



**Kiprop & 5 others v Republic (Criminal Appeal E024 of 2025)  
[2026] KEHC 4312 (KLR) (18 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CRIMINAL APPEAL E024 OF 2025  
JR KARANJA, J  
MARCH 18, 2026**

**BETWEEN**

**JACKTONE KIPROP ..... 1<sup>ST</sup> APPELLANT  
ALFRED MAGUT ..... 2<sup>ND</sup> APPELLANT  
EZEKIEL KOECH ..... 3<sup>RD</sup> APPELLANT  
SHILLAH CHERUTO ..... 4<sup>TH</sup> APPELLANT  
FREDRICK KIBET ..... 5<sup>TH</sup> APPELLANT  
SHEDRACK KIPKOECH ..... 6<sup>TH</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. It was under a Certificate of Urgency that the present appeal dated 4<sup>th</sup> November 2025 was filed by the seven (7) Appellants against the ruling and order of the Principal Magistrate made on 27<sup>th</sup> October 2025 in Kapsabet Magistrate’s Court Criminal Case No. CCRJ No. 233 of 2025 in which the Appellants are charged with five (5) counts under the Environmental Regulations 2003 and the Environment Management & Co-ordination Act 1999.
2. The matter is ongoing and due for mention before the Trial Court of the 13<sup>th</sup> April 2026, which therefore means that this is an interlocutory appeal against the Trial Court’s interlocutory order made on the 27<sup>th</sup> October 2025, arising from the Notice of Motion dated 11<sup>th</sup> August 2025 filed against the



Appellants by the Respondent, Office of Director of Public Prosecution (ODPP) for orders “inter-alia” that: -

- “(3) The honourable court do issue orders restraining the Accused Persons, namely Jackton Kiprop, Alfred Magut, Ezekie Koech, Sheillah Cheruto, Elisha Kipsang, Fredrick Kibet and Shadrack Kipkoech, together with any person acting under their instruction, direction, or authority from accessing interfering with, altering the scene of crime or conducting any operations at the Chemase site, pending trial.
- (5) The Honourable Court be pleased to authorize the District Criminal | Investigations Officer [DCIO] Tinderet Sub-County Police Commander [SCPC], Tinderet together with officers from the National Environment Management Authority [NEMA], to take all necessary steps to secure the site, preserve evidence and enforce compliance with environment orders.
- (6) The honourable court do consider the overriding public interest, threats to environmental safety and the integrity of the criminal process as grounds for granting the orders sought.”

3. The prayers aforementioned were granted by the trial court vide the impugned ruling dated and delivered on 27<sup>th</sup> October 2025.

The merits or otherwise of the ruling is not a factor for consideration at this juncture, but at the full hearing of the appeal.

What is for consideration at this point is whether the Applicants have demonstrated sufficient and satisfactory grounds for exercise of this court’s discretion in granting stay orders against the Respondent pending the hearing and determination of the present appeal and perhaps thereafter, pending the hearing and determination of the criminal charges preferred against them by the Respondent.

4. The petition of appeal was followed by the application for stay vide the Notice of Motion dated 5<sup>th</sup> November 2025 anchored on Articles 50, 159[a] and 165[3][e][6] and [7] of *the Constitution* of Kenya 2010 and Section 354 [3][d] of the Criminal Procedure Code.

The grounds for the application are set out in the body of the Notice of Motion upon which the Applicants pray for the following main orders: -

- (i) Stay of execution of the ruling and order issued by the Trial court on 27<sup>th</sup> October 2025 pending the hearing and determination of the application inter-parties i.e. prayer [2].
- (ii) Stay of execution pending the hearing and determination of the petition of appeal dated 4<sup>th</sup> October 2025 i.e. prayer [3].
- (iii) Stay of further proceedings in Kapsabet Criminal Case No. 233 of 2025 pending the hearing and determination for the application inter-parties i.e. prayer 4 and
- (iv) Stay of further proceedings in Kapsabet Criminal Case No. 233 of 2025 pending hearing and determination of the petition of appeal dated 4<sup>th</sup> November 2025 i.e. prayer [5].

6. The Applicants through the First Applicant Jacktone Kiprop, deponed the affidavit dated 5<sup>th</sup> November 2025 in support of the application which was opposed by the Respondent on the basis



of the averments contained in the replying affidavit dated 18<sup>th</sup> November 2025 deposed by IP Mary Kathure of the NEMA Police Unit.

Ex-parte interim orders in terms of prayers [2] and [4] of the application were granted by this court on 11<sup>th</sup> November 2025 pending hearing and determination of the main application “inter-parties”

7. On the 9<sup>th</sup> February 2026, the interim orders were extended and directions were given by the court to the effect that the application be canvassed by written submissions. In that regard, both parties filed their respective submissions which were duly considered by this court on the basis of the grounds in support and in opposition to the application from which the basic issue for determination referred to hereinabove emerges.

8. In terms of Article 50[1] of *the Constitution*, every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court.

The necessary ingredients of a fair trial are set out in Sub-Section [2] of Article 50.

Pursuant to Article 159[2][d] of *the Constitution*, justice shall be administered without undue regard to procedural technicalities.

9. Under Article 165 3[e] of *the Constitution*, the High Court is clothed with appellate jurisdiction conferred on it by legislation in this case, Section 354[3][d] of the Criminal Procedure Code which provides for powers of the High Court in the following terms: -

“(3) the court may then if it considers that there is no sufficient grounds for interfering, dismiss the appeal or may

(a) in an appeal from any other order, alter or reverse the order.”

10. It cannot therefore be gain said that this court does have the necessary jurisdiction to hear and determine the present application. Indeed, the Court of Appeal in the case of Goddy Mwakio & Another Vs. Republic [2011] eKLR stated that: -

“The law as regards the principles that guide the court in such applications are now well settled. The court exercises unfettered discretion which must be exercised judicially. The Applicant needs to satisfy the court firstly, that the appeal or intended appeal is not frivolous, that is to say that it is an arguable appeal. Secondly, the court must also be persuaded that were it to dismiss the application for stay and later the appeal or intended appeal succeeds, the results or the success could be rendered nugatory.”

11. In *Wainaina & Another Vs. Republic* [2023] KECA 727[KRL], the Court of Appeal cited the case of *Berkeley North Motor & 2 Others Vs. Attorney General & 3 Others* [2005] KECA 244[KLR], and said that in that case the court rendered itself on the factors to be considered in an application for stay of criminal proceedings in the following manner:

“At this stage, on an application to stay criminal proceedings, it is not for this court to make a final determination; we only need to be satisfied that a sole bona fide contention is not unarguable or frivolous.”

12. The Supreme Court of Kenya in the case of *Dande & 3 Others Vs. Director of Public Prosecution & 2 Others* [2022]KESC 23 (KLR) held that an order for stay of criminal proceedings was not granted as a matter of course but upon the sparing exercise of Judicial direction and only in the most exceptional of circumstances. The Court went further to give instances for granting of a stay order, to wit: -



- a. The appeal or intended appeal was arguable and not frivolous.
  - b. Unless the order of stay sought is granted, the appeal or intended appeal were it eventually to succeed, would be rendered nugatory.
  - c. It is in the public interest that the order of stay be granted.  
(See, also *Wyclife Oparanya Ambetsa Vs. DPP* [2017] eKLR)
13. In *Diana Kethi Kilonzo vs. Republic* {(2016) KECA 19, KLR} the Court of Appeal stated that  
“an Applicant is bound to demonstrate first that the appeal is not frivolous or that it is arguable and secondly, that if it were to succeed, the success would not be rendered nugatory unless a stay is granted.”
14. Basically, an interlocutory appeal arises before the final decision of a trial Court. It is a middle case appeal intended to address critical issues like jurisdictional “inter – alia.”  
In the present case, it is abundantly clear that grounds (b) (c) and (d) of the supporting grounds are most relevant and vital in as much as allude to or address the issue of the arguability of the appeal on both points of law and fact and the issue of the trial Court jurisdiction to enforce compliance with environmental orders. The issue as to whether or not the appeal will be rendered nugatory if stay is not granted also comes to the fore.
15. In that regard, the holdings of the Supreme Court in the *Dande Case* (supra) as well as the Court of Appeal in the other cases cited herein above provide useful guidelines in the determination of the present application. It is worth of note that in the *Dande Case* (supra) the Supreme Court observed as follows; -  
“An arguable appeal was not one that had to necessarily succeed but was simply one that was deserving of the court’s consideration. What had to be avoided was to render the appeal if successful, nugatory or an academic exercise. The court in exercising its discretion balanced the lower and higher risks of injustice and no definitive conclusions ought to be made as that could only be in the appeal and not in an application for stay.”
16. Herein, consideration being given to the grounds of appeal and the circumstance of the case it is apparent that the appeal is not frivolous. It raises serious triable and arguable issue of facts and law which deserve the Court’s consideration at the hearing of the appeal. In the meantime, so that the appeal is not rendered nugatory if it succeeds, there must be established a fair playing ground prior to the hearing and determination of the appeal. This can only be achieved by an order of stay of proceedings and execution of the trial Court’s orders pending hearing and determined of the appeal.
17. In sum, the present application is allowed in terms of prayers (3) and (5) of the Notice of Motion with corrections on the date of the appeal i.e., 4<sup>th</sup> November 2025 and not 4<sup>th</sup> October 2025 and without orders as to costs.

**RULING DATED AND DELIVERED THIS 18<sup>TH</sup> DAY OF MARCH 2026.**

**HON. J. R. KARANJAH**

**JUDGE**

