



**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, SHAH & O'KUBASU, J.J.A.
CIVIL APPLICATION NO. NAI 322 OF 2001 (173/01 UR)**

BETWEEN

BLUE SHIELD INSURANCE CO LTD APPLICANT

AND

IGNATIUS NTUNDU RESPONDENT

**(Application for stay of execution from the judgment of
the High Court of Kenya at Meru (Tuiyot J) dated
22nd May, 2001**

in

MERU H.C.C.C. NO. 79 OF 2001

RULING OF THE COURT

We think the applicant has an arguable appeal and Mr Kurauka for the respondent is obviously right to concede this. The claim was for a declaratory judgment against the insurance company and it is arguable that even if the company was properly served with summons, the respondent was not entitled to obtain summary money judgment against it. That is one arguable point and that one point is sufficient.

We also think that the respondent is not very forthcoming in stating his ability to refund the decretal sum if the appeal against him was to succeed. It is clear that since the decision of this Court in **KENINDIA ASSURANCE COMPANY LIMITED V PATRICK MUTURI , Civil Application NO NAI 107 of 1993 (unreported)** the Court is perfectly entitled to take into account the ability of a respondent to refund the decretal sum if he were to be ordered to do so. We are, accordingly satisfied that the applicant is entitled to a stay of execution. We accordingly order as follows:

1. We grant to the applicant a stay as prayed in its notice of motion until the hearing and determination of the appeal.
2. The attached goods of the applicant are to be released to it forthwith and the court broker's charges are to await the outcome of the appeal unless the court broker and the applicant are agreed on costs and the applicant pays them pending the determination of the appeal.
3. The applicant is to deposit the decretal sum in Barclays Bank Ltd, Meru Branch within 30 days of the date of this order. The account is to be opened in the joint names of the advocates for the parties and the money so deposited can only be released on the signed authority of the two counsel.

4.The costs of this motion shall be in the appeal. These shall be our orders in the motion.

Dated and delivered at Nairobi this 26th day of September, 2001.

R. S. C. OMOLO

JUDGE OF APPEAL

A. B. SHAH

JUDGE OF APPEAL

E. O. O'KUBASU

JUDGE OF APPEAL

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

DEPUTY REGISTRAR