



**Doshi & 2 others v Director of Public Prosecution & 6 others (Civil Application E408 of 2024) [2024] KECA 1420 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1420 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E408 OF 2024  
F TUIYOTT, JA  
OCTOBER 11, 2024**

**BETWEEN**

**ASHOK LABHSHANKER DOSHI ..... 1<sup>ST</sup> APPLICANT  
PRATIBHA ASHOK DOSHI ..... 2<sup>ND</sup> APPLICANT  
MAGNUM PROPERTIES LIMITED ..... 3<sup>RD</sup> APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT  
INSPECTOR GENERAL, NATIONAL POLICE SERVICE ..... 3<sup>RD</sup> RESPONDENT  
CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT  
CHIEF MAGISTRATE, MILIMANI LAW COURTS ..... 6<sup>TH</sup> RESPONDENT  
GREEN VIEW LODGE LIMITED ..... 7<sup>TH</sup> RESPONDENT**

*(An application for injunction and stay of proceedings pending the lodging, hearing and determination of an appeal from the Ruling and Order of the Environment and Land Court at Nairobi (O. A. Ongote, J.) delivered on 31st July, 2024 in ELC Petition No. E017 of 2023)*

**RULING**

1. On 15<sup>th</sup> August 2024, I declined to certify the notice of motion dated 12<sup>th</sup> August 2024 as urgent. On the same day of my order, counsel for the applicant requested that the question of certification be placed before me for hearing inter partes. The request for hearing was made pursuant to Rule 49(5) of the [Court of Appeal Rules](#).



2. At the hearing Mr. Okwach learned counsel represented the three applicants, Mr. Omwega learned prosecution counsel appeared for the 1<sup>st</sup> respondent, Mr. Kamau learned State Counsel represented the 2<sup>nd</sup> and 6<sup>th</sup> respondents, while Mr. Githinji Mwangi learned counsel appeared for the 7<sup>th</sup> respondent.
3. In respect to what is relevant now, namely whether or not the motion should be certified urgent, counsel for the applicants submitted the motion seeks to stay criminal proceedings against the applicants and second, seeks to preserve the substratum of the suit. On the other hand, learned counsel Mr. Githinji argued that courts have in the past, as far back as in the years 2020 and 2021, made similar orders as those sought to be stayed, yet the applicants have not appealed against them. Second, that the challenge to his client's title to the suit property was dismissed in the year 2021, and to date the title remains in the name of his client. Counsels Omwega and Kamau supported the court's decision not to certify the current motion and urged me not to change my mind as nothing new had been presented that would warrant such change.
4. I have relooked at the motion sought to be certified. The application seeks to stay the hearing of MCCC E257 of 2023, *Republic vs Ashok Labhshanker Doshi & 2 others* and development, disposal, alteration or transfer of LR. No. 209/3850 whose possession is with the 7<sup>th</sup> respondent and who also holds the title. Undoubtedly, the decision sought to be stayed paves the way for the criminal proceedings to continue and for the 7<sup>th</sup> respondent to have an unrestrained enjoyment of his property. Whether the motion is merited or will eventually succeed is a call to be made by the Court that will hear the motion.
5. What I must consider now is whether the current state of affairs exposes the applicants to some adverse action and if so whether the motion was filed timeously. Regarding the former, it seems that continuation of criminal proceedings and the possible development or disposal of the property could be prejudicial to the applicants. As to the second question, the decision sought to be stayed was made on 31<sup>st</sup> July 2024 and the motion brought just 12 days later. It was filed promptly.
6. I must confess that at the time of making the order declining certification I was under the impression that the motion was filed hopelessly late and so not deserving of urgent hearing. It is now obvious that it was in fact filed speedily.
7. The upshot is that I set aside my order of 15<sup>th</sup> August 2024, declining to certify the notice of motion dated 12<sup>th</sup> August 2024 as urgent and in its place I do hereby certify the motion as urgent. No order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF OCTOBER, 2024.**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

