

**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: KWACH, OMOLO & SHAH, J.J.A.
CIVIL APPLICATION NO. NAI. 323 OF 2000**

BETWEEN

ALLIED INDUSTRIES LTD.....APPLICANT

AND

DAVID MBUTHIA.....RESPONDENT

**(An application for stay of execution pending the filing
of an intended appeal from a judgment of the High
Court of Kenya at Nairobi (Ang'awa J) dated 28nd
February, 2000**

in

H.C.C.C. NO. 1799 OF 1993)

RULING OF THE COURT

The only allegedly arguable point that the applicant's counsel says he would have at the time of the hearing of the intended appeal is that the learned Judge in the superior court refused to grant an adjournment as a result of which refusal the applicant was unable to present its case properly before the superior court. The learned judge pointed out, whilst refusing to grant the adjournment, that there were thirteen adjournments. We do not think that is such an arguable point. It is a non-starter. The time for lodging the appeal has already expired.

There is nothing before us to show that the success in the intended appeal, if ever it will be mounted, will be rendered nugatory. Simply to say that the respondent will be unable to refund the decretal sum is not enough. We see no merit in this application. It is dismissed with costs.

Dated and delivered at Nairobi this 7th day of March, 2001.

R.O. KWACH
.....
JUDGE OF APPEAL

R.S.C. OMOLO
.....
JUDGE OF APPEAL

A.B. SHAH
.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR