



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Criminal Appeal 2 of 2009**

**NATIONAL CEREALS AND PRODUCE BOARD.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

This matter came before this court by way of a Criminal Appeal from the ruling of the ***Senior Resident Magistrate Siakago's decision in Misc Civil Application No. 1 of 2008***. The Magistrate had made orders for the destruction of a consignment of 31,781 bags of maize which had been confirmed to be contaminated and unfit for human consumption. An application to set aside that order was dismissed by the same magistrate on 8/1/2009. Being aggrieved by the said order, the applicant/Appellant i.e ***NATIONAL CEREALS and PRODUCE BOARD*** moved to this court by way of the present appeal. What is fascinating however is that the applicant decided to move this court in its criminal jurisdiction while it is clear that the appeal arises from a Miscellaneous Civil Application. I am inclined therefore to agree with Mr. Omwega for the state in his submission that the said application has been brought under the wrong provisions of the law.

Section 356 of the CPC explicitly deals with staying orders issued by the court while exercising its criminal jurisdiction. I would therefore be in order to dismiss this application for the same is not properly before the court. I am however mindful of the importance and gravity of the subject matter herein and the fact that the high court is seized of unlimited jurisdiction in both civil and criminal matters. I will therefore decide on the application before me on its merit.

Both parties are in agreement that the maize in question is unfit for human consumption as evidenced by the reports by the Public Health Officer. The only issue calling for my decision therefore is the mode of disposal of the same. The learned magistrate ordered that the same be disposed of by way of burning. The Appellant/applicant nonetheless maintains that the maize can be sold off for industrial utility. This ruling would have been much easier and straightforward to write a few weeks ago. I say so because in the recent past the issue of maize in general and in particular contaminated maize has become a national issue. The issue of contaminated maize has become a national health issue. There is hue and cry over contaminated maize finding its way into people's kitchen and the health risk this portends is of enormous proportions. Given the current concerns and suspicions, how sure can this court be that the maize at Ishiara if ordered released for industrial use will not find its way into people's stomachs. What safeguards would this court have to ensure that the said maize does not end up enriching some unscrupulous businessmen (and we have no shortage of those) at the expense of poor innocent wananchi who depend on Ugali and Githeri to hang on to life? Releasing this maize to the public domain will in my considered view amount to gambling with people's lives. I appreciate the fact that the applicant/Appellant is going to suffer considerable pecuniary loss but for me the sanctity of life far outweighs such loss. I am also mindful of the harm burning the said maize could cause to the environment, but again, that is a lesser evil than the loss of lives of poor people who may fall prey to the unscrupulous business people who may want to make a quick buck without any qualms as to who is likely to get hurt.

Releasing this maize into the market for whatever use, would not just be wrong and inexpedient. Such an act would be unscrupulous, inhuman, unconscionable and even diabolical. The court as a court of justice has a duty to weigh and balance the interests of all the parties before it and even those of the

larger public who are likely to be affected by its decisions and orders. For the foregoing reasons, the application before me must fail. I have also looked at the petition of Appeal and I am convinced that the same has no chances of success whatsoever and preservatory orders will not therefore be necessary. Accordingly I dismiss the notice of motion dated 6/2/2009 and order that the **31,781** bags of maize lying at the Ishiara **National Cereal and Produce Board Depot** be destroyed by burning within 7 days from the date of this ruling. The exercise be supervised by the Senior Resident Magistrate Siakago, Deputy Registrar High Court Embu, the District Public Health Officer, Mbeere District; with the local O.C.S providing the necessary security.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 9th day of June 2009.