



**IN THE COURT OF APPEAL  
AT NAIROBI  
(CORAM: GICHERU, TUNOI & O'KUBASU, J.J.A.)  
CIVIL APPLICATION NO. NAI. 224 OF 2001 (UR 11/2001)**

**BETWEEN**

**AJAY INDRAVADAN SHAH ..... APPLICANT**

**AND**

**GUILDERS INTERNATIONAL BANK LIMITED ..... RESPONDENT**

**(Application for stay of execution from the Ruling of the  
High Court of Kenya at Nairobi (Mr. Ransley,  
Commissioner of Assize) dated 3rd February, 2000**

**in**

**MILIMANI COMMERCIAL COURT C.S. NO. 1121 OF 1999)**

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**RULING OF THE COURT**

This is an application for stay of execution of the order of the superior court made on 3rd February, 2000 in its Civil Case No. 1121 of 1999 by which the learned Commissioner entered judgment for the respondent, the Plaintiff in the suit, against the applicant in the sum of Shs.15,000,000/= together with interest at the rate of 35% from the date the loan was advanced until payment in full.

By a plaint filed in the superior court on 17th August, 1999, the respondent averred that on the strength of a personal guarantee dated 20th March, 1998, it advanced certain monies to the applicant and in June, 1991, he was indebted to the respondent in respect of the advances, loans and interest in the total sum of Shs.27,864,660/10. By a letter dated 21st June, 1999, the respondent called upon the applicant to repay the sum but the applicant failed to do so thus provoking the suit in which the respondent prayed for judgment against the applicant for the said sum with interest thereon at the compounded rate of 47% per annum. In his written statement of defence the applicant denied the existence of a personal guarantee and contended that there was no agreement of interest payable as alleged or agreeing to pay interest at the rate of 47% as prayed in the plaint.

On 29th October, 1999, the respondent took out a Chamber Summons under Order VI rule 13(1) seeking an order to strike out the defence. When the application came up for hearing the applicant admitted that Shs.15,000,000/= had been advanced to him but objected to the interest claimed at 47%. He pleaded to liquidate the decretal amount by instalments. The learned Commissioner then entered judgment for the respondent in the sum admitted by the applicant but fixed the interest rate at 35% from the date of the loan until payment in full.

From this decision the applicant has lodged Civil Appeal No. 135 of 2001 which is due for hearing in December, 2001. The crux of the appeal is that the learned Commissioner erred in fixing the rate of interest payable on the principal amount at 35% and yet there was no contractual or any other agreement between the parties. Moreover, he contended such an interest is exorbitant, unreasonable and punitive. It is accordingly submitted that the appeal is arguable.

We are on our part satisfied that the applicant has demonstrated that he has an arguable appeal. This point was finally conceded by counsel for the respondent. As to whether if stay is not granted the appeal which has already been lodged will be rendered nugatory, we need only to point out that though the applicant has fully paid the principal sum, the amount now due on interest is quite substantial and stands at over Shs.35,000,000/= and a notice to show cause why the applicant should not be arrested and committed to civil jail has been issued. If the notice is effected and the applicant is jailed there is no doubt at all that the appeal will be rendered nugatory.

We allow the application and grant stay of execution of the decree of the superior court in this matter until the determination of the appeal. Costs of this application shall be in the appeal.

**Dated and delivered this 31st day of July, 2001.**

**J. E. GICHERU**

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**JUDGE OF APPEAL**

**P. K. TUNOI**

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**JUDGE OF APPEAL**

**E. O. O'KUBASU**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**