



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION**

**ACEC CRIMINAL APPEAL NO. 8 OF 2018**

**IBRAHIM HAJI ISAAC.....APPELLANT/APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION....RESPONDENT**

*(Being an appeal arising from Milimani Chief Magistrate's Court*

*Anti-Corruption Court in Anti-corruption Case No.9 of 2015 delivered*

*by Hon. L.N. MUGAMBI Chief Magistrate on 9<sup>th</sup> April 2018.)*

**RULING**

1 The Appellant/Applicant filed the application dated 25<sup>th</sup> April, 2018 alongside the appeal herein. The appeal is against a ruling by the trial court dated and delivered on 9<sup>th</sup> April 2018.

2 In the said Ruling the trial court discharged the applicant's five(5) co-accused on the ground that the recommendation to charge and the decision to charge them fell within the period when the EACC was not properly constituted.

3 It was however ordered that the case against the Applicant proceeds. This is the core of the appeal. It was Hon. Mugambi's (C.M.) view that the decision to have the Applicant charged was made vide the DPP's letter dated 9<sup>th</sup> October 2014, and not much later.

4 The hearing of the said matter has been rescheduled to 29<sup>th</sup> June 2018, before the Chief Magistrate. The Appellant/Applicant has expressed his fears in the matter proceeding before the appeal is heard.

5 I have considered the application, affidavit, grounds of opposition and the submissions by both counsel. I have had a chance to peruse the lower court file and in particular the following:

(i) Charge sheet

(ii) The letter from the D.P.P dated 9<sup>th</sup> October 2014 and the response by the EACC dated 6<sup>th</sup> May 2015.

6 In the appeal filed this court has to make a determination as to whether the Applicant's case falls within the category of cases affected by the Court of Appeal **Engineer Kamau case (C.A. No. 102 of 2016)** or not.

7 That decision cannot be made vide this application. The court has been informed that two (2) witnesses have been scheduled to testify in the criminal case tomorrow.

8 I find that in all fairness the proceedings in this case ACC No. 9 of 2015 should be temporarily stayed to allow this court hear the appeal and make a determination. The same will be heard within the shortest time possible.

9 I therefore allow the application dated 25<sup>th</sup> April 2018 and grant a temporary order of stay of proceedings in Nairobi ACC No. 9 of 2015.

(a) Record of appeal to be prepared and served within 7 days.

(b) Counsel may file written submissions limited to 3 pages.

(c) Appeal to be heard on 12<sup>th</sup> July 2018 when Counsel will highlight their submissions before Justice Onyiego.

(d) The lower court case ACC No. 9 of 2015 to be mentioned before Mr. Mugambi Chief Magistrate on 30<sup>th</sup> July 2018 for further orders and/or directions.

**Orders accordingly.**

**Signed, dated and delivered this 28<sup>th</sup> day of June 2018 in open court at Nairobi.**

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**HEDWIG I. ONG'UDI**

**JUDGE**