



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, MUSINGA & GATEMBU J.J.A.)

CIVIL APPEAL (APPLICATION) NO. 242 OF 2020

BETWEEN

DR. EVANS ODHIAMBO KIDERO.....1ST APPLICANT
DR. SUSAN AKELLO MBOYA.....2ND APPLICANT
DR. EVANS ODHIAMBO KIDERO (Suing on behalf of the Estate of the late
ABIGAEI ATIENO KIDERO).....3RD APPLICANT
DR. EVANS ODHIAMBO KIDERO (Suing on behalf of the Estate of the late
PHILIP AYOT KIDERO).....4TH APPLICANT
GEM INVESTMENTS.....5TH APPLICANT
GEM APARTMENTS.....6TH APPLICANT
GEM SUITES.....7TH APPLICANT
ORRO LIMITED.....8TH APPLICANT
ARGENTI LIMITED.....9TH APPLICANT
PAUL AOL.....10TH APPLICANT

VERSUS

THE CHIEF MAGISTRATE OF
MILIMANI LAW COURTS.....1ST RESPONDENT
ETHICS AND ANTI-CORRUPTION COMMISSION.....2ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS.....4TH RESPONDENT
HON. ATTORNEY GENERAL.....5TH RESPONDENT

(Being an application for injunction pending the hearing and determination

of the Appeal from the Judgment and Decree of the High Court of Kenya

(Hon. Mumbi Ngugi, J.) dated 4th June, 2020 in Nairobi Petition No. 25 of 2018)

RULING OF THE COURT

1. **UPON** perusing the Notice of Motion dated 19th June 2020 by the applicants seeking an order to stay the judgment of **Hon. Lady Justice Mumbi Ngugi** dated 4th June, 2020 pending hearing and determination of the appeal; an order of temporary injunction restraining the 2nd respondent through any of its agents, officers or investigators from any further execution of the search warrant issued against the 1st Applicant dated 19th September, 2018 pending the hearing and determination of **Civil Appeal No. 242 of 2020 Dr. Evans Kidero & Others vs. EACC & Others** already filed in this Court; an order of injunction restraining the 2nd respondent through any of its agents, officers or investigators from purporting to search, seize and continue to seize the 2nd - 10th Applicants' properties pending the hearing and determination of **Civil Appeal No. 242 of 2020 Dr. Evans Kidero & 7 Others vs. EACC & Others** already filed in this Court.; and an order that costs of the application do abide the outcome of this Appeal; and
2. **UPON** reading the grounds in the body of the application and supporting affidavit of **Dr. Evans Odhiambo Kidero** together with annexures thereto; and
3. **UPON** reading the 2nd respondent's replying affidavit sworn by **Paul Mugwe** together with annexures thereto; and
4. **UPON** appraising the applicant's and 2nd respondent's written submissions dated **25th June, 2020** and **27th June, 2020** respectively in support of their rival positions; and
5. **HAVING** considered the Memorandum of Appeal already filed in light of the principles that guide this Court in determining applications under **Rule 5(2)(b)** of this Court's Rules as summarized in **Stanley Kangethe vs. Tony Ketter & Others [2013]eKLR**, and which we fully adopt, we are satisfied that the applicants have satisfied the first of the twin principles that guide the court in the exercise of its mandate under the said rule, namely demonstration of existence of an arguable appeal irrespective of its ultimate success and /or otherwise; and
6. **HAVING** applied the same test with regard to the need to satisfy the second prerequisite, namely demonstration that failure to grant the order sought will render the appeal filed nugatory, we do not think that the second prerequisite has been satisfied. The applicant has failed to controvert the 2nd respondent's averments in their replying affidavit that pending completion of investigations, filing, prosecution, and conclusion of the criminal case(s) against the applicants and the filing of the asset recovery suit, which actions are yet to commence, are unlikely to be concluded before the appeal which is already filed is heard and determined; and
7. **HAVING** appreciated that in order to succeed under **rule 5(2) (b)** of the Court's Rules both prerequisites must be satisfied; and
8. **HAVING** reached the above conclusion, we make orders as follows:

(i) The Notice of Motion dated 19th June, 2020 is declined.

(ii) Costs of the application to abide the outcome of the appeal. Dated and delivered at Nairobi this 9th day of October, 2020.

R. N. NAMBUYE

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JUDGE OF APPEAL

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU FCIArb

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR