



**Ingutia v Republic (Criminal Appeal E045 of 2024)
[2024] KEHC 7186 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7186 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL E045 OF 2024
SC CHIRCHIR, J
JUNE 12, 2024**

BETWEEN

CORNELIUS MUNYWELE INGUTIA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant's/Applicant's Notice of Motion dated 28/5/2024, seeks for stay of the Ruling of the kakamega Chief Magistrate's Court issued on 2/5/2024 in Criminal Case No. 1877 of 2019. The Ruling was delivered at the close of the prosecution's case in which the trial court found that Applicant herein had a case to answer.
2. The Motion is supported by the grounds appearing on the face of it, and the Affidavit sworn by the Applicant. It is the Applicant's case that the trial court has put him on his defence despite the prosecution's case being all hearsay, and that the purported eye-witness to the offence never testified, as he had since died.
3. In his oral Submission before court he states that the Charge Sheet was defective; that he was charged with a crime, which had not taken place by the time he was taking plea. That he ought not to have been put on his defence with such obvious defects

Determination:

4. The Applicant is basically challenging the Ruling of the lower Court, which found that the Applicant had a case to answer at the close of the Prosecution's case. He has filed an Appeal against the said Ruling and seeks a stay of the execution of the said Ruling. I take note that the Applicant is unrepresented and I will take it that he meant to ask for stay of proceedings.



5. In an Application for stay pending Appeal one of the considerations to address is whether the Appeal is arguable with high chance of success. I have perused the Petition of Appeal. The Applicant is challenging an interim order arising in the course of proceedings. In criminal law Appeals against such orders are only allowed sparingly and only in exceptional circumstances(Ref:[*Dande & 3 others v DPP & 2 others*](#)(2023)e KLR.)
6. In the case of [*Martin Makhakhav v Republic*](#) [2019] eKLR, the Court of Appeal was considering an Appeal against a Ruling on “A case to answer” at the close of the Prosecution’s case. The Court held: -

“ ... a determination that there is a case to answer does not and cannot mean that the Judge will inevitably convict. It is simply an opportunity for the accused to give his side of the story and poke holes in the Prosecution’s case. Under section 347(1)(a) of the [*Criminal Procedure Code*](#), a right of appeal from the Subordinate Court to the High Court only arises where an accused person has been convicted.”
7. In view of the above finding and the provisions of Section 347(1)(a) of the [*Criminal Procedure Code*](#), I doubt whether the Appellant’s Appeal stands a chance. Consequently, a stay of proceedings in the face of an Appeal whose chances of succeeding is almost non-existent will not serve any purpose.

The Application is unmerited. It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 12TH DAY OF JUNE, 2024.

S. CHIRCHIR

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the Prosecution

Court Assistant: Godwin

