



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL REVISION NO. 99 OF 2018

RAPHAEL SAUTI WANJALA.....1ST APPLICANT

MBAGATUZINDE GERO.....2ND APPLICANT

JOHN KECHULA OKOTA.....3RD APPLICANT

ALFRED WESONGA SIDUWA.....4TH APPLICANT

PETER NAMAKHABWA OTUONA.....5TH APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicants moved the court by way of Notice of Motion under Articles 50(2) (a), 25 (c) 165 (6) & (7), 159 (1) & (2) and 258 (1) of the Constitution of Kenya. They are seeking the following orders:

- a) That this application be certified urgent and the same be heard and determined on priority basis;
- b) That this court stays the hearing in the chief Magistrate's Court Criminal Case No. 606 of 2018 pending the hearing and determination of this application.
- c) That this court stays the hearing in the chief Magistrate's Court Criminal Case No. 606 of 2018 pending the hearing and determination of the appeal filed by the applicants to the Court of Appeal.
- d) That the applicant be awarded costs with interest thereon.

2. The application was premised on eleven grounds that their application dated 14th November 2018 was dismissed and they have appealed against the dismissal.

3. The application was opposed by the state through M/s Ngari learned counsel.

4. Every party who is aggrieved by a decision of the court has a right to appeal. This is what fair trial envisages. I will grant the stay.

5. In order to check on possible abuse of the due process, the applicants will be expected to keep the trial court informed of the progress in Court of Appeal every two months. If they fail to do so, the stay herein will lapse and the trial court will be at liberty to schedule the matter for hearing.

6. Each party will bear own costs.

DELIVERED and SIGNED at BUSIA this 28th day of March, 2019

KIARIE WAWERU KIARIE

JUDGE