



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KWACH, AKIWUMI & BOSIRE, J.J.A.)**

**CIVIL APPLICATION NO. NAI. 79 OF 2000 (UR.35/00)**

**BETWEEN**

**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 Milimani Commercial Court Nairobi (Justice Kasanga Mulwa) dated 9th March, 2000 in**

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

**\*\*\*\*\***

**RULING OF THE COURT**

The order of Mulwa, J. made on 9.3.00 has not been obeyed. This is also admitted by Mr. Nyawara counsel for the Applicant who it appears does not, however, regard it as being a proper interpretation of the original order made by Gacheche, CA. But this notwithstanding, the position in law as set out clearly in The Pharmacy and Poisons Board v Sipri Pharmaceuticals Limited & the Republic Civil Application No. NAI 103 of 1998 (43/98 UR) (unreported), is that no matter whether the order of Mulwa, J. be right or wrong, it must, unless properly set aside by way of review or an appeal, be complied with. This the Applicant has not done and for that reason, we agree with Mr. Wasuna, counsel for the Respondent, that the present application cannot be heard until the order of Mulwa, J. is complied with or set aside. The present application is hereby taken out of today's list and stood over generally. Today's cost to the Respondent.

**Dated and delivered at Nairobi this 12th day of April, 2000.**

**R. O. KWACH**

**.....**

**JUDGE OF APPEAL**

**A. M. AKIWUMI**

**.....**

**JUDGE OF APPEAL**

**S. E. O. BOSIRE**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**