



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, OKWENGU, J. MOHAMMED J.J.A.)

CIVIL APPEAL (APPLICATION) NO. 107 OF 2020

BETWEEN

CABINET SECRETARY,

MINISTRY OF HEALTH.....1ST APPLICANT

PRINCIPAL SECRETARY

MINISTRY OF HEALTH.....2ND APPLICANT

HON. ATTORNEY GENERAL.....3RD APPLICANT

AND

DR. HEZEKIAH CHEPKWONY.....1ST RESPONDENT

(Being an application seeking stay of execution of the Ruling and orders of the Employment and Labour Relations Court of Kenya (Hon. Onesmus Makau, J.) dated 9th July, 2020

in

Nairobi ELRC Petition No. 124 of 2019)

RULING OF THE COURT

1. **UPON** perusing the Notice of Motion dated 16th July 2020 seeking an interim order staying execution of the decision and orders of the Employment and Labour Relations Court delivered by **Hon. Mr. Justice Onesmus Makau** on 9th July, 2020; in **Nairobi Petition No. 124 of 2019 Dr. Hezekiah Chepkwony & 2 Others vs. CS Ministry of Health & 2 Others** pending hearing and determination of the appeal; an order staying further proceedings in **Nairobi Petition No. 124 of 2019 Dr. Hezekiah Chepkwony & 2 Others vs CS Ministry of Health & 2 Others**; pending the hearing and determination of the appeal; an order that costs of the application be in the cause among other prayers; and
2. **UPON** reading the grounds on the body of the application, a supporting affidavit of **Mutai Kagwe** together with annexures thereto; and
3. **UPON** reading the 1st and 2nd respondents Replying Affidavit sworn by **Dr. Pius Wanjala**; together with annexures thereto; and
4. **UPON** appraising the 1st and 2nd Respondents written submissions dated 18th August 2020 together with legal authorities, relied upon in support of their opposition to the application; and
5. **HAVING** considered the totality of the above on 28th September 2020 when the application came before us for hearing and granted an interim order of stay of execution of the decision and orders of the Employment and Labour Relations Court delivered by **Hon. Mr. Justice Onesmus Makau** on **9th July, 2020** in **Nairobi Petition No. 124 of 2019** as prayed for in **prayer (b)** of the application pending delivery of ruling on **20th November, 2020**; an Interim order of stay of proceedings in **Petition No. 124 of 2019** as prayed for in **prayer (c)** of the application pending delivery of the ruling on 20th November, 2020; and that costs of the application to abide the outcome of the ruling; and

6. **HAVING** considered the totality of the above 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; and

7. **HAVING** applied the threshold therein to the rival positions herein with regard to demonstration of satisfaction of the first prerequisite under the above rule in light of the content of the Memorandum of Appeal contained in the record of appeal on which the application under consideration has been anchored, we are satisfied that the appeal pending is arguable notwithstanding that it may not ultimately succeed; and

8. **HAVING** applied the same threshold with regard to the demonstration of satisfaction of the second prerequisite of the twin principle, we are satisfied that this prerequisite has also been satisfied, reason being that action threatened against the Applicants is Civil Jail for alleged contempt of Court orders which in our view once executed is irreversible; and

9. **HAVING** reached the above conclusion, we make orders as follows;

(i) The application dated 16th July, 2020 is allowed as prayed for in prayers (b) and (c) of the application.

(ii) Costs of the application to abide the outcome of the Appeal.

Dated and Delivered at Nairobi this 20th day of November, 2020.

R. N. NAMBUYE

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JUDGE OF APPEAL

HANNAH OKWENGU

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR