



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

JR. MISC. APPLICATION NO. 405 OF 2013

**IN THE MATTER OF: AN APPLICATION BY TODDY MADAHANA, ANTHONY KALATHIL
CHACKO AND CLINIX HEALTH CARE LIMITED, FOR LEAVE TO APPLY, FOR ORDERS
OF PROHIBITION AND CERTIORARI**

AND

IN THE MATTER OF THE ETHICS AND ANTI - CORRUPTION COMMISSION ACT, 2011

AND

**IN THE MATTER OF THE ANTI CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF
2003**

AND

IN THE MATTER OF THE PENAL CODE, CHAPTER 63 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE PUBLIC PROCUREMENT AND DISPOSAL ACT, NO. 3 OF 2005

AND

IN THE MATTER OF THE NATIONAL HOSPITAL INSURANCE FUND ACT, NO. 9 OF 1998

AND

**IN THE MATTER OF ACC. NO. 18 OF 2013, REPUBLIC –VS- RICHARD LANGAT KERICH,
MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY
KALATHIL CHACKO AND CLINIX HEALTHCARE LIMITED**

AND

**IN THE MATTER TODDY MADAHANA, ANTHONY KALATHIL
CHACKO & CLINIX HEALTH CARE LIMITED.....APPLICANTS**

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

THE CHIEF MAGISTRATE'S

ANTI CORRUPTION COURT.....2ND RESPONDENT

RULING

Introduction

1. By a Notice of Motion dated 7th November 2013, the applicants herein seek the following orders:
 1. **THAT this matter be certified urgent and placed before the duty judge for immediate attention.**
 2. **THAT the applicants be granted leave to apply for an Order of Certiorari to remove into this Honorable Court and quash the decision of the Director of Public Prosecution in collaboration with the Ethics and Anti-corruption Commission and through Chief Magistrates Anti-Corruption Court to charge the Applicants in ACC No. 18 of 2013.**
 3. **THAT the Applicants be granted leave to apply for an Order of Certiorari to remove into this Honorable Court and quash the decision of the Director of Public Prosecution to charge the Applicants in ACC. No. 18 of 2013 REPUBLIC VS RICHARD LANGAT KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO , AND CLINIX HEALTH CARE LIMITED with conspiracy to defraud contrary to Section 317 of the Renal Code Cap 63 of the Laws of Kenya.**
 4. **THAT the Applicants be granted leave to apply for an Order of Certiorari to remove into this Honourable Court and quash the decisions of the Director of Public Prosecution to charge the Applicants in ACC. No. 18 of 2013 REPUBLIC VS RICHARD LANGAT, KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO, AND CLINIX HEALTH CARE LIMITED with wilful failure to comply with the Applicable law relating to the procurement of services contrary to Section 45 (2) (b) as read with Section 48 of the Anti-corruption and Economic Crimes Act No. 3 of 2003.**
 5. **THAT the Applicants be granted leave to apply for an Order of Certiorari to remove into this Honourable Court and quash the decisions of the Director of Public Prosecution to charge the Applicants in ACC. No. 18 of 2013 REPUBLIC VS RICHARD LANGAT, KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO, AND CLINIX HEALTH CARE LIMITED with abuse of office contrary to Section 46 as read with Section 48 (1) of the Anti-Corruption and Economic Crimes Act, 2003.**
 6. **THAT the Applicants be granted leave to apply for an Order of Certiorari to remove into this Honourable Court and quash the decisions of the Director of Public Prosecution to charge the Applicants in ACC. No. 18 of 2013 REPUBLIC VS RICHARD LANGAT, KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO, AND CLINIX HEALTH CARE LIMITED with obtaining money by false pretences contrary to Section 313 of the penal code Cap 63 of the Laws of Kenya.**
 7. **THAT the Applicants be granted leave to apply for an order of Prohibition against the Director of Public Prosecution prohibiting him from prosecution or proceeding with the prosecution of the Applicants with the charges of conspiracy to defraud contrary to Section 317 of the Penal Code Cap 63 of the Laws of Kenya in ACC No. 18 of 2013 REPUBLIC VS RICHARD LANGAT, KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO , AND CLINIX HEALTH CARE LIMITED.**
 8. **THAT the Applicants be granted leave to apply for an Order of Prohibition against the Chief Magistrates Anti-Corruption Court stopping the said court from proceeding with the**

hearing and all proceedings against the Applicants on the charges preferred in ACC No. 18 of 2013 REPUBLIC VS RICHARD LANGAT, KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO , AND CLINIX HEALTH CARE LIMITED.

9. THAT the grant of leave do operate as stay of the decision by the Director of Public Prosecution, the Chief Magistrate, Anti-Corruption Court and the Ethics and Anti-Corruption Commission to charge the Applicants with Criminal offences for their actions and conduct and specifically to operate as a stay of all proceedings against the Applicants on all charges preferred in ACC No. 18 of 2013 REPUBLIC VS RICHARD LANGAT KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO , AND CLINIX HEALTH CARE LIMITED.
10. THAT costs of the Application be provided for.

2. On 12th November, 2013 when the matter came before me for hearing, **Mr Ndege** learned counsel for the 1st Respondent informed the Court that the 1st Respondent was not opposing the application for leave. Accordingly prayers 2 to 8 of the present Chamber Summons were granted. It follows that the only pending prayer and which is the subject of this ruling is prayer 9 seeking direction that the leave granted herein do operate as a stay.
3. In the premises I intend to deal only with those averments and submissions which are relevant to the prayer for stay.

Applicants' Case

4. In support of the application, **Toddy Madahana**, the 1st ex parte applicant swore a verifying affidavit on 7th November 2013.
5. According to the deponent, since the charge against the ex parte applicants is a gross abuse of office on the part of the 1st Respondent and is discriminatory against the applicants, to allow the taking of the plea and continuity of the initiated prosecution would not only vitiate the fundamental rights of the e parte applicants, but would also violate the objectives and purposes of the *Anti-Corruption and Economic Crimes Act* as well as the Constitution of the Republic of Kenya and a complete travesty of justice. To the deponent, the prosecution of the Ex Parte Applicants herein in spite of their manifest innocence which apart from the illustrations in the said affidavit, has also been established by other government agencies and hence would not only amount to improper abuse of the Criminal Justice System but will also visit disastrous consequences on other innocent third parties.
6. It was therefore deposed that it is only fair and just that this court grants the orders sought herein to protect the ends of justice, the probity of administrative systems and check the apparent wanton abuse of the criminal justice system to intimidate citizens who deal and contract with the government.
7. In the deponent's view, absolutely no prejudice will be occasioned to the Respondent or to any other person by the grant of the orders sought herein.

Respondents' Case

8. In response to the application, the Respondent filed an affidavit sworn by **Bernard Ngetich**, a prosecution counsel in the office of the 1st Respondent herein on 15th November, 2013.
9. According to him, the contention by the *ex parte* applicants that the criminal charges levied against them are intended to expose them to odium, contempt and irreparable harm to their profession and business reputation is unfounded and bad in law in that: the applicants are presumed innocent until proven guilty by a competent court of law; the applicants shall have their day in court and be accorded the opportunity to prove their innocence; there are sufficient constitutional and legal safeguards for a fair trial in Kenya; and that all persons are expected to predict the consequences of their activities.

Interested Party's Case

10. In opposition to the application, the 2nd interested party herein, the Ethics & Anti-Corruption Commission filed grounds of opposition in which it was stated that since the Republic has lined more than 30 witnesses to give evidence at the trial of the applicants and co-accused persons, these proceedings will be heard and concluded long before the criminal trial is concluded and that the applicants have not produced any evidence or otherwise demonstrated that their rights have been violated or are about to be violated in any manner whatsoever. It was further stated that the applicants filed Constitutional Petition No. 495 of 2013, **Clinix Healthcare Ltd vs. EACC** but withdrew the same on 7th November, 2013 after failing to convince the Constitutional Court to grant them similar orders.
11. The 1st interested party, **Richard Langat Kerich**, on his part supported the application by swearing two affidavits. Apart from dealing with the merits of application, the deponent deposed that he has been subjected to an unfair trial as proceedings and investigations culminating into his arrest and arraignment in court have been conducted in public where he has been accused as a fraudster, thief and incompetent thus exposing to odium, contempt and irreparable harm to his profession and person and he fears that he may not get a fair hearing in the criminal case. To him, the charges against him are malicious, vexatious as they disclose no reasonable cause of action and are merely intended to exert un-due pressure on him as a public officer contrary to Article 236 of the Constitution of Kenya.
12. There was similarly an affidavit sworn by **Gideon Rukaria**, the 3rd interested party herein which only dwelt on the substance of the criminal charge.

Submissions in support of the application

13. According to **Mr Arwa** for the 1st applicant the principles guiding the decision whether or not to grant stay are two. Firstly, is whether the intended proceedings are arguable and secondly, whether the intended proceedings are likely to be rendered nugatory if the stay sought is not granted. In learned counsel's view the applicants have satisfied the first condition. With respect to the second condition it was submitted that unless the stay sought is granted, there is a likelihood that the proceedings under challenge may be completed before these proceedings are determined and hence render these proceedings nugatory. In his view once the Court is satisfied that the case is arguable the proceedings ought to be protected. In support of his submissions **Mr Arwa** cited the case of **Shah vs. resident Magistrate, Nairobi [2000] 1 EA 208** in which the Court of Appeal held that as the criminal proceedings affected the liberty of the applicants or they might be convicted before the appeal was heard if the criminal trial proceeded the appeal would be rendered nugatory. Learned counsel urged the Court to protect the integrity of the judicial review process as no prejudice would be suffered since if these proceedings are dismissed the criminal trial would still proceed.
14. On the part of the 3rd applicant, it was submitted by **Mr Beki**, while adopting the submissions of **Mr Arwa** that the proceedings the said applicant intends to commence are meant to stop the criminal proceedings where a plea is yet to be taken hence if the stay sought is not granted the applicants are likely to be arraigned before the Court with a likelihood that a plea of guilty may be entered. According to him, the section under which the 3rd applicant is to be charged imposes a sentence of imprisonment of three years without an option of a fine hence begs the question whether the 3rd respondent can be so sentenced.
15. On the part of the 2nd interested party it was submitted by **Mr Bosek** that serious prejudice will be visited on the applicants if the stay sought is not granted. In his view criminal proceedings are an agonising process and no one wishes to go through such proceedings hence the applicants are likely to be prejudiced. In his view the applicants will be expected to take plea and be bailed out which process is expensive. In his view the law protects his client from liability.
16. **Mr Makori** for the 3rd, 4th and 5th interested parties submitted that his clients are public servants protected under Article 136 of the Constitution. In his view to allow the respondents to proceed with the criminal proceedings would amount to allowing them to continue abusing the legal process. According to him if the pleas are taken, section 62 of the Ethics and Anti-Corruption

Commission Act will take effect with the result that his clients are likely to be suspended. Secondly, it was submitted that his clients have been charged in another matter in which heavy bail terms have been posted and further charges may incapacitate them in raising the required bail hence may be placed behind bars.

Submissions in opposition to the application

17. In opposition to the application **Mr Ndege**, learned counsel for the respondent contended that there are more than 30 witnesses lined up to be called in the criminal case hence it is unlikely that the said criminal case will be heard and determined before these proceedings are heard and determined. While disputing that the judicial review orders being sought are merited, it was submitted that the issues raised can be canvassed by the applicants in their defence in the criminal case.
18. **Mr Rinkanya**, learned counsel for the 1st interested party, Ethics and Anti-corruption Commission questioned the standing of the interested parties in these proceedings who had not sought to be joined in these proceedings. By granting the applicants leave, it was submitted that the applicants may have an arguable case hence the issues raised herein ought not to be canvassed at this stage of the proceedings. He submitted that the applicants have not discharged their duty of showing that these proceedings will be rendered nugatory since no plea has been taken in the said criminal proceedings and no hearing date set. In his view these proceedings are likely to be heard and a decision rendered long before the criminal case is heard.

Rejoinder by the applicants

19. In a rejoinder, it was submitted by **Mr Arwa** that to contend that these proceedings are likely to be determined before the criminal case is purely speculative and this Court ought not to compete with the criminal court. In his view the abuse of the process which is sought to be prevented will take place immediately the applicants are charged. It was submitted that the Court ought to bear in mind that in these proceedings the criminal case is yet to be commenced.

Determinations

20. I have considered the application, the affidavits filed herein and the submissions made by the parties and this is the view I form of the issues raised.
21. It was contended that some of the interested parties herein having not been expressly joined to these proceedings, had no *locus standi* in the matter. Order 53 rule 1(2) of the Civil Procedure Rules provides the general procedure for applying for leave and it states that:

An application for such leave as aforesaid shall be made ex

parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.

22. On the hearing of the application for leave, subrule (3) thereof provides that “the grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.” However there is a proviso to the said rule to the effect that “where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave” and further that “where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.”
23. It is important to note the provisions of rule 6 of the said Order which provides as follows:

On the hearing of any such motion as aforesaid, any person who

desires to be heard in opposition to the motion and appears to the High Court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice or summons, and shall be liable to costs in the discretion of the court if the order should be made. [Underlining mine].

24. It is therefore clear that at the hearing of the motion the only persons who may be heard under rule 6 are persons who desire to oppose the motion.
25. It is therefore my view that at the stage of leave any person other than an intended respondent and especially one who proposes to support the application ought not without an express order of the Court jump into the fray as it were with a view to assisting in propping up the applicant's case. In this case the appearance of the affected interested parties had the effect of unnecessarily taking the Court's time in hearing them when they were not the beneficiaries of the stay sought. The effect was that the said parties used the opportunity to argue for a stay in their favour when the only leave which was granted was in favour of the applicant. It must always be remembered that an order for stay under judicial review can only be granted where leave has been granted. In other words where the Court declines to grant leave stay cannot be granted as stay is a consequential order to the grant of leave.
26. On 12th November 2013 leave to apply for judicial review orders was granted in these proceedings. Whereas the strength or weakness of the applicant's case is a factor to be taken into consideration since it would not be right to stay proceedings where the Court is clear in its mind that the chances of the judicial review proceeding being successful are slim, in granting leave the Court is under an obligation to determine whether a *prima facie* case has been made out and ought not to be granted as a matter of course. See **Nakumatt Holdings Limited vs. Commissioner of Value Added Tax [2011] eKLR.**
27. As leave had been granted in these proceedings without any opposition from the Respondents and as no application has been made to set aside the said leave, it is my view that it would be an exercise in futility for this Court to embark on an investigation at this stage whether or not the applicants' case is arguable since to arrive at a decision in the negative would impact negatively on the leave already granted. Consequently I do not intend to embark on that futile and absurd exercise.
28. However the mere fact that the application discloses a *prima facie* case does not necessarily qualify the matter to a grant of stay. The Court despite a finding that the applicants has established a *prima facie* case must proceed to address its mind on whether or not to direct the leave so granted to operate as a stay of the proceedings in question.
29. The decision whether or not to grant a stay pursuant to leave is no doubt an exercise of judicial discretion and that discretion like any other judicial discretion must be exercised judicially.
30. Where, the decision sought to be quashed has been implemented leave ought not to operate as a stay since where a decision has been implemented stay is no longer efficacious as there may be nothing remaining to be stayed. It is only in cases where either the decision has not been implemented or where the same is in the course of implementation that stay may be granted. See **George Philip M Wekulo vs. The Law Society of Kenya & Another Kakamega HCMISCA No. 29 of 2005.**
31. However even where the leave is granted, it was held in **Jared Benson Kangwana Vs. Attorney General Nairobi HCCC No. 446 of 1995** that in considering whether the said leave ought to operate as a stay of proceedings the Court has to be careful in what it states lest it touches on the merits of the main application for judicial review and that where the application raises important points deserving determination by way of judicial review it cannot be said to be frivolous.
32. In my view, it is only where the imminent outcome of the decision challenged is likely to render the success of the judicial review nugatory or an academic exercise that the Court would stay the said proceedings the strength or otherwise of the applicant's case notwithstanding.
33. **Maraga, J** (as he then was) in **Taib A. Taib vs. The Minister for Local Government & Others Mombasa HCMISCA. No. 158 of 2006** was of the view that:

“As injunctions are not available against the Government and public officers, stay is a very important aspect of the judicial review jurisdiction... In judicial review applications the Court should always ensure that the *ex parte* applicant's application is not rendered

nugatory by the acts of the Respondent during the pendency of the application and therefore where the order is efficacious the Court should not hesitate to grant it though it must never be forgotten that the stay orders are discretionary and their scope and purpose is limited... The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made and it is not limited to judicial or quasi-judicial proceedings as it encompasses the administrative decision making process being undertaken by a public body such as a local authority or minister and the implementation of the decision of such a body if it has been taken. It is however not appropriate to compel a public body to act... A stay order framed in such a way as to compel the Respondents to reinstate the applicant before hearing the Respondent cannot be granted.”

34. Therefore it is not in every case that there are chances of the High Court reaching a decision contrary to the one in the proceedings sought to be stayed that the High Court will stay those proceedings. It must be shown that the probability of a determination being made in the challenged proceedings, are high and such probability cannot be said to have been achieved on mere conjecture and speculation. It follows that the stage at which the said proceedings have reached may be crucial in determining whether or not to grant the stay sought though that is not the determinant factor.
35. In this application, it is the applicant's case that unless the leave granted herein is directed to operate as a stay, these proceedings are likely to be rendered nugatory. According to the applicants, there is a likelihood that the challenged criminal proceedings may be determined before these proceedings are determined. It is upon the applicants who seek to stop the criminal proceedings to prove that there is an imminent threat of the impugned proceedings being undertaken and determined before the judicial review proceedings and hence render the outcome of the latter nugatory. In this case, no material has been placed before this court on the basis of which the Court can arrive at the said decision. What the applicants say is that there is such a possibility of such an event. In my view, the applicants ought to show that the **probability** other than mere **possibility** of such an eventuality occurring exists. In this case the respondents have countered the said allegation by stating that in light of the fact that the prosecution intends to line up more than 30 witnesses there is no likelihood of the criminal case which is yet to commence being determined before these proceedings. It must always be remembered that since *res judicata* does not strictly apply to these kind of proceedings an application for stay of proceedings may be made as and when the occasion arises though being discretionary the Court is entitled to take into account delay in applying for the same. In this case as the plea is yet to be taken leave alone the setting of a hearing date, I am not prepared to hold that at this stage these proceeding are in imminent danger of being rendered nugatory.
36. The applicants further contend that since they are seeking orders of prohibition the commencement of the criminal proceedings is likely to render that prayer an academic exercise. As indicated at the beginning of this ruling the restraining orders which the applicants seek are in the following terms:

THAT the Applicants be granted leave to apply for an order of Prohibition against the Director of Public Prosecution prohibiting him from prosecution or proceeding with the prosecution of the Applicants with the charges of conspiracy to defraud contrary to Section 317 of the Penal Code Cap 63 of the Laws of Kenya in ACC No. 18 of 2013 REPUBLIC VS RICHARD LANGAT, KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO , AND CLINIX HEALTH CARE LIMITED.

THAT the Applicants be granted leave to apply for an Order of Prohibition against the Chief Magistrates Anti-Corruption Court stopping the said court from proceeding with the hearing and all proceedings against the Applicants on the charges preferred in ACC No. 18 of 2013 REPUBLIC VS RICHARD LANGAT, KERICH, MARWA FADHILI CHACHA, DAVID KIPRUTO CHINGI, TODDY MADAHANA, ANTHONY KALATHIL CHACKO ,

AND CLINIX HEALTH CARE LIMITED.

37. What is sought are orders prohibiting either the prosecution or hearing of the case. Such orders in my view are capable of being granted at any stage of the challenged proceedings hence the mere fact that the same are commenced will not deter the Court from granting appropriate orders should the Court find the applicants' case merited. If what was being sought was an order and only an order prohibiting the taking of the plea one may argue that once the plea is taken there will be nothing pending to be heard. I therefore do not agree that this Court will be handicapped in granting the orders sought if the criminal proceedings are commenced.
38. It is however my view that the mere fact that a party seeks orders of prohibition does not automatically entitle the party to orders of stay otherwise parties who seek stay would simply apply for leave to apply for orders of prohibition and based thereon would be entitled to an automatic stay. The grant of stay being an exercise of judicial discretion, every case must be considered on the basis of its peculiar circumstances taking into account the stage at which the challenged proceedings have reached which stage may inform the Court on the probability of the same being determined before the judicial review proceedings.
39. It was alleged that there is a possibility of the applicants pleading guilty to the charge at the time of the plea hence rendering these proceedings nugatory. In my view I do not see why a plea of guilty by the applicants should be considered prejudicial to the applicants unless it is being implied that they will be forced into entering such a plea. If the applicants voluntarily plead guilty to the charges, in my view, these proceedings may well be unnecessary.
40. On the issue that the applicants are at the risk of being slapped with bail terms which they may not meet, the law as I understand it is that the imposition of bail terms is not meant to punish an accused person but is only meant to ensure that the accused attends the trial hence the Court in imposing the bail terms takes into account all the relevant circumstances in order to ensure that the terms are reasonable. That in my view is not ground for staying criminal proceedings.
41. It is however contended that criminal process is an agonising and an expensive affair. That the institution of criminal proceedings invariably has the potential of causing the accused person anxiety and sometimes agony cannot be farfetched. That however is not without more a basis for blocking a criminal trial. As was held in **Kuria & 3 Others vs. Attorney General [2002] 2 KLR 69:**

“The effect of a criminal prosecution on an accused person is adverse, but so also are their purpose in the society, which are immense. There is a public interest underlying every criminal prosecution, which is being zealously guarded, whereas at the same time there is a private interest on the rights of the accused person to be protected, by whichever means. Given these bi-polar considerations, it is imperative for the court to balance these considerations vis-à-vis the available evidence. However, just as a conviction cannot be secured without any basis of evidence, an order of prohibition cannot also be given without any evidence that there is a manipulation, abuse or misuse of court process or that there is a danger to the right of the accused person to have a fair trial.”

42. I have considered the decision in **Shah vs. Resident Magistrate, Nairobi** (supra) which was a decision of the Court of Appeal on an application for stay pending an appeal. In that case, the applicant's apprehension was that they were unlikely to get a fair trial when **Mr Mackecha** was doubling as a prosecutor in the criminal case as well as counsel in another civil case going on in the superior court against them. The court was of the view that in the event that the applicants succeeded in their appeal and thereafter in their application before the superior court, that court's order would have been of no use to them if they had already been convicted and serving sentence. What weighed in mind of the Court, in my view, was the probability of the applicants being convicted during the pendency of their appeal. Such probability in this case where the plea is yet to be taken is in my respectful view, at this stage remote.
43. I have said enough to show that the orders sought in the Notice of Motion dated 7th November 2013 in so far as they relate to stay are, at least at this stage of the proceedings, unmerited.

ORDER

44. In the result the said prayer is disallowed. The costs will be in the cause.

Dated at Nairobi this day 14th of January 2014

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Ligunya for 1st and 2nd applicants

Mr Begi for the 3rd applicant

Mr Ndege for 1st Respondent

Mr. Rinkanya for Ethics and Anti-Corruption Commission

Mr Bosek for the 1st interested party