KWACH, SHAH & OWUOR, J.J.A.)
CIVIL APPLICATION NO. NAI. 71 OF 1999 (UR.27/99)**

BETWEEN

BANDAPTAI AGRO & HARDWARE LIMITED APPELLANT

AND

MEA LIMITEDRESPONDENT

**(An application for stay of execution of the order
and decree pending the lodging and hearing of an
intended appeal from the ruling and order of the
High Court of Kenya at Nakuru (Hon. Justice D. Rimita)**

dated 17th March, 1999

in

H.C.C.C. NO. 474 OF 1997)

RULING OF THE COURT

This is an application under *rule 5 (2)(b)* of the Court of Appeal Rules for a stay of execution of the ruling and order of Rimita J given on 17th March, 1999. By that decision the learned Judge dismissed an application by *Bandaptai Agro & Hardware Limited (the applicant)* for a stay of execution and for payment of the decretal amount by instalments.

MEA Limited (*the respondent*) had filed a suit in the superior court against the applicant to recover Shs 16,348,702/40 being the value of goods sold and delivered to the applicant by the respondent. The applicant filed a sham defence which was struck

out and judgment entered in favour of the respondent.

In the process of executing the decree issued in its favour, the respondent not only attached the goods lying in the applicant's business premises but also locked up the premises. The result is that the applicant cannot trade at all and yet the respondent expects to be paid the money due under the decree. In rejecting the applicant's offer of Shs 500,000/= per month, the learned Judge did not comment on the conduct of

the respondent. On the face of it, the offer by the applicant to pay the decretal amount by monthly instalments of Shs 500,000/= does not seem to us to be unreasonable given the present economic situation in Kenya. On appeal, this Court may well come to the conclusion that in rejecting that offer the learned Judge did not exercise his discretion correctly.

In the result, we allow this application and grant a stay of the order of Rimita J dated 17th March, 1999. We lift the attachment and order the respondent to open the premises and give the applicant unimpeded access. The applicant will pay the respondent Shs 600,000/= per month with effect from 1st May, 1999 pending the hearing and final determination of the intended appeal. Costs of the application to be in the appeal.

Dated and delivered at Nairobi this 30th day of March, 1999.

R. O. KWACH

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR