



**IN THE COURT OF APPEAL**

**AT MOMBASA**

**[CORAM: ASIKE-MAKHANDIA, SICHALE & J. MOHAMMED, J.J.A]**

**CIVIL APPLICATION NO. 39 OF 2020**

**BETWEEN**

**COUNTY GOVERNMENT OF MOMBASA.....APPLICANT**

**AND**

**BLUESHIELD INSURANCE COMPANY .....RESPONDENT**

(Being an application brought under Rule 5(2)(b) of the Court of Appeal Rules, 2010 for stay of execution of the garnishee order absolute pending the lodging, hearing and determination of an intended appeal from the ruling of the High Court of Kenya at Mombasa (D.O. Chepkwony, J) dated 2<sup>nd</sup> August, 2019

**in**

**Miscellaneous Civil Application No. 796 of 2004**

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**RULING OF THE COURT**

1. UPON perusing the Notice of Motion dated **8<sup>th</sup> June, 2020** by the applicant, County Government of Mombasa, brought under Rule 5(2)(b) of the Court's Rules, where the applicant seeks, *inter alia*, a stay of execution of the Ruling of the High Court of Kenya at Mombasa dated **2<sup>nd</sup> August, 2019** in High Court Civil Application No. 796 of 2004 pending the hearing and determination of an intended appeal; and

2. UPON perusing the affidavit of **Jimmy Waliula**, the Director of Legal Services of the County Government of Mombasa sworn on **8<sup>th</sup> June, 2020** in support of the application; and

3. NOTING that the respondent did not file a replying affidavit and/or submissions in opposition to the motion; and

4. UPON perusing the motion dated **8<sup>th</sup> June, 2020** and the affidavit in support thereof wherein the applicant contends that it has an arguable appeal in that it seeks to contest whether the applicant, being a government entity can be a subject of garnishee proceedings and further that the appeal will be rendered nugatory given that the respondent is under statutory management and is unlikely to refund a sum of Kshs 19,909,774.00 if the intended appeal succeeds; and

5. HAVING considered the principles that guide this Court in determination of Rule 5(2)(b) applications as summarized in *Stanley Kang’ethe Kinyanjui vs. Tony Keter & 5 Others [2013] eKLR* and noting that the applicant has demonstrated that it has an arguable appeal which may be rendered nugatory unless the orders sought are granted, given that the applicant is a government entity and it is arguable whether it can be attached in the manner aforesaid and given that the respondent is under statutory management and hence unlikely to repay the decretal sum in the event that the intended appeal is successful, we make the following orders;

- (i) The Notice of Motion dated **8<sup>th</sup> June, 2020** is allowed;
- (ii) Costs of the motion shall be in the intended appeal.

*Dated and Delivered at Nairobi this 4<sup>th</sup> Day of December, 2020.*

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**F. SICHALE**

.....

**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

*I certify that this is a true*

*copy of the original.*

*Signed*

**DEPUTY REGISTRAR**



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