

**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: KWACH, OMOLO & LAKHA, J.J.A.)
CIVIL APPLICATION NO. NAI. 374 OF 2000 (UR. 182/2000)**

BETWEEN

H.W.K APPLICANT

AND

E.C..... RESPONDENT

**(An application for stay of execution in an intended appeal
from a Ruling of the High Court of Kenya at Nairobi (K.H.
Rawal, J.) dated 28th November, 2000**

in

DIVORCE CAUSE NO. 17 OF 1998)

RULING OF THE COURT

This is an application by the unsuccessful husband for a stay of execution of the decision of the superior court (**Mrs. Rawal, J.**) given on 28 November, 2000 whereby she made certain orders requiring the applicant to maintain the petitioner (wife) and her three children by paying her a sum of **K.Shs.30,000/=** from the year 1999 and to pay the school fees and medical charges for the children.

The principles upon which this Court grants a stay under **rule 5(2)(b)** of the Rules of this Court (under which this application has been made) are now firmly established. It has to be shown to this court that the intended appeal is arguable and that if the stay is withheld, the appeal will be rendered nugatory.

Having carefully considered the submissions made to this court on behalf of the parties, we are satisfied that the intended appeal is not frivolous but is certainly arguable. As we have already stated, the judge of the superior court ordered the applicant to make back-dated payments to the wife. It is at least arguable that the judge was not entitled to back-date the payments. We are also satisfied that the intended appeal will be rendered nugatory if a stay is not granted as sought.

In these circumstances, the application for stay succeeds. We order that there shall be a stay of execution of the ruling of the superior court given on 28th November, 2000 until the final determination of the intended appeal or until such further order as this court may deem fit save that the applicant shall pay maintenance to the petitioner and her three children of K.Shs.15,000/= per month from the date of this order. The costs of this application shall abide the intended appeal.

Dated and delivered at Nairobi this 16th day of March, 2001.

R.O. KWACH

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JUDGE OF APPEAL

R.S.C. OMOLO

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JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR