

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 346 of 2012

ROYAL MEDIA SERVICES LTD PETITIONER

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

THE MINISTER OF INFORMATION AND BROADCASTING 2ND RESPONDENT

THE COMMUNICATION COMMISSION OF KENYA 3RD RESPONDENT

RULING NO. 3

1. I have dismissed an application by the petitioner to have me recuse myself from hearing this matter. The petitioner's counsel has applied for a stay pending appeal to take steps to challenge my decision on appeal.
2. I have heard the parties and I take the following view of the matter. First, this court has jurisdiction to grant stay pending appeal whether formally or informally on such terms as it deems fit. (See *Ihugo Mwaura v AG*) Secondly, whether or not to grant an order of stay is a matter for the court's discretion dependent on the circumstances of the case.
3. This suit was filed in August 2012, under certificate of urgency in view of the nature of the matter, the application or conservatory orders was not argued but parties took steps to have the matter heard on merit. In the meantime, the parties agreed that interim orders be maintained. Directions were issued to expedite the matter and it is agreed by both parties that the matter is ready for hearing.
4. The right of access to justice under **Article 48** does not operate in a vacuum nor does it belong to one party, it must be seen in the light of each case. The right of appeal is an integral part of this right and so is the power of the court to order stay of proceedings. All these matters must be balanced in light of the circumstances.
5. I decline to grant an order for stay of proceedings and I direct that the matter fixed for hearing today to proceed as scheduled.

DATED and DELIVERED at NAIROBI this 6th day of November 2012

D.S. MAJANJA

JUDGE

Dr Kamau Kuria, S.C., instructed by Kamau Kuria and Kiraitu Advocates for the petitioner.

Mr Ojwang', Litigation Counsel, instructed by the State Law Office for the 1st and 2nd respondent.

Mr Kilonzo with him Ms Thanji and Ms Chemtai instructed by Sisule Munyi and Kilonzo Associates Advocates for the 3rd respondent.