



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISCELLANEOUS CRIMINAL APPLICATION NO. 295 OF 2011

RICHARD LOISA SEKENGEIAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant has filed **Cr appeal No. 191 of 2011** in which he seeks orders that the ruling in **Anti-Corruption case No. 67 of 2007** delivered on 7th March 2011, be found to be contrary to the due process of the law, unconstitutional, unpalatable to the interests of justice, fairness and fair trial against the appellant.
2. That appeal is predicated on grounds that:
 - (i) *The learned trial magistrate displayed bias towards the appellant by declining to allow the complainant to withdraw the charges.*
 - (ii) *That the appellant's rights to fair trial under Article 50 of Constitution were breached, when the learned trial magistrate declined to allow the case to start de novo upon taking over the case, from another trial magistrate and upon the prosecution substituting the charge sheet introducing one more count.*
3. The respondent through learned counsel Mr. Muriithi, submitted that the state associates itself with the ruling of the learned trial magistrate dated 7th March 2011, and urged that the provisions of **Section 200(3)** of the **Criminal Procedure Code** though coached in mandatory terms, ought to be exercised based on the circumstances of a case.
4. While the said appeal is pending the applicant has brought this application under **Section 150, 200(3), 347 and 349** of the **Criminal Procedure Code**. He seeks orders that proceedings in **Anti-Corruption case No. 67 of 2007** be stayed pending the determination of **Cr. appeal No. 191 of 2011**. I have perused the petition and grounds of appeal and the application herein, and in the circumstances of

this case I am inclined to grant the application to stay the proceedings in the subordinate court.

5. In order that those proceedings may not be stayed indefinitely the hearing of Criminal appeal No. 191 of 2011 is hereby set down for hearing on 13th June 2012.

SIGNED DATED and **DELIVERED** in open court this **21st** day of **March 2012**.

L. A. ACHODE

JUDGE