



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL 66A, 67 & 68 OF 2020 (CONSOLIDATED)

BENSON NDIKWAE OPWORA.....1ST APPELLANT/APPLICANT

HENRY MOMANYI.....2ND APPELLANT/APPLICANT

NAOMI OSIBORI OKIBO.....3RD APPELLANT/APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

AND

DAVID WAULA KIRIMOJO.....INTERESTED PARTY

(An appeal from the order/ruling in original Kimilili Law Courts criminal case NO. 65/2019 delivered pm 22.6.2020 by Hon. G. Adhiambo, PM)

RULING

The appellant/applicants 1. BENSON NDIKWAE OPWORA 2. NAOMI OSIBORI OKIBO 3. HENRY MOMANYI were respondents in an application filed in Kimilili court by David Wafula Kirimojo seeking leave to commence Private Prosecution proceedings against appellant. By ruling delivered on 22.6.2020, the learned Principal Magistrate granted the applicants leave to commence private prosecution and directed the appellants to appear in court on 6.7.2020 for the purpose of being charged with the offence of forgery.

Aggrieved by the ruling the appellant filed petition of appeal and conteprenously filed this application dated 1st July 2020 seeking orders;

a) Spent

b) THAT the application be certified urgent and be heard ex-parte in the first instance.

c) THAT there be a stay of execution of the order/ruling issued on the 22/6/2020 by the principal magistrate's court at Kimilili in Misc criminal case No. 65 of 2019 pending inter-parties hearing of this application.

d) THAT there be a stay of execution of the order/ ruling issued on the 22/6/2020 by the principal magistrate's court at Kimilili in Misc criminal case No. 65 of 2019 pending hearing and determination of this appeal.

WHICH APPLICATION is premised upon the following grounds:-

a) THAT the appellant has filed an appeal challenging the ruling/ order issued on the 22/6/2020 that granted leave to the interested party to prosecute the appellant in a private prosecution.

b) THAT the appeal has overwhelming chances of success and triable issues.

c) THAT the Appellant is set to be charged on the 6/7/2020 in a private prosecution as per the order / ruling issued by the trial magistrate on the 22/6/2020 unless this Honourable Court grants the order of stay as sought.

d) THAT the order/ ruling of 22/6/2020 is as a result of the misunderstanding between the state agencies namely the Director of Public Prosecutions and the National police service which the Honourable magistrate fell into a trap by granting the order to the

interested party hence our submission that if the order issued on the 22/6/2020 is not stayed at this stage, the appellant is likely to suffer irreparable harm that may not be compensated in monetary terms.

e) THAT this application is filed without any delay the order appealed against having been delivered on the 22/6/2020.

The application was opposed by the Interested Party David Wafula Kirimojo who depones that the application is incurably defective and aimed at causing confusion, that the appeal filed is diversionary and is an abuse of the court process.

This is an application seeking that the orders of the trial magistrate for appellant to attend court and take plea, be stayed. The appellants have filed a petition of appeal against the ruling.

I have considered the application and submissions. I allow the appellant's application for stay of the ruling for appellant to take plea for 60 days within which time the appeal will be prosecuted and finalized. If the appeal is not prosecuted and finalized within 60 days from today, the stay orders issued will lapse on the 60th day i.e 6.5.2021.

DATED AND DELIVERED AT BUNGOMA THIS 4TH DAY OF MARCH, 2021

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S.N. RIECHI

JUDGE