

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
MISCELLANEOUS CRIMINAL APPLICATION NO. E079 OF 2024

REPUBLIC.....APPLICANT

VERSUS

PHARIJALA OPAKA OSORE.....RESPONDENT

RULING

1. The applicant prays for “*an order staying the trial court decision of fining the respondent Kshs 300,000 or in default to serve 5 years in prison*”.
2. The notice of motion is dated 13th March 2024. It is anchored on the deposition of *Mr. Michael Sang*, the Senior Assistant Director of Prosecutions. The facts are fairly straightforward: The respondent was charged in Nairobi Milimani Magistrates Court Criminal Case No. 165 of 2020 (hereafter *the trial court* or the *lower court*) on three counts relating to terrorism under the **Prevention of Terrorism Act** (hereafter *the Act*)
3. He was convicted on one count for the offence of collection of information for purposes of terrorism and sentenced to pay a fine Kshs 300,000 or in default to serve 5 years in prison.

4. In a nutshell, the applicant contends that section 29 of the Act provides for a sentence of 20 years imprisonment without any option for a fine. Accordingly, the lower court erred by imposing a light and illegal sentence. At paragraph 8 of the affidavit, the deponent avers that *“the applicant is dissatisfied with the judgement and order of the court and has already filed a petition of appeal...annexed and marked MS1 is the intended petition of appeal”*
5. As I will discuss shortly, no such petition of appeal was filed. On 18th March 2024, I granted an interim stay of the sentence by the lower court which has been extended from time to time.
6. The application is fervently opposed by the respondent through the replying affidavit sworn on 6th February 2025. He argues that the interim orders lack foundation in view of the fact that no appeal was filed. In addition, he avers that the trial court took into consideration that he was a first offender and suffering from a mental illness. He thus contends that the lower court properly exercised its discretion in sentencing.
7. On 22nd January 2026, I heard further submissions from both learned counsel for the applicant and the respondent.

8. I take the following view of the matter. In view of the orders that I propose to make, it would be prejudicial to delve into the impugned sentence by the lower court. But I can safely state the following: Terrorist acts are grave felonies aimed at intimidating or causing fear to the public or to cause destruction of life and property. That is why parliament passed severe sentences such as the one under section 29 of the Act.
9. The sole issue before me is whether the applicant is entitled to a *stay* of the sentence. There is only *one* substantive prayer that I set out verbatim in paragraph 1 of this ruling. From the notice of motion and supporting affidavit, it is apparent that the prayer was founded on an *intended* appeal.
10. Although the deponent averred at paragraph 8 that the State had “*already filed a petition of appeal*”, learned Senior Prosecution Counsel, *Mr. H. Kiarie*, freely conceded that no such appeal was ever filed. He made a belated attempt at the hearing for leave to do so out of time but there was no formal application before the court or any good explanation for the delay.
11. Furthermore, the present notice of motion is brought as a Miscellaneous Criminal Application. As rightly put by learned

counsel for the respondent, *Mr. C. Mwita*, these are not revision proceedings. What all this means is that the interim order of stay is floating without a foundation of either a pending appeal or a revision. This is not a mere technicality but one of substantive law and criminal procedure.

12. The impugned judgment and sentence was delivered on 5th March 2024. Like I stated, I granted the interim order on 18th March 2024 which was well within the time for filing an appeal. It was not done and there is no application for extension of time to file an appeal out of time. In a word, the State went into slumber after securing the interim relief.

13. The upshot is that the notice of motion by the Republic dated 13th March 2024 is hereby *dismissed*.

It is so ordered.

DATED, SIGNED and DELIVERED at **NAIROBI** this 5th day of February 2026.

KANYI KIMONDO
JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Ms. Awino holding brief for Mr. Kiarie for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Edwin Ombuna, Court Assistant.

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