



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM: OMOLO, LAKHA & OWOUR, J.J.A.)**  
**CIVIL APPLICATION NO. NAI. 283 OF 1998**  
**BETWEEN**

**TAHIR SHEIKH SAID TRANSPORTERS (K) LIMITED .....APPELLANT**

**AND**

**CHARLES MUGABO .....RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of  
Kenya at Eldoret (Lady Justice R. Nambuye) dated 22nd  
December, 1994**

**in  
H.C.C.C. NO. R147 OF 1987)**

**\*\*\*\*\***

**RULING OF THE COURT**

By this application dated the 3rd of November, 1998 the defendant seeks, under rule 5(2)(b) of the Rules of this Court, an order for a stay of execution of the Judgment/Decree of the superior court (Lady Justice Nambuye) of 23rd May, 1995 given at Eldoret pending determination of an intended appeal from the said judgment and Decree.

The plaintiff, a Uganda national, whose whereabouts and assets are not known to the applicant, sued the applicant seeking damages arising out of an accident in which he was involved and as a result of which he suffered injuries specified in the plaint. Judgment was entered, by consent, on full liability and the case proceeded for assessment of damages only.

In general, this Court grants a stay if satisfied that the intended appeal is not frivolous and that it will be rendered nugatory if a stay is not granted.

It is contended on behalf of the applicant that the learned judge erred in principle in failing to make a global award and in making separate award of damages on each item of multiple injuries sustained by the respondent. Further, an award for loss of future earnings was made without the same having been pleaded or claimed in the plaint. In any event, complains the applicant, a total award of K.Shs.1,115,000/=, in the circumstances of the case, is so inordinately high that it is wholly an erroneous estimate of the damages for the injuries suffered by the respondent.

Having heard the advocates for the parties and, in view of the foregoing, we are satisfied that it cannot be said that the intended appeal is frivolous or not arguable. We are also satisfied that if a stay is not granted the intended appeal will be rendered nugatory.

Accordingly, it follows that the application is granted as prayed but subject to the following conditions:-

*1. That the applicant do pay to the respondent/plaintiff a sum of K.Shs.200,000/= within 30 days from the date of this ruling; and*

*2. That the applicant do deposit a sum of K.Shs.500,000/= into an interest earning account in the joint names of both counsel within 30 days from the date of payment of the amount ordered in 1 above.*

**Dated and delivered at Nairobi this 20th day of November,**

**1998**

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

**JUDGE OF APPEAL**

**A.A. LAKHA .....**

**JUDGE OF APPEAL**

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

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**