



**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OMOLO, LAKHA & O'KUBASU, JJ.A.)
CIVIL APPLICATION NO. NAI. 374 OF 2001**

BETWEEN

PAUL WATHIRU NGURE APPLICANT

AND

PHILIP NJOROGE NGURE 1ST RESPONDENT

MICHAEL MUHORO NGURE 2ND RESPONDENT

**(Application for stay of execution pending the hearing and
determination of the appeal against the Judgment and
Decree of the High Court of Kenya at Nairobi (Hon.
Justice Shaikh Amin) dated 10th day of May, 2001**

in

H.C.C.C. NO. 2330 OF 1997)

RULING

RULING OF THE COURT

This is the defendant's application for a stay under rule 5(2)(b) of the Rules of this Court seeking a stay of execution of the judgment and decree of the superior court (Sheikh Amin, J.) delivered on 10 May, 2001.

The facts are few and simple. The plaintiffs claim a declaration that the defendant was registered as the proprietor of **Land Parcel Ndumberi/Githunguri/Githiga/531** and held the same on behalf and in trust of the plaintiffs herein and that the aforesaid trust be forthwith determined and the defendant do transfer to the plaintiffs 1.25 acres each out of the said Land Parcel as per the draft plan agreed between the plaintiffs and the defendant on 17 August, 1994 and that the incidental expenses thereof be borne by the parties herein equally.

After the hearing of the suit concluded, the learned judge made an order in terms of the claim as above. The defendant's appeal therefrom being **Civil Appeal No. 268 of 2001** has been filed in this Court and is pending.

Pending such hearing of the appeal, a stay is sought. The principles on which this Court grants a stay are well settled. Two conditions have to be satisfied by the applicant: first, it must be shown that the intended appeal is arguable and, secondly, it must also be shown that if stay is withheld, the appeal will be rendered nugatory.

We have accordingly considered the facts of this case and applying the principles above stated, we have not been persuaded that the intended appeal has a probability of success. That being so, the application for stay fails. We do not see how, in the circumstances, it would be proper to exercise our discretion to grant this application.

This application for stay, therefore, fails and is dismissed with costs.

Dated and delivered at Nairobi this 19th day of April, 2002.

R.S.C. OMOLO

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

E. O'KUBASU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR