



**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: TUNOI, BOSIRE & KEIWUA, J.J.A.)
CIVIL APPLICATION NO. NAI. 39 OF 2001 (21/2001 UR)**

BETWEEN

JAMES MBUGUA MACHARIA APPLICANT

AND

AGNES WANJIKU MBUGUARESPONDENT

**(Application for stay of execution pending the hearing
and determination of an appeal from the judgment of
the High Court of Kenya at Nairobi (An'gawa, J.)
delivered on 13th October, 1999**

in

H.C.JUDICIAL SEPARATION CAUSE NO. 50 OF 1997)

RULING OF THE COURT

This is an application brought under rule 5(2)(b) of the Rules of this Court seeking a stay of execution on the judgment and decree of the High Court dated 13th October, 1999, in H.C.C.C. No. 50 of 1997 pending the hearing and determination of Civil Appeal No. Nai. 323 of 2000. This Court in Civil Application No. 19 of 2000 while considering a similar application between the same parties s

"Considering all the matters put before us in support of and in opposition to this application it is hereby allowed and the order that commends itself to us is that of the sum of Shs.35,000/= ordered payable to the wife there be stay of execution thereof to the extent of Shs.25,000/= per month so that the husband will pay to the wife Shs.10,000/= per month with effect from 13th October, 1999, pending the hearing and determination of the intended appeal."

This was on 3rd May, 2000. The above order lapsed when Civil Appeal No. 15 of 2000 was struck out as incompetent. But since then, the circumstances have not changed. Consequently, notwithstanding the submissions made before us by counsel on both sides we find no basis for departing from the conclusions reached in the aforesaid decision.

In the result, we allow the application and grant orders in terms of the aforesaid orders made by this Court on 3rd May, 2000. However, the applicant must as a condition of the grant of the orders update the payments ordered therein with 30 days hereof and in default the stay shall lapse without any further order. Costs of this application shall be in the intended appeal.

Dated and delivered at Nairobi this 5th day of April, 2001.

P. K. TUNOI

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JUDGE OF APPEAL

S. E. O. BOSIRE

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JUDGE OF APPEAL

M. KEIWUA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR