



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 140 OF 2013

REPUBLICAPPLICANT

VERSUS

GEORAM SUPPLIES LTD.

GEORGE NDUNGU GITURESPONDENT

RULING

By way of a Chamber Summons application dated 24th September, 2013 and expressed to be brought under section 354 of the Criminal procedure Code, the applicant seeks to be granted a stay of the orders of the learned trial magistrate in Mombasa Criminal case No. 2239 of 2011 made on 17th September, 2013 ordering the release of exhibits produced therein pending and determination of the appeal.

The grounds are that the trial magistrate ordered the release of the exhibits before the fourteen (14) days allowed for an appeal were over.

Secondly that the release of the exhibits will render both the application and the appeal nugatory.

This application is opposed principally on the grounds that the appeal if any has not been admitted to hearing as envisioned by section 352 and 352(A) of the Criminal Procedure Code and that the application cannot exist without an admitted appeal.

Secondly, that the applicant has not annexed the proceedings, the Judgment, the list of exhibits and the witness statements.

As to whether the trial Court had jurisdiction to issue the orders subject matter of these proceedings section 177(a) of the Criminal Procedure Code is said to donate such powers. The Court had acquitted the Accused persons and it had the powers to deal with the goods in question as ownership was not in dispute.

That the continued holding of the goods would greatly prejudice the Respondents who have incurred a lot of money.

Upon perusal the record of proceedings it is noted that the appeal has not been admitted to hearing. The applicant had not furnished the Court with the record and list of exhibits. (It is further noted that the issue in question is that of exhibits that are allegedly said to be counterfeit goods). It is noted that if the goods are released as ordered by the trial Court then the applicant would have lost the sub plratum of their

appeal. Balancing this with the fact that the Respondents continue to incur losses owing to the detention of the goods its the view of this Court that the appeal be admitted which I hereby do and that it be fast tracked. The upshot is that the goods which are exhibits in this case will await the outcome of the appeal which is fixed for hearing on 9th December, 2013.

Ruling delivered dated and signed this **20th** day of **November, 2013**.

.....

M. MUYA

JUDGE

20TH NOVEMBER, 2013

In the presence of:-

Learned Counsel for the Respondent Mr. Kadima

Learned State Counsel Mr. Tanui

Court clerk Musundi

M. MUYA

JUDGE

Court: Proceedings to be typed and served and the Respondent within fourteen (14) days from today.

.....

M. MUYA

JUDGE

20TH NOVEMBER, 2013