



**Republic v Okonyo (Criminal Appeal E070 of 2024)  
[2024] KEHC 17064 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 17064 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL APPEAL E070 OF 2024  
WM KAGENDO., J  
DECEMBER 19, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THOMAS OKONYO ..... RESPONDENT**

*(Arising from the Ruling delivered by Hon. Rita Orora SRM on 3rd October 2024 in Mombasa Chief Magistrate's Miscellaneous Criminal Application Number E212 of 2024, Thomas Nabutse Okonyo v Fred Mwangangi and 4 Others)*

**RULING**

**Introduction**

1. This Honourable Court is called to determine the Notice of Motion application dated 11<sup>th</sup> October, 2024 by the Applicant who sought the following orders:-
2. Spent
3. Spent
4. That this court be pleased to issue an order of stay of the Ruling delivered by Hon. Rita Orora SRM on 3rd October 2024 in Mombasa Chief Magistrate's Miscellaneous Criminal Application Number E212 of 2024, *Thomas Nabutse Okonyo v Fred Mwangangi and 4 others* pending hearing and determination of the Appeal.
5. That the Honorable Court be pleased to issue any other order that it may deem fit and just to grant.
6. The Application is supported by the applicant's affidavit wherein they aver that:-



7. The Respondent filed a miscellaneous criminal application E212 of 2024, *Thomas Nabutse Okonyo v Fred Mwangangi and 4 others* at the Chief Magistrate Court Mombasa seeking to institute private prosecution.
8. On 3<sup>rd</sup> October 2024 the Honourable Rita Orora SRM delivered her ruling allowing the Respondent to institute private prosecution.
9. The Appellant was dissatisfied with this decision and has prepared its Petition of Appeal raising several weighty grounds.
10. The private prosecution was slated for directions on 16<sup>th</sup> October 2024.
11. The Notice of Appeal initiating this Appeal has been filed thus the Appellant is not guilty of laches, indolence or any imaginable measure of lackadaisical conduct and or inertia.
12. The Appellant has applied for certified copies of proceedings and Ruling and is awaiting to be supplied with the same.
13. The appeal has been brought without undue delay.
14. Unless stay orders are issued the said private prosecution will proceed therefore rendering this appeal nugatory and an academic exercise.
15. No prejudice will be occasioned to the Respondent if the stay orders sought are granted.

### **Analysis and Determination**

1. The law guiding stay of criminal proceedings in our jurisdiction can now be said to be well settled. Of relevance to the matter at hand is the holding in *Joram Mwenda Guantai v The Chief Magistrate, Nairobi* Civil Appeal No. 228 of 2003 [2007] 2 EA 170, where the Court of Appeal held that:

“...the High Court has inherent jurisdiction to grant an order of prohibition to a person charged before a subordinate court and considers himself to be a victim of oppression. If the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the Judge has the power to intervene and the High Court has an inherent power and the duty to secure fair treatment for all persons who are brought before the court or to a subordinate court and to prevent an abuse of the process of the court.”

1. However, the decision whether or not to arrest proceedings is discretionary and being discretionary the stage at which the application is made is a crucial factor to be considered. This must be so because as was held in *Goddy Mwakio & Another v Republic* [2011] eKLR wherein the Court of Appeal stated that:

“An order for stay of proceedings, particularly stay of criminal proceedings is made sparingly and only in exceptional circumstances.”

1. The rationale for this, as appreciated by Gikonyo, J opinion in the case of *Kenya Wildlife Service v James Mutembei* [2019] eKLR where the court (Gikonyo, J) is that: -

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... Stay of proceedings is a grave judicial action which seriously



interferes with the right of a litigant to conduct his litigation...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity.

The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

1. The question that arises is whether in this case there exist exceptional circumstances warranting the arrest of the proceedings . The summary of the facts is that on 3<sup>rd</sup> October 2024 the Honourable Rita Orora SRM delivered her ruling allowing the Respondent to institute private prosecution. The Appellant was dissatisfied with this decision and has prepared its Petition of Appeal raising several grounds. The private prosecution was slated for directions on 16<sup>th</sup> October 2024. The Notice of Appeal initiating this Appeal has been filed thus the Appellant is not guilty of laches, indolence or any imaginable measure of lackadaisical conduct and or inertia.
2. there was no response to the Application and after weighing the submissions i find that there is merit in the Application

### **Conclusion and Disposition**

1. According, I hereby direct that pending the hearing and determination of this Appeal there will be a stay the ruling delivered by Hon. Rita Orora SRM on 3<sup>rd</sup> October, 2024 in Mombasa Chief Magistrate’s Miscellaneous Criminal Application Number E212 of 2024, *Thomas Nabutse Okonyo v Fred Mwangangi and 4 others*.
2. I however direct the Applicant to prepare, file and serve its record of appeal within 45 days.

It is so ordered.

**RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 19TH DAY OF DECEMBER, 2024**

.....

**HON. LADY JUSTICE W. M. KAGENDO**

**(JUDGE)**

**HIGH COURT OF KENYA AT MOMBASA (CRIMINAL DIVISION)**

In the presence of:

M/s. Bebora, Court Assistant;

Ms. Maina - State Counsel/Applicant

**SIGNED BY: HON. LADY JUSTICE WENDY MICHENI**

**THE JUDICIARY OF KENYA.**

**MOMBASA HIGH COURT CRIMINAL**

**DATE: 2024-12-19 23:16:51**

