



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

HIGH COURT CRIMINAL APPEAL NO E041 OF 2025

**DIRECTOR OF PUBLIC
PROSECUTIONS.....APPELLANT/APPLICANT**

VERSUS

**H.E KAWIRA MWANGAZA..... 1ST
RESPONDENT**

**DIRECTORS OF CRIMINAL INVESTIGATIONS.....2ND
RESPONDENT**

**ETHICS AND ANTI-CORRUPTION COMMISSION..... 3RD
RESPONDENT**

**NATIONAL COHESION AND INTERGRATION COMMISSION... 4TH
RESPONDENT**

**LAURENCE MPURU ABURI5TH
RESPONDENT**

RULING

1. The Applicant herein, H. E. Kawira Mwangaza, Governor of Meru County as she then was, moved the Lower Court by way of a Notice of Motion dated 27th August, 2024 to grant her leave to institute private prosecution against Laurence

Mpuru Aburi. The said application was heard and allowed vide a Ruling dated 11th June, 2025.

2. Director of Public Prosecution, the Appellant/Applicant herein, dissatisfied with the said Ruling filed a Petition of Appeal dated 17th June, 2025 and an application for stay of execution dated 2nd August, 2025.

3. The application was opposed by the Respondent and was canvassed by way of written submissions.

4. I have evaluated the Lower Court proceedings and the impugned Ruling, as well as the Petition of Appeal, the application herein and submissions filed.

5. It's a settled legal principle that the power to grant or deny stay of execution is discretionary and must be exercised judiciously. In **Butt -vs- Rent Restriction Tribunal (1982) KLR 417**, the Court held that the Power of the Court

to grant or refuse stay is discretionary and should be exercised in such a way as not to prevent an Appeal.

6. Further, in **Stanley Kang'ethe Kinyanjui -vs- Tony Ketter and Others (2013) eKLR**, the Court set out the guiding principles, including:

1) Existence of an arguable Appeal.

2) Whether the Appeal will be rendered nugatory.

3) The requirement of substantial loss.

7. These principles though set out mostly in Civil matters, they apply Mutatis Mutandis with necessary modifications to applications for stay of execution in Criminal matters.

8. At this juncture, I am of considered view that, for purposes of the present application, the Director of the Public Prosecutions has failed to demonstrate, to the requisite legal threshold, that the intended appeal is arguable or possesses any discernible merit.

9. The decision of 11th June, 2025 granting leave for private prosecution was made in accordance with well settled principles in **Floriculture International Ltd and Others - vs Attorney General and others (1997) eKLR**, which recognize that private prosecution lies where:-

- i) There is inaction, refusal, or failure by the prosecutorial authority; and**
- ii) The prosecution is not an abuse of the Court process.**

10. Having failed to act or having declined to prosecute, the DPP cannot now seek to frustrate a lawful process merely because the Court permitted a private citizen to proceed. The DPP has also not demonstrated that the intended appeal will be rendered nugatory. Criminal proceedings are subject to Judicial oversight and Constitutional safeguards under **Article 50 of the Constitution of Kenya 2010.**

11. In **Michael Monari and another -vs- Commissioner of Police and 3 Others (2012) eKLR**, the Court held that Criminal proceedings should be allowed to run their course

unless abuse is shown. Further, even if private prosecution proceedings commence, the DPP retains powers under **Article 157(6) (c)** to take over and discontinue proceedings, subject to **Article 157(8)**. The DPP will not therefore be prejudiced in any irreversible manner as it retains full constitutional control mechanisms. The alleged prejudice is illusory and legally unsustainable.

12. While **Article 157** vests prosecutorial authority in the DPP, it does not extinguish the right to private prosecution. Private prosecution acts as a safeguard against inaction or abuse of discretion by the DPP.

13. Public interest in this matter militates against grant of stay. Private prosecution herein enhances accountability and ensures access to justice where state machinery has failed. Grant of stay will therefore amount to shielding potential wrong doing, undermine confidence in justice system and deny the complainant the right to be heard.

14.The balance of convenience favours refusal of stay. The Respondent will suffer no irreparable prejudice, as the trial process affords full procedural safeguards. Conversely, granting a stay would risk stifling a legitimate prosecution, occasion delay, and undermine the administration of Justice. In the premises, the greater prejudice lies in halting, rather than permitting, the prosecution to proceed.

15.As such, I do find the application is want of merit and is hereby dismissed. Having made this decision, it's fair and prudent that the appeal be heard in High Court No. 2.

DATED AND DELIVERED AT MERU THIS 28TH DAY OF APRIL, 2026.

S.M. GITHINJI -JUDGE

28/4/2026

In the presence of:-

Miss Mueni for the 1st Respondent.

Mr. Irungu for the State.

Mention before High Court No. 2 on 11/5/2026.

S.M. GITHINJI -JUDGE

28/4/2026