



**REPUBLIC OF KENYA**  
**COURT OF APPEAL AT NAIROBI**  
**CIV APP 79 OF 00**

**DOROTHY K. KWONYIKE T/A LUGUYAN ENTERPRISES.....APPLICANT**

**AND**

**VICTORIA COMMERCIAL BANK LIMITED.....RESPONDENT**

**(An application for stay of execution and proceedings and injunction pending the lodging and hearing of an intended Appeal from the Ruling of the High Court of Kenya at Nairobi (Hon. Mr. Justice Kassanga Mulwa) given on 9th March, 2000 in**

**H.C.C.C. NO. 25 OF 2000)**

\*\*\*\*\*

**RULING ON URGENCY**

On 12th January, 2000 an ex-parte mandatory injunction was granted by commissioner Gacheche. That order almost decided the claim. She recorded no reasons to show how the non-granting of such an injunction would be defeated by delays. She overlooked the provision in order 39 rule 3(2) of the Civil Procedure Rules. So effectively the order expired on 26th February, 2000. There was no application for extension of the said ex-parte order. Mulwa, J nevertheless looked at that lapsed order as if it was in force. The subject-matter of the dispute is a wasting asset, namely a lorry. It becomes therefore necessary to try and preserve the same. Having heard both counsel I see no impediment in the way of certifying this application as urgent. I hereby certify the same as urgent. Costs in the application.

**Dated and delivered at Nairobi this 4th day of March, 2000.**

**A.B. SHAH**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**