



REPUBLIC OF KENYA

**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**

**Civil Appli 281 of 2005 (UR 174/2005)**

**DR. ALOYS BLAISE AYAKO.....APPLICANT**

**AND**

**UNIVERSITY OF NAIROBI.....RESPONDENT**

***(Being an application for stay of execution of the order of the High Court of Kenya at Nairobi (Mugo, J) dated 24<sup>th</sup> June, 2004 and 25<sup>th</sup> February, 2005***

**in**

**H.C.C.C. NO. 832 OF 2002 )**

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

**RULING OF THE COURT**

This application expressed to be brought under **rule 5(2)(b)** of the Rules of this Court seeks a stay of execution of the orders made by the superior court at Nairobi on 24<sup>th</sup> June, 2004 and on 25<sup>th</sup> February, 2005 in H.C.C.C. No. 832 of 2002, pending the filing and determination of an intended appeal.

By a plaint dated 15<sup>th</sup> May, 2002, the respondent sought judgment against the applicant for Shs.676,000/= in respect of rents due to it for the months of June, 1999 to August, 2001 at the rate of Shs.26,000/= per month.

The applicant duly filed a statement of defence and also lodged a counter-claim and/or set-off. However, on 24<sup>th</sup> June, 2004 his defence was struck out on the ground that he had not made discovery on oath of the documents which were or had been in his possession or power relating to the matters in question in the suit. Subsequently, judgment was entered against him and for the respondent. It transpired later that all attempts to set that judgment aside have been in vain.

We have considered the rival submissions made by the parties before us. We have, also, carefully perused the pleadings on record. We are satisfied that the applicant's intended appeal is indeed arguable. In other words we do not think that the intended appeal is frivolous.

In determining whether the success in the intended appeal will be rendered nugatory unless the applicant is granted a stay, we apply the principles enunciated by this Court in **ORARO AND RACHIER V. CO-OPERATIVE BANK OF KENYA LIMITED** [1999] LLR 1118 (CAK). In this instance, the circumstances showed that it would be too onerous and well-nigh impossible to require the applicant to

deposit the entire decretal sum in court.

All in all, we are satisfied that the applicant has made out a case for the grant of a stay of execution of the orders made by the superior court but on terms. We order that there be a stay of the said decree pending the filing and determination of the intended appeal subject to the applicant depositing with this Court a sum of Shs.500,000/= within 30 days hereof; and, in default this application shall stand dismissed.

These shall be our orders.

*DATED and DELIVERED at Nairobi this 10<sup>th</sup> day of November, 2006.*

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**E.M. GITHINJI**

.....

**JUDGE OF APPEAL**

**J.W. ONYANGO OTIENO**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**