



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NYARANGI, PLATT & GACHUHI JJA)

CIVIL APPLICATION NO. NAI 18 OF 1987

OTIENO..... APPLICANT

VERSUS

UGO & ANOTHER.....RESPONDENT

(Application for stay of execution pending an appeal in the High Court at Nairobi, Bosire J)

JUDGMENT

In form this is an application for an interlocutory injunction under Rule 5(2) (b) of the Rules of the Court. We find no difficulty in disposing of the application on the basis of the established practice of this court as evidenced in the decision in *Maheschandra Shamjibhai Gheewala v Aruna B Gheewala and others*, Civil Application No Nai 127 of 1986 and *M M Butt v Rent Restriction Tribunal*, Civil Application No Nai 6 of 1979. The usual rule is that an injunction is granted to preserve the subject-matter pending the hearing and the determination of the action so that the rights if any of an appellant are safeguarded to prevent the appeal, if successful, from being nugatory. There are no special circumstances which would cause us to decide differently because, fortunately, the body can be preserved for another two months or so and hence there is no necessity to risk exhumation.

The point taken by Mr Kwach on behalf of the respondents is that the applicant ought to proceed expeditiously to prepare the record of the intended appeal and have the same filed in the registry of this court. With that we agree and we are grateful to Mr Khaminwa for his offer to lodge the record of appeal within 28 days from today.

We allow the application and order in terms of paragraph 1 and 2 of the notice of motion. The body shall remain in the City Mortuary until further order of this court. No order as to costs.

Dated and Delivered at Nairobi this 18th day of February, 1987

J.O NYARANGI

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JUDGE OF APPEAL

H.G PLATT

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JUDGE OF APPEAL

J.M GACHUHI

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JUDGE OF APPEAL