

**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI 279 OF 2001 (156/01 UR)**

BETWEEN

AJAY SHAH APPLICANT

AND

**TRUST BANK LTD
NITIN CHANDARIA VINOD PATEL RESPONDENTS**

**(Application for stay of execution pending an appeal from
a ruling of the High Court of Kenya at Nairobi
(Ringera J) dated 9th August, 2001**

in

H.C.C.S. NO. 875 OF 2001)

RULING

There can be no doubt on the material before me that the sum the applicant has been ordered to deposit is very large. But it is the sum claimed in the plaint and the superior court thinks the applicant ought to provide security for it. I am not concerned with the matter of whether or not a stay will be granted. That is for the bench which will hear the application. The question is whether the matter is urgent and on this point, I still see no urgency. All that is being said is that unless the matter is certified urgent, the applicant may lose his liberty. That need not necessarily follow; the applicant can avoid that consequence by complying with the order.

I am not given any reason why the order cannot be complied with except that the superior court did not give the applicant a chance to file an affidavit of means. That being so, I am unable to say why the applicant cannot comply with the order. True, the money is a very large sum but it is what is claimed in the plaint and that alone cannot make the matter urgent. I still refuse to certify the motion as being urgent and I award the costs of today to the respondent.

Dated and delivered at Nairobi this 13th day of August, 2001.

R. S. C. OMOLO

JUDGE OF APPEAL

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

DEPUTY REGISTRAR