



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: GICHERU, OMOLO & KEIWUA, JJ.A.  
CIVIL APPLICATION NO. NAI 102 OF 2000 (UR 50/00)

BETWEEN

THABITI INSURANCE BROKERS LTD. .... APPLICANT

AND

JOSEPH OGERO OBONYO ..... RESPONDENT

(An application for stay of execution from the judgment  
of the High Court of Kenya at Kisumu (Wambilyangah  
J) dated 12th October, 1999

in

H.C.C.C. NO. 140 OF 1997)

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**RULING OF THE COURT**

This is an application for the stay of the judgment of the superior court made at Kisumu on 12th October, 1999. By that judgment, Thabiti Insurance Brokers, the applicant, was ordered to pay to Joseph Ogero Obonyo, the respondent, the sum of K.Shs.1,561,500/= together with costs and interest. It is clear from the record before us that the respondent has been attempting to enforce that judgment and according to the proclamation of attachment dated 30th March, 2000 by M/s Legacy Auctioneering Services, the sum then outstanding was K.Shs.2,089,442/= excluding the costs of the auctioneer. The applicant intends to appeal against the judgment of the superior court and it filed a notice of appeal on 22nd October, 1999. The applicant having filed a notice of appeal, it is entitled to come to this Court for a stay of the superior court's judgment.

Mr Odunga who opposed the application on behalf of the respondent, agreed with Mr Ocharo for the applicant, that the applicant has an arguable appeal. We agree with them and we do not have to consider that issue. The only point left to us to consider is whether the applicant's intended appeal will be rendered nugatory if we do not grant a stay to the applicant. We think there is substance in the applicant's contention that if the money is paid out to the respondent, he might not be in a position to refund if he were to be required to do so. As far as we can gather from the record before us, the only business the respondent was engaged in was that of transportation. That business collapsed due to the accident which led to this litigation, of course assuming at this stage that there was in fact an accident as the respondent had contended before the trial Judge. The record also tends to show that the respondent had considerable difficulties in paying relatively small sums of money, assuming further that he did pay them. In the applicant's supporting affidavit, it was specifically averred that if execution of the decree were to be allowed to proceed, the appeal would be rendered nugatory. In his replying affidavit the respondent has

not attempted to show that he would be able to refund the decretal sum if he were required to do so. We accordingly allow this application and order a stay of the superior court's judgment but on condition that the prohibitory order made by the superior court against the applicant's property registered as Land Parcel No. 330/1142 in Nairobi shall continue to be in force. The costs of this motion shall be in the appeal.

Those shall be the orders of the Court.

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

J. E. GICHERU

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

M. KEIWUA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR