



REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL MISCELLANEOUS APPLICATION NO. 316 of 2000

TAI JEAN GARMENTS COMPANY LIMITED 1ST APPLICANT

NARESH DARBAR 2ND APPLICANT

BHUPENDRA DARBAR 3RD APPLICANT

AND

VIYAY MORJARIA.....RESPONDENT

RULING OF THE COURT:

This is an application under rule 5(2)(b) of the Court of Appeal Rules for stay of execution of the judgment and decree of Rimita J. given on 4th October, 2000. The learned Judge gave judgment for the respondent for Shs.16,000,000/= as money lent by the respondent to the applicants. Mr. Oyatsi has drawn our attention to a number of shortcomings in the judgment including the learned Judge's apparent failure to give the applicants credit for Shs. 8,979,040/= which the respondent admitted he had been paid by the applicants.

The respondent's claim as pleaded in his plaint was for the recovery of Shs.16,000,000/=. The learned Judge has not explained why he disregarded that payment. This is an arguable point which the applicants should be allowed to canvass in the appeal. On the material before us we are satisfied that this is a proper case for an order of stay. Accordingly we grant the application and order that as a condition for the stay the applicants shall execute a bank guarantee in the sum of Shs. 7,000,000/= within 30 days from today. In default the application to stand dismissed with costs.

Costs of the application to be in the intended appeal.

Dated and delivered at Nairobi this 23rd day of November, 2000.

R.O. KWACH

JUDGE OF APPEAL

R.S.C. OMOLO

JUDGE OF APPEAL

A.B. SHAH

JUDGE OF APPEAL

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

DEPUTY REGISTRAR