



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CRIMINAL CASE NO. E059 OF 2021

REPUBLIC.....APPLICANT

VERSUS

1. NABIL LOO MOHAMED

2. BAKARI KILA BAKARI

3. STEPHEN VICKER MANGIRA

4. LILIAN BENARD MARTIN.....RESPONDENTS

R U L I N G

1. The 3rd Respondent Stephen Vicker Mangira by an application under Certificate of urgency dated 30th June 2021 brought pursuant to Articles 2(4), 25 (c), 48 and 50(1) of the constitution sought that orders issued on 25/06/2021 granting leave to the prosecution to appeal out of time be stayed pending the hearing and determination of the application herein and that upon hearing the same to be declared to have been given in violation of Article 25(c) and 50(1) of the constitution of Kenya 2010 and in breach of the rules of natural justice and are therefore null & void ab initio.

2. It was sought that the *ex parte* orders given on 25/06/2021 be quashed, nullified and set aside as a matter of right. The application was based on the grounds on the face of the application and supporting affidavit of the 3rd Respondent. The application was opposed by grounds of opposition dated 6th July 2021 and filed on even date.

3. The application was canvassed by way of oral submissions by the Applicants Counsel whereas the Respondents Counsel Ms. Karanja said she will rely on grounds of opposition.

4. The Respondents filed an application dated 21st June 2021 seeking leave to appeal out of time. They sought to appeal against Judgement in CR. Case No. 257 of 2017 at Shanzu which was delivered on 12th May 2021. It was explained that the applicant could not have appealed without all of the lower courts proceedings and that delay was not inordinate as judgment was delivered on 12th May 2021.

5. Having considered the application by the 3rd Respondent this court finds that leave to appeal out of time was granted in consideration that judgment was delivered on 12/5/2021 and a delay of 13 days was not inordinate.

6. The applicants will at the end of the day have their day in court and I do find that no prejudice will be suffered. The Respondents have a constitutional right like any party to appeal against orders for which they feel aggrieved.

Application dated 30th June 2021 is therefore dismissed.

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS, THIS 29TH DAY OF JULY, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel – Court assistant

Mr. Magolo Advocate for 1st & 2nd & 4th Respondent

Mr. Kinyua Advocate & Mr. Muthuri Advocate for 3rd Respondent

Ms. Karanja for the Applicant

COURT: Copies to be supplied.

HON. LADY JUSTICE A. ONG'INJO

JUDGE