



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: SHAH, J.A. (IN CHAMBERS)

CIVIL APPLICATION NO. NAI. 64 OF 2002 (37/2002 UR)

BETWEEN

SOUTHERN CREDIT BANKING CORPORATION LTD.....APPLICANT

AND

TULIP APARTMENTS LTD..... FIRST RESPONDENT

LORIMAR APARTMENTS LTD..... SECOND RESPONDENT

(An application for stay of proceedings and/or execution
pending the lodging, hearing and determination of an intended
appeal from the decision of the High Court of Kenya at Nairobi

(Kuloba, J) dated 28th March, 2002

in

H.C.C.C. NO. 284 OF 2002)

RULING ON URGENCY

On 5th April, 2002 I declined to certify this application as urgent as there was a similar parallel application for stay of execution and stay of proceedings in the superior court. I stated then that unforeseen results may occur if two courts give different decisions. My refusal to certify this application led the applicant to seek certification of urgency under rule 47(5) of the Rules of this Court. I heard all parties to this application on 26th April, 2002 as a result of request by *Messrs Archer & Wilcock Advocates* by a letter dated 22nd April, 2002 by which letter the said firm of advocates sought the inter-parte hearing.

Miss Janmohamed who appeared for the applicant informed me that the application in the superior court, for stay of execution was not heard as the learned Judge felt that the applicant had not complied with orders to return or to give the keys of the maisonettes, which are the subject-matter of the suit, to the first two respondents despite a court order to do so. It is not for me to inquire into that at this stage and I leave it at that. Miss Janmohamed confirmed that there has been, already, execution of the order whereby

her client was ordered to deliver up the said keys to the first two respondents. In these circumstances the order whereby the applicant seeks stay of execution is already a fait accompli and the applicant's only desire now is to seek a stay of further proceedings in the superior court as Kuloba, J, according to Miss Janmohamed, has made orders which dispose off the injunction application fully.

Mr. Kalove who appeared for the first two respondents stated that there is no urgency as the possession of the suit maisonettes has already been given to his clients and that the charge on the suit properties is still in place, that is to say, the properties still remain charged to the applicant. The only difference, Mr. Kalove pointed out, is that the maisonettes are now occupied, as a result of the order of the superior court and that a property is better looked after tenanted than not tenanted.

As I see it as the maisonettes are occupied and that the charge still remains in place there is no need to issue a certificate of urgency. At the rate hearing dates are given in this court I do not see that the applicant will suffer any prejudice if the application will be heard in normal course of events.

If I were to certify this application as urgent merely on the ground that far-reaching orders have been made by the superior court I may be taken to decide the issue in some manner which sitting as a single Judge of this Court I would not wish to do.

Whilst I appreciate the sentiments of the applicant, sitting as a Judge, I cannot go by sentiments. I must go by law and procedure. The interests of the applicant, despite non-certification of urgency, will be preserved in all the circumstances of this case.

I decline therefore, to certify this application as urgent. Costs of this application will be in the application itself.

Dated and delivered at Nairobi this 29th day of April, 2002.

A.B. SHAH

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.