IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MAKHANDIA, M'INOTI & SICHALE, JJ.A)

CIVIL APPLICATION NO. 76 OF 2018 (UR 67/2018)

SICPA SECURITIES SOL. SA.....APPLICANT

AND

OKIYA OMTATAH OKOITI.....1ST RESPONDENT

THE CABINET SECRETARY,

NATIONAL TREASURY.....2ND RESPONDENT

THE COMMISSIONER GENERAL,

KENYA REVENUE AUTHORITY.....3RD RESPONDENT

(Being an application for stay of Judgment and Orders of the High Court of Kenya at Nairobi

(John M. Mativo, J.) dated 12th March, 2018

in

Petition No. 532 of 2017)

****

CONSOLIDATED WITH

CIVIL APPLICATION NO. 78 OF 2018 (UR 68/2018)

THE COMMISSIONER GENERAL,

KENYA REVENUE AUTHORITY.....APPLICANT

AND

OKIYA OMTATAH OKOITI.....1ST RESPONDENT

THE CABINET SECRETARY,

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(Being an application for stay of Judgment and Orders of the High Court of Kenya at Nairobi

(John M. Mativo, J.) dated 12th March,

RULING OF THE COURT

On 12th March 2018, the High Court (**Mativo,J**) delivered a judgment in **Constitutional Petition No. 532 of 2017,** which precipitated the two applications now before this Court for determination. The High Court had been moved by the 1st respondent, "**Okiya**" as the petitioner therein, against the Commissioner General, Kenya Revenue Authority' "**KRA**", the Cabinet Secretary, National Treasury "CS", and SICPA Securities SOL SA "**SICPA**" as the 1st, 2nd and 3rd respondents respectively. Okiya's petition in the High Court sought *inter alia*, declarations that KRA and CS had threatened and violated the Constitution, Statutory Instruments Act, the Fair Administrative Action Act and Public Procurement Act, Parliament's suspension of implementation by KRA, the CS and SICPA of the Excisable Goods, Management Systems "**EGMS"** was valid and stays in force until further directions by National Assembly; Legal Notice Nos. 110 of 18th June 2013 and 53 of 30th March, 2017 were invalid, null and void and of no legal effect; the standards and counterfeiting capabilities of the excisable goods management system was unnecessary since it duplicates the work of the Kenya Bureau of Standards and the Anti-Counterfeit Agency; the decision to impose excise duty on bottled water, fruit juices and vegetable juices was contrary to Article 43(1) (a) (c) and (d) of the Constitution; the decision to have manufacturers and consumers bear the administrative and compliance costs associated with the implementation and operations of Excisable Goods Management Systems was unreasonable and contrary to Article 40(2) and (3) of the Constitution; the procurement of EGMS for SICPA was irregular, unlawful and unconstitutional and, therefore, invalid null and void and finally, that pursuant to Article 226(5) of the Constitution, public officers who directed or approved the use of public funds contrary to law in the procurement system from SICPA be held liable for any loss arising from that use and make good the loss, whether they remain in public service or not. He then prayed for an order permanently prohibiting KRA, the CS and SICPA from implementing the EGMS; an order to quash Legal Notice No. 110 of 18th June 2013, Gazette Notice No. 12856 of 5th September 2013 and Legal Notice No. 53 of 2017 for being unconstitutional and therefore null and void; an order quashing the award by KRA to SICPA of Tender Number KRA/HQS/DP-423/2014-2015 for the provision of the EGMS.It is important to note that the later, Legal Notice No. 110 of 2013 had been repealed by Legal Notice No. 53 of 30th March, 2017.

The petition followed a public notice in the local media on 3rd October 2017 announcing that with effect from 1st November 2017, "*Bottled water, Juices, Soda and Other Non-Alcoholic Beverages and Cosmetics"* manufactured or imported into Kenya shall be affixed with excise stamps in accordance with Legal Notice No. 110 of 18th June 2013. The regulations contained in the said Legal Notice had been issued by the CS and had the effect of expanding the scope of the items to be covered by EGMS to include the listed goods. SICPA, an international company with its headquarters in Switzerland but with a branch in Kenya had been awarded the tender, worth between Kshs 15 -17 billion according to Okiya by KRA to implement the EGMS which system was to ensure the traceability of products, secure exercise duty and ultimately increase revenue to the KRA. The system was meant to seal revenue loopholes that had been occasioned in the erstwhile system and also cub illicit trade in counterfeit goods. The previous manual method of affixing Excise and Revenue Stamps on excisable goods was only limited to tobacco, wines, spirits and beer but experienced alleged rampant counterfeiting of stamps resulting in manufacturers under declaring volumes of their products leading to under collection of excise tax.

Okiya, however, challenged the legal instruments on the main grounds that there had been no public participation or consultations before the introduction of the EGMS and that the legal instruments for the introduction of the EGMS were enacted in a manner inconsistent with the Constitution and were therefore null and void. Further, that the award of Tender Number KRA/HQS/DP-423/2014-2015 by the KRA through direct procurement violated applicable laws thus necessitating its quashing.

The judicial review was of course resisted by SICPA, CS and KRA on the grounds set out in the regulations aforesaid as well as the loss that would be occasioned to SICPA were they to be compelled to dismantle the system.

The High Court was persuaded that Legal Notice No. 53 of 30th March 2017 was enacted in a manner inconsistent with the Constitution and the Statutory Instruments Act on account of want of adequate public participation prior to its enactment and proceeded to issue the following declarations:

> **i. A declaration be and is hereby issued that public participation must apply to enactment of all subsidiary legislations and policy decisions though the degree and form of such participation will depend on the peculiar circumstances of the case.**
>
> **ii. A declaration be and is hereby issued that subsidiary legislation must conform to the Constitution, the parent Act and the Statutory Instruments Act in terms of both its content and the manner in which it is adopted and failure to comply renders the legislation invalid.**
>
> **iii. A declaration be and is hereby issued decreeing that the Repealed Legal Notice 110 of 18th June 2013 and Gazette Notice No. 12856 of 5th September 2013 were enacted in a manner inconsistent with the provisions of the Constitution and the Statutory Instruments Act, hence they were null and void for all purposes.**
>
> **iv. A declaration be and is hereby issued decreeing that Legal Notice number 53 of 30th March 2017 was enacted in a manner inconsistent with the Constitution and the Statutory Instruments Act in that there was no adequate public participation prior to its enactment, hence the same is null and void for all purposes.**
>
> **v. A declaration be and is hereby issued decreeing that the first Respondent was obligated to craft and implement a meaningful programme of public participation and stakeholder engagement in the process of the tendering Tender Number KRA/HQS/DP-423/2014-2015 and or to ensure that the direct procurement meet the strict statutory requirements of any of the requirements of Section 103(2) (a) to (e)."**

This was then followed by orders of certiorari in the following terms:

a. An order of certiorari be and is hereby issued quashing Legal Notice Number 53 of 30th March 2017 to the extent that it seeks to impose or introduce excise duty on bottled water, juices, soda and other non-alcoholic beverages and Cosmetics.

b. An order of certiorari be and is hereby issued quashing the award of Tender Number KRA/HQS/DP-423/2014-2015 for the Excisable Goods Management System, awarded by the first respondent to the third respondent.

The court also found that the direct award of the tender to the SICPA failed to meet strict statutory requirements and proceeded to quash the award.

Dissatisfied with those findings, SICPA, CS and KRA are desirous of appealing the same in this Court and have in fact already filed Notices of Appeal dated 14th March 2018, 5th March 2018 and 12th March 2018 respectively. Wishing to stay the execution of the judgment and decree of the High Court before the lodging, hearing and determination of the intended appeal, SICPA and KRA have approached this Court by way of two Notices of Motion all dated 21st March 2018 principally brought under **rule 5 (2) (b)** of the Court of Appeal of Rules.

When the applications came up before us for hearing, and in the light of the fact that both applications emanated from the same judgment, involved the same parties and sought similar prayers, parties consented to the two applications being consolidated for ease of hearing and disposal. They all hinged on the claim that the intended appeals are arguable and should the prayers sought in the application not be granted; the intended appeals will be rendered nugatory.

Upon being served with the applications, Okiya in response and in opposition filed a notice of preliminary objection and grounds of opposition. The responses to each application are similar. In his preliminary objection, Okiya challenges the jurisdiction of this Court to entertain the applications on ground that there are no positive and enforceable orders which are capable of execution thus stripping this court of jurisdiction.

We may hasten to point out that this Court frowns upon preliminary objections. In **Equity Bank Limited v West Link Mbo Limited (2013) eKLR,** this Court observed as follows;

> ***"In raising the preliminary objection, the respondent's counsel fully appreciates that the preliminary objection, if allowed, would have profound effect in this Court. Indeed, if the objection is allowed the effect would be that a party aggrieved by the Judgment of the High Court or other court with equivalent jurisdiction to the High Court and who intends to appeal, or has indeed filed an appeal to this Court cannot move the Court by an independent application for stay of the execution of the impugned judgment, or seek a temporary injunction or apply for stay of impugned proceedings pending the filing, hearing and determination of the appeal."***

It has been held that this Court's jurisdiction to grant interim orders of stay under rule **5 (2) (b)** or even in exercise of its inherent powers is of fundamental importance and without it the Court's effectiveness would be greatly compromised. It has also been stated that the rules of this Court expressly provide the parties with solutions, which they ought to invoke instead of raising preliminary objections. In **Equity Bank Limited v West Link Mbo Limited** (supra), Kiage, JA faced with a preliminary objection in an application seeking stay of execution, stated as follows;

> ***"To uphold the objection would negate the very object and purpose for the existence of the Court of Appeal by rendering its work futile where appeals succeed but the harm already done absent stay cannot be undone.***
>
> ***Far be it from me to engender such a justice-defying result.***
>
> ***I would dismiss the preliminary objection and, notwithstanding the general importance of the matter raised…"***

Such that if Okiya felt so strongly about his objections, then he ought to have applied under the rules of this Court for appropriate remedy, such as striking out of the offending pleading. The rules of this Court do not countenance preliminary objections. We shall therefore treat the preliminary objection as part of his response to the applications.

Okiya has vehemently opposed both applications on the basis that the High Court did not issue any positive orders capable of being stayed. He argues that given the nature of the orders granted, they took effect immediately upon delivery of the judgment and therefore there was nothing left to stay. According to him, staying the orders granted at this stage would be determinative of the appeal and will amount to irregularly reversing the trial courts orders without hearing the appeal. He further contends through his written submissions that executory judgments and orders are those that declare the rights of parties and proceed to order the defendant to act in a particular manner, which is enforceable by execution if disobeyed. On the other hand, he submits that a declaratory judgment merely proclaims the existence of a right or a legal relationship and contains no provision for the enforcement against the defendant. According to Okiya, therefore, a declaratory order is incapable of being stayed. He cites the Nigeria Supreme Court case of **Chief R.A Okoya v S. Santilli & Others [1990] 1 All N.L.R 250. 3** and **Norman Washington Manley Bowen v Shahine Robinson & Another [2015] JMCA Civ 57** for his propositions. In the former case, the issue before the Nigerian Supreme Court was whether a defendant who has filed an appeal against a purely declaratory orders made against him is entitled to apply for stay of execution of those orders pending the hearing and determination of the appeal. In its consideration, that court stated that;

> ***"A defendant who has filed an appeal against a declaratory judgment or order is not entitled to apply for a stay of execution of that judgment or order. This is because a declaratory judgment or Orders has no coercive effect and threatens no one."***

The Jamaican Supreme Court in the **Norman Washington** (supra) case also came to the same conclusion; that court had no powers to stay a

declaratory order. In the same breath, Okiya asserts that an order of *certiorari* is incapable of being stayed or as being amenable to stay. He relied on the case of **Republic v Public Procurement Administrative Review Board & 3 Others ex parte Kenya Electricity Generating Company Ltd (2010) eKLR,** where this Court considered whether an order of *certiorari* was capable of being stayed. The Court held that;

> ***"…from its nature, an order of certiorari cannot be stayed pending appeal by interlocutory proceedings. Rather it can only be set aside in the appeal itself."***
>
> The Court went further to state;
>
> ***"…the Court has no jurisdiction under Rule 5 (2) (b) to stay the nullification of the resolution and the contract. It can only stay the execution of the decree or orders of the superior court. The order of certiorari granted by the superior court is not capable of execution as the superior court did not order any party to do anything or refrain from doing anything or to pay any sum (of money) other than costs. Furthermore, the order of certiorari granted by the superior court quashing the resolutions of the Council and the Agreement is final and conclusive and took effect immediately. If the application is allowed the effect would be to reverse the decision of the superior court and legalize the resolution and the contract already nullified until the determination of the appeal. This Court has no jurisdiction at this stage to undo what the superior court has done. It can only reverse the order of certiorari upon the hearing of the appeal."***

Be that as it may, the CS in his submissions through **Mr. Ogosso**, learned State Counsel contended that in appropriate cases, stay orders can be granted to preserve the substratum of an appeal. He cited the case of **Njuguna S. Ndungu v Ethics & Anti-Corruption Commission & 3 Others (2015) eKLR** where this Court pronounced itself as follows;

> ***"It is worth noting that in Dhiman v Shah (supra), whereas the Court conceded the absence of any provisions in the Rules by which it could stop an eviction order in an application under Rule 5(2) (b), it resorted to the inherent jurisdiction with a view to making such orders as would meet the ends of justice. It allowed the applicant to remain in possession of the premise in question, thereby maintaining the status quo pending appeal. That, for purposes of this case, addresses the argument about negative orders being incapable of being stayed. In appropriate cases they can, in as much the same way as a judge who reject an application for injunction may, nevertheless, in appreciation of the fact that he could be wrong, grant an injunction pending appeal against his refusal to grant the injunction."***

Court went further to state;

> ***"A proper reading of this Court's decision in EQUITY BANK LTD VS WEST LINK MBO LTD (supra) shows that the Court has never been antipathetic towards the grant of what, may be called conservatory orders in proper cases the aim being to preserve the substratum of the appeal, to maintain the status quo and to avoid a scenario where parties exercising their undoubted right of appeal are embarrassed by harm having been visited on them pending the appeal. It is accepted that other than flowing expressly from the Rules, the power to order a stay of execution in inherent in the Court and it may, in appropriate cases, invoke and deploy the same ex-debito justiae."***

Mr. Muite, SC and **Gatonye**, Learned Counsel for SICPA and KRA respectively took the same position above as **Mr. Ogosso.** Of paramount importance and consideration in an application brought under rule **5 (2) (b)** is the preservation of the subject matter of an appeal. Failure by the appellate court to protect the subject matter of an appeal, especially where an applicant has demonstrated an arguable appeal, would greatly compromise the effectiveness of this Court in performing its main judicial functions of addressing appeals. We take the view that the Court's jurisdiction to preserve the substratum of an appeal or maintain status quo so that an applicant is not embarrassed is inherent and maybe exercised whenever circumstances demand such as in this case.

Considering the merits of the appeal, the law is trite and settled that an applicant seeking stay of execution must demonstrate what is now commonly referred to as the two principles or limbs. Firstly, an applicant must demonstrate that the intended appeal is not frivolous or is arguable; secondly, that if the stay of execution orders sought are not granted, then the intended appeal will be rendered nugatory.

See **Githunguri v Jimba Credit Corporation (No. 2) (1988) KLR 838.** The principles governing stay of execution were succinctly captured by this Court as below;

> ***i. "In dealing with Rule 5(2) (b) the court exercises original and discretionary jurisdiction and that exercise does not constitute an appeal from the trial judge's discretion to this court. See*** *Ruben & 9 Others v Nderitu & Another (1989) KLR 459.*
>
> ***ii. The discretion of this court under Rule 5(2)(b) to grant a stay or injunction is wide and unfettered provided it is just to do so.***
>
> ***iii. The court becomes seized of the matter only after the notice of appeal has been filed under Rule 75.*** *Halai & Another v Thornton & Turpin (1963) Ltd. (1990) KLR 365.*
>
> ***iv. In considering whether an appeal will be rendered nugatory the court must bear in mind that each case must depend on its own facts and peculiar circumstances.*** *David Morton Silverstein v Atsango Chesoni, Civil Application No. Nai 189 of 2001.*
>
> ***v. An applicant must satisfy the court on both of the twin principles.***
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> ***vi. On whether the appeal is arguable, it is sufficient if a single bonafide arguable ground of appeal is raised.*** *Damji Pragji*

*Mandavia v Sara Lee Household & Body Care (K) Ltd, Civil Application No. Nai 345 of 2004***.**

vii. An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous. *Joseph Gitahi Gachau & Another v. Pioneer Holdings (A) Ltd. & 2 others, Civil Application No. 124 of 2008.*

viii. In considering an application brought under Rule 5 (2) (b) the court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal. *Damji Pragji* ***(supra).***

ix. The term "nugatory" has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling. *Reliance Bank Ltd v Norlake Investments Ltd [2002] 1 EA 227 at page 232***.**

x. Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.

xi. Where it is alleged by the applicant that an appeal will be rendered nugatory on account of the respondent's alleged impecunity, the onus shifts to the latter to rebut by evidence the claim. *International Laboratory for Research on Animal Diseases v Kinyua, [1990] KLR 403.****"***

No doubt cognizant of the above principles which must be borne in mind in this determination, SICPA, KRA and the CS deposed and orally submitted that they have arguable appeals with good prospects of success and that unless the orders sought are granted, the intended appeal will be rendered nugatory. In support of these positions they have exhibited draft memorandums of appeal showing several grounds that they intend to rely on in the prosecution of their intended appeal. Even one arguable ground will suffice in satisfying the first principle as already stated. In the draft memorandums, they have faulted the learned Judge for, *inter alia*, relying on the provisions of the Public Procurement and Disposal Act, 2015 "*PPDA*" and failing to appreciate that Tender NO. KRA/HQS/DP-423/2014-2015 was awarded on the basis of the provisions of the Public Procurement Act, 2005 and not the former Act.

They will therefore be challenging the decision of the High Court for relying on legislation that had been repealed. In his determination, the Judge relied on section **3** of the PPDA to find that public procurement by state organs is guided by the values and principles of the Constitution and relevant legislation and proceeded to expressly identify the national values and principles provided for under Article 10 of the Constitution, among them public participation. The Judge then proceeded to anchor his decision on the finding that there had been no public participation in passing the legal instruments that informed EGMS. However, as is manifest from the record, the legal instruments introducing EGMS, being Legal Notice No. 110 of 2013 and gazette Notice No. 12856 of 2013, which prescribed the price of an excise stamp were passed in 2013. The Public Procurement Act, 2005 was the applicable law then since the PPDA came into force on 7 thJanuary 2016 when the tender had already been awarded to the applicant. Certainly, this makes for an arguable point.

Similarly, they raise the ground that the learned Judge erred in law in failing to appreciate that Legal Notice No. 110 and 53 of 2017 were not meant to impose new taxation but were meant to enable the implementation of EGMS. These two grounds are sufficient to show that SICPA, KRA and the CS have demonstrated that their intended appeals are not frivolous as Okiya thinks. After all, and as seen above, the grounds raised or advanced must not be the ones that will necessarily succeed at the hearing of the appeal.

We must now interrogate whether the applicants have demonstrated that if the stay orders are not granted then the intended appeal will be rendered nugatory. It has been held that whether or not an appeal shall be rendered nugatory must be considered within the circumstances of each particular case. It is deponed in support of the applications that enforcement of the impugned judgment and orders will lead to the cancellation of SICPA's contract with KRA leading to severe and massive financial loss as it would be forced to uninstall and scrap the high-tech equipment that it has already deployed at a cost in excess of Kshs. 1.886 billion. It is also deposed that in the event SICPA is compelled to close its local subsidiary (SICPA Kenya Ltd), it would have to lay off its 66 Kenyan staff and lose about Kshs 58 million which it invested to set up its local entity. SICPA further contends that the system it has implemented for KRA is unique and that the majority of its elements cannot readily be resold to 3rd parties. As such, it argues that the cost of de-installation, repackaging and exportation of this equipment for reuse in its projects in other countries would be prohibitive and would result in massive loss to the company. Additionally, that the High court's orders had the erroneous effect of nullifying the collection of excise duty under both phase One and Two. As such, continuing to collect revenue under Phase One would expose KRA officers to contempt proceedings. According to SICPA, Okiya has no known assets capable of reimbursing and or refunding it with the money it would lose in the event that the application for stay is not granted. As such, Counsel submitted that the doctrine of proportionality ought to be considered by Court in its determination.

KRA approached the nugatory aspect of the intended appeal from a different perspective. According to it, unless the stay of execution order is granted, "*the intended appeal will be rendered academic and nugatory for the reason that there is very imminent risk that the colossal amounts in revenue due for collection*" by it will be lost. To buttress that point, it is contended that as a consequence of the nullification of the tender by court, it has projected that the revenue deficit will continue to grow due to non-implementation of the EGMS. It estimates that revenue loss as a result of non-collection would amount to Kshs. 27.686 billion in the Financial Year 2017-2018 alone.

KRA's counsel further submitted that the contract between SICPA and KRA had been operational since 2013 and colossal sums of money had been expended since. Counsel also pointed out that KRA, a government agency, stood to lose close to Kshs 20 billion in the event the contract is cancelled. He stated that this raised an element of public interest which Court ought to consider as well.

For the CS it was submitted that the complete halt of the implementation of the systems will have far reaching consequences in that a sum in excess of 28 billion will be lost. He further submitted that over 1.2 million products had been seized following the implementation of the EGMS. If the system is halted, the Kenyan populace will be exposed to counterfeit and harmful products.

Okiya on his part denies that Government will lose any revenue if stay is not granted. He opines that EGMS was to be implemented in two

phases and that only phase two had been stopped. In the premises, he submits that the appeal will not be rendered nugatory.

In an application under rule **5(2)(b)** of the rules of this Court, the Court has discretion to make orders on such terms as are just in the peculiar circumstances of the case. In his response to the applications, Okiya has not denied or controverted the deposition in the application that in the event the appeal succeeds, then he would not be in a position to reimburse the parties the loss occasioned. Of course given the huge sums of money involved, that would be unlikely. Even though as seen above that the orders of declaration and *certiorari* issued by the High Court are not amenable to stay of execution, the fact that the SICPA, the CS and KRA stand to lose substantial amounts is a factor for consideration. In **Peter Njuguna Njoroge v Zipporah Wangui Njuguna [2013] eKLR,** this Court observed as follows;

> ***"Turning to whether the intended appeal, if ultimately successful, will be rendered nugatory, in RELIANCE BANK LTD V NORLAKE INVESTMENTS LTD, (2002) 1 EA, 227, this Court stated that what may render a successful appeal nugatory must be considered within the circumstances of each particular case. Considerations such as the expense and length of time it may take to reverse or recover what has changed hands pending the appeal are relevant considerations. In THE STANDARD BANK LIMITED VS G. N. KAGIAT/A KAGIA & COMPANY ADVOCATES, CIVIL APPLICATION NO. NAI 193 OF2003, it was stated:***
>
> ***"If the applicant's appeal ultimately succeeds, either wholly or partially, such success will not be totally effectual if the applicant will not easily recover the money it paid and if it has to institute other civil proceedings to recover the money. Such an eventuality should in the interest of justice be taken into account."***

Counsel for SICPA, the CS and KRA submitted that in determining the applications, this Court ought to give due regard to proportionality. Although counsel did not elaborate much on this aspect, in our view applying proportionality principle requires an assessment of the balance between the competing parties' interests. In **Kenya Pipeline Company Limited v Stanley Munga Githunguri [2011] eKLR**, this Court observed that one of the principal aims of the overriding objective is to approach the exercise of power or discretion under any proviso or rule, with a sense of balance or proportionality.In this case, the intended appellants stand to lose substantial, if not colossal amount of money in the event that this Court refuses to grant the orders sought and the appeals ultimately succeed. It is obvious that they will not be able to recover the money and the loss considering that they had already invested Kshs. 1.886 billion in the system. Neither can the effect of the counterfeit products on the Kenyan society be ignored. Thus refusal to grant a stay would cause such hardship as would be out of proportion to that which is likely to be suffered by Okiya.

Counsel for the trio further argued that public interest be considered as the government, which represents public interest, would lose close to Kshs. 20 billion in the event this Court declines to intervene. We agree with the submissions. Finally, Okiya on his part would not be prejudiced by grant of the orders sought. He has alleged none and none is fathomable.

Accordingly, and in the interest of justice and in the unique circumstances of this case, the order that best commends to us is to stay the judgment and decree of the High Court rendered on 12th March 2018 in its entirety pending the lodging, hearing and determination of the appeals.

Costs of the application to abide the outcome of the intended appeals.

Dated and delivered at Nairobi this 11th day of May, 2018.

ASIKE MAKHANDIA

…….

JUDGE OF APPEAL

K. M'INOTI

…….

JUDGE OF APPEAL

F. SICHALE

…….

JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR