

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL APPEAL CASE NO E012 OF 2026

ANDREW KINYUA KABURO
SICILY WANJIKU KABURO
PETERSON KABURO NJOGU
**CATHELIN WANJIRO KABUROAPPLICANTS/
APPELLANTS**

-VERSUS-

DIRECTOR OF PUBLIC PROSECUTIONS
.....RESPONDENT

RULING

1. The applicants filed an appeal from a ruling made by the court and the appellants were aggrieved. They filed an appeal to this court. The appellants moved to the high court seeking redress on what was essentially an interlocutory ruling. They seek the following orders in the notice of motion dated 24.04.2026(though indicated as 20256). The application sought the following orders:

1. That this matter be certified urgent and orders dispensed with ex-parte.
2. That pending the hearing and determination of this application and the main appeal, this honorable court do issue an order of stay of proceedings in



Gichugu criminal case number MCCR/E845/2024
to avert miscarriage of justice for the accused.

3. That the costs of this application be provided.

2. It is based on the ground that the Office of the Director of Public Prosecution had ordered the inspector general of police to carry out further investigations. They have a firm believe that the court erred in allowing the application.

3. I have perused the file and noted that there is not conviction or sentence given in the matter. Section 347 of the criminal procedure act provides as follows:

(a) a person convicted on a trial held by a subordinate court of the first or second class may appeal to the High Court; and

4. The powers of the Director of Public Prosecutions are set out on Article 157 of the constitution. in particular sub-Articles 9, 10 and 11 provide as follows:

(9) The powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

(10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her

powers or functions, shall not be under the direction or control of any person or authority.

(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

5. The supreme court [DK Maraga, CJ & P, MK Ibrahim, SC Wanjala, N Ndungu & I Lenaola, SCJJ] in the case of **Waswa v Republic (Petition 23 of 2019) [2020] KESC 23 (KLR) (4 September 2020) (Judgment)**, posited as follows:

20. There was no provision in both the Constitution and the Criminal Procedure Code (CPC) for interlocutory criminal appeals. The Constitution under article 50(2)(q) provided that every accused person had the right, if convicted, to appeal to, or apply for review by, a higher court as prescribed by law. Similarly, the CPC under sections 347 and 379(1) only allowed appeals by persons who had been convicted of an offence.

21. The delay of over six years defeated the intention of the framers of the Constitution and of Parliament to have criminal trials concluded expeditiously. The guarantee to have a criminal

trial conducted without undue delay related not only to the time by which a trial should commence but also the time by which it should end, judgment rendered and any applicable appeals or reviews completed.

Therefore, although criminal trials were not time bound like election petitions, there was need to have them determined expeditiously in line with the constitutional prescriptions.

22. The right of appeal against interlocutory decisions was available to a party in a criminal trial but should be deferred, and await the final determination by the trial court. A person seeking to appeal against an interlocutory decision had to file the intended notice of appeal within 14 days of the trial court's judgment. However, exceptional circumstances could exist where an appeal on an interlocutory decision could be sparingly allowed, these included:

1. where the decision concerned the admissibility of evidence, which, if ruled inadmissible, would eliminate or substantially weaken the prosecution case;
 2. when the decision was of sufficient importance to the trial to justify it being determined on an interlocutory appeal;
- and

3. where the decision entailed the recusal of the trial court to hear the cause.

6. The question of stay therefore is not available. The entire appeal is deferred until a final determination of the matter. The application for stay is struck out. The matter in the court below should proceed and this appeal can only be dealt with if there is a conviction or acquittal and sentence as the case may be.

7. Lastly the appeal appeared to have been filed by one person on behalf of the rest. Unfortunately, this is not proper. There is no provision to file joint and proxy appeals in criminal cases. Therefore, appeals filed on behalf of are Sicily Wanjiru Kaburo, Peterson Kaburo Njogu and Catheline Wanjiku kaburo are hereby struck out. The appeal that remains but differed until conviction, is for Andrew Kinyua Kaburo. The authority to plead is struck out as it relates to the domain of civil proceedings. In criminal matters, accused persons have individualized rights and duties. Criminal liability is not shared.

8. Whatever matters the applicant had must await convictions they do not fall under the three exceptions in the case of of **Joseph Lendrix Waswa v Republic (supra)**.

Orders

9. In the upshot, I make the following orders: -

- a. Therefore, appeals filed on behalf of are Sicily Wanjiru Kaburo, Peterson Kaburo Njogu and Catheline Wanjiku Kaburo are hereby struck out.
- b. The appeal that remains but differed until conviction, is for Andrew Kinyua Kaburo.
- c. The authority to plead is struck out as it relates to the domain of civil proceedings.
- d. The file is closed and to be re-opened upon conviction and or acquittal and or sentence for Andrew Kinyua Kaburo only as the remaining party.

DELIVERED, DATED and SIGNED at NYERI on this **15th** day of **May, 2026**.

Ex-Tempore Ruling delivered.

KIZITO MAGARE
JUDGE

In the presence of:

No Appearance by the parties

Court Assistant- Michael