



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 29 OF 2012**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**THOMAS KIPKEMOI KIPKORIR.....1<sup>ST</sup> ACCUSED**

**JOSEPH KOMEN YATICH.....2<sup>ND</sup> ACCUSED**

**SEBASTIAN YANO KOMEN.....3<sup>RD</sup> ACCUSED**

**RULING**

Thomas Kipkemoi Kipkorir, Joseph Komen Yatich and Sebastian Yano Komen, the 1<sup>st</sup> accused person, 2<sup>nd</sup> accused person and 3<sup>rd</sup> accused person respectively, were jointly charged with the murder of Nicholas Ochieng Odongo on the night of 30<sup>th</sup> March 2012 at Kwitu Classical Bar in Eastleigh Section III within Nairobi County. They were tried and found guilty of the murder in a judgement delivered by this court on 21<sup>st</sup> July 2016. The accused persons opted not to mitigate before sentence and on 27<sup>th</sup> July 2016 this court sentence each of them to death.

Mr. Nyangito for the 1<sup>st</sup> accused made an oral application seeking stay of execution of the sentence for 30 days in respect of the 1<sup>st</sup> accused person pending the filing of appeal. Ms Celine Odembo for the 2<sup>nd</sup> accused and Mr. Koech for the 3<sup>rd</sup> accused associated themselves with that application. My understanding is that all the accused persons are seeking stay of execution of the death sentence pending the filing of the intended appeal as well as the application for bail pending the appeal. Mr. Nyangito told the court that execution of the sentence could be carried out at any time after the sentence has been pronounced and this may prejudice the appeal.

The application was opposed by Ms Macharia, the prosecution counsel, who submitted that there are 14 days within which to appeal or file any application for bail pending appeal and therefore there is no justification in asking for more days. She submitted that an application for extension of time can be filed in the event that the allocated 14 days expire before this is done.

I have considered this application. I find no merit in it. All the proceedings including the judgement and rulings have been typed and copies of the same are ready for collection and therefore no one can claim they are unable to act due to delay in acquiring the typed proceedings and therefore they may delay the filing of the appeal. The practice has been that no execution can be carried out until a party has exhausted all the appeal channels. For this reason, it is my view that 14 days reserved for appeal are adequate. The parties must move with speed now that the proceedings have been typed and prepare their appeal papers for filing to the superior court. The application to stay the execution for 30 days is hereby denied. Orders

shall issue accordingly.

**Dated, signed and delivered in open court this 28<sup>th</sup> day of July 2016**

**S. N. Mutuku**

**Judge**

**In the presence of:**

Ms Macharia for the prosecution

Mr. Nyangito for the 1<sup>st</sup> accused

Ms Celine Odembo for 2<sup>nd</sup> accused

Mr. Koech for 3<sup>rd</sup> accused

The three accused persons

Mr. Daniel Ngumbi, court clerk