



IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISC. CRIMINAL APPLICATION NO. 301 OF 2010

DAVID MUGAI MUCERU.....APPLICANT

VERSUS

REPUBLIC.....1ST RESPONDENT

KENYA REVENUE AUTHORITY.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....INTERESTED PARTY

RULING

Application by Chamber Summons dated 18/6/10 seeking prayer 3 stay of execution of orders issued in criminal case No. 45 of 2010 pending the hearing and determination of the appeal on the Trial Magistrate's Ruling and this court do give direction on preservation of the property in issue being the East African Sandalwood pending the hearing and determination of the appeal.

The application is based on the following grounds:

- (a) an appeal was filed against the ruling of the Trial Magistrate dated 9/6/2010
- (b) appeal has high chances of success.
- (c) that is in the interest of justice to sustain the subject property of the suit property pending the hearing of the appeal as destruction of the same will render the appeal nugatory.
- (d) That the respondent shall not suffer any prejudice if orders sought are granted.

Also it is supported by affidavit of David Muigai Mucheru filed on 21/6/2010. He is the Applicant.

On 12/1/2010 he was charged before Makadara Chief Magistrate's Court Case No. PCR 45 of 2010 and consequently he was discharged when the Attorney General entered a Nolle Prosqui. The charge in Case No. 45 of 2010 was withdrawn. The Applicant's property was not released and he filed an application in Makadara Court to obtain its release. However the Trial Magistrate at Makadara declined to release the same

and it is against that decision that the Applicant herein has appealed.

It is my view that the appeal is likely to succeed. The powers of the Attorney General arises from the constitutional powers of Attorney General under Section 26 which authorizes the Attorney General to absolutely control the criminal prosecution. The property is valued at 30,000,000/=.

I am satisfied that the Applicant has suffered substantial loss. I grant stay pending the hearing and determination of the appeal No. Cr. A. No. 333 of 2010.

Regarding the hearing the appeal preservation of the suit property will be necessary. I order the Kenya Forest Services to take care and protect the same pending the hearing and determination of the appeal. Further order the Kenya Revenue Authority shall temporarily remove their stamps/seals pending the hearing and determination of the said appeal.

The costs of this application are reserved pending appeal but the Applicant shall deposit Shs. 50,000/= for costs of this application if required within 30 days of this orders accordingly.

Dated and delivered at Nairobi this 18th day of October 2010.

J. N. KHAMINWA

JUDGE