



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: LAKHA, BOSIRE & OWUOR, J.J.A)

CIVIL APPLICATION NO. NAI. 64 OF 2001 (37/2001 UR)

BETWEEN

SPARES AND INDUSTRIES LIMITEDAPPLICANT

AND

FINA BANK LIMITEDRESPONDENT

**(Application for stay of execution pending the lodging,
hearing and determination of an intended appeal from
the Order of the High Court of Kenya at Nairobi (Mr.**

Justice Khamoni) dated 26th February, 2001

in

H.C.C.C NO. 2106 OF 1999)

RULING OF THE COURT

This is the plaintiff's application brought under **rule 5 (2) (b)** of the Rules of this Court seeking an order that:-

"There be a stay of proceedings/hearing of the High Court Civil Suit Number 2106 of 1999 pending the hearing and determination of the intended appeal".

The intended appeal is from the decision of the superior court (Khamoni, J.) given on 26th February, 2001. The facts of the case have been sufficiently set out in **Civil Appeal No. 51 of 2000** and need not be repeated in this application. The decision of the superior court from which it is now intended to appeal merely dismissed the plaintiff's application for leave to join two other parties as defendants and to amend its plaint in order to plead particulars of its losses and damages arising from alleged mismanagement of the applicant's affairs during the one year period of receivership. The hearing of the case has already been set down in September this year.

The principles upon which this Court grants a stay are now firmly established. They require that the

applicant should show that he had an arguable appeal and the same would be rendered nugatory if the stay sought in the application is withheld. We have carefully considered the submissions made to us by counsel for both parties and we say without much hesitation that we are not persuaded that the intended appeal would indeed be rendered nugatory if a stay is not granted. Moreso, after we had been assured by Mr. Wagara counsel for the applicant that he is now ready to mount the intended appeal and the hearing of the case we are called upon to stay, has been fixed in September, 2001. In our view this is more than sufficient time for the applicant to prosecute its appeal.

Having said that, it becomes unnecessary for us to express any view as to whether the intended appeal is arguable. For the above reason, the application fails and is dismissed with costs.

Dated and delivered at Nairobi this 30th day of March, 2001.

A.A. LAKHA

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JUDGE OF APPEAL

S.E.O BOSIRE

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR