



**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI  
(CORAM: GICHERU, OWUOR & O'KUBASU JJ.A)  
CIVIL APPLICATION NO.NAI.258 OF 2001**

**BETWEEN**

**GEOFFREY ORAO OBURA .....APPLICANT**

**AND**

**MARTHA KARAMBU KOOME .....RESPONDENT**

**RULING OF THE COURT**

The applicant clearly has an arguable appeal. By the originating summons filed in court on the 15th September, 1998 the applicant was asked to enter appearance within 15 days to the said summons. On the 30th September, 1998 the respondent was hauled before the learned judge for the hearing of the summons itself. On that day, even the 15 days for entering appearance had not run out. The applicant asked for time to file a replying affidavit. The judge rejected that application. The truth is that the applicant had not been given an opportunity to defend himself - even if his case was thought to be hopeless, he was nevertheless entitled to put the case before the court. He appears to have been denied the chance to defend and that is clearly an arguable point and may well entitle the applicant to have the judgment set aside ex debito justitiae . We think it would be right to grant a stay in the circumstances and we do so. The respondent herself deponed in the replying affidavit dated the 6th November, 1998 at paragraph 11

"THAT my client Bank is specially vulnerable in the present economic climate and a grant of stay of execution to the applicant unfairly threatens its operations and customer funds."

That may well be evidence that if the applicant were to pay the money to the respondent, his appeal, if successful, may be rendered nugatory.

We accordingly allow this motion and order that the order of the judge dated the 30th September, 1998 be and is hereby stayed until the intended appeal shall have been heard and determined. The costs of this application shall be costs in the intended appeal.

**Dated and delivered at Nairobi this 9th day November,**

**1998.**

**R. S. C. OMOLO .....**

**JUDGE OF APPEAL**

**A. B. SHAH .....**

**JUDGE OF APPEAL**

**E. OWUOR .....**

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**