



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CIVIL APPLI NO. 312 OF 2007 (213/2007 UR)**

**THE BOARD OF TRUSTEES OF**

**THE NATIONAL SOCIAL SECURITY FUND.....APPLICANT**

**AND**

**BLANTINE ACHITSA INDULI and**

**AGRIPINA K. INDULI (*suing as the legal representative of the estate of the***

***late* ADRIAN INDULI SHIKALI).....RESPONDENTS**

***(Application for stay of execution of the judgment of the High Court of Kenya at Nairobi (Khamoni, J) dated 30<sup>th</sup> May, 2007***

**in**

**H.C.C.C. NO. 549 OF 2002)**

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

**RULING OF THE COURT**

**The *BOARD OF TRUSTEES OF THE NATIONAL SOCIAL SECURITY FUND*, the applicant herein, moves the Court under *rule 5(2)(b)* of the Court's rules for an order:-**

***“That there be a stay of execution of the judgment delivered on the 30<sup>th</sup> day of May, 2007 and the decree ensuing therefrom on such terms as this Honourable Court may deem apt, pending the hearing and determination of this Appeal.”***

**The deceased, *ANDRIAN INDULI SHIKALI*, died on 28<sup>th</sup> March, 1997 whilst in the employment of the applicant. Before his demise he was a member of a staff Retirement Benefit Scheme which had been set up by the applicant for its employees. The respondents, the deceased's widow and daughter, suing as his legal representatives lodged a claim in the superior court demanding payment of the deceased's benefits under the said scheme. The benefits were, in the main, in respect of the pension lumpsum and Group Insurance Benefits.**

**However, after the suit was filed the applicant settled that part of the claim which related to the**

pension, but, resisted the claim in respect of the Group Insurance Benefits. After a trial the learned trial Judge *Khamoni J*, entered judgment for the respondents against the applicant in the sum of Shs.2,326,000/= with costs and interest. On 26<sup>th</sup> June, 2007 *Visram J*, pursuant to an application by the applicant ordered a temporary stay of execution of the decree on condition that the applicant provided a Bank guarantee as security for the payment thereof. The applicant fulfilled that condition and the guarantee is in force until July, 2008. The applicant has further since moved fast and filed an appeal, being Civil Appeal No. 131 of 2007.

*Mr. Mutubwa*, for the applicant, contended before us in the application that the appeal is arguable and is not a frivolous one and in support of that contention, *Mr. Mutubwa*, referred us to the applicant's Memorandum of Appeal, which contains not less than twenty one grounds of appeal. We have, indeed, considered *Mr. Mutubwa's* submissions and looked at those grounds of appeal. It is our respectful view that they cannot by any stretch of imagination be described as frivolous. It is to be noted, of course, that in reaching this conclusion we have differed with *Mr. Amuga*, for the respondents, who had vigorously contended that the appeal was not at all meritorious.

Will the pending appeal be rendered nugatory if we do not grant the stay sought? *Mr. Mutubwa* contends that if the decretal sum was paid over to the respondents, the applicant would not be able to recover it back because the resources of the respondents are unknown. But, *Mr. Amuga* has demonstrated before us that the respondents do own substantial properties both in Nairobi and in Kakamega and again that the 1<sup>st</sup> respondent is an employee of the applicant.

Considering the respective positions of the parties, and the fact that there is an existing Bank guarantee we grant to the applicant a stay of execution of the decree of the superior court dated 30<sup>th</sup> May, 2007 on condition that it provides a Bank guarantee to an aggregate amount of Shs.3,000,000/= within fourteen days of the date hereof, such guarantee to remain in force until the hearing and determination of the appeal or until further orders of this Court. The costs of the motion shall be in the appeal.

*DATED and DELIVERED at NAIROBI this 29<sup>th</sup> day of February, 2008.*

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

.....

JUDGE OF APPEAL

E.O. O'KUBASU

.....

JUDGE OF APPEAL

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

**DEPUTY REGISTRAR**