



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAIROBI**

Civil Appli 22 of 2007 (UR. 18/07)

MICHAEL KARIUKI NJOROGE 1ST APPLICANT

DANIEL NJOROGE KINYANJUI 2ND APPLICANT

JOYCE WANGUI NGIGE 3RD APPLICANT

AND

WAIRIMU KINYANJUIRESPONDENT

(An application for release of the applicants, Michael Kariuki Njoroge, Daniel Njoroge Kinyanjui and Joyce Wangui Ngige pursuant to the orders of committal of (Angawa, J.) dated 7th February, 2007

in

NAIROBI H.C.C.C NO. 96 OF 2007)

RULING OF THE COURT

The motion brought under Certificate of Urgency before us seeks two orders: firstly, a stay of execution of orders issued by the superior court, Ang’ awa, J. committing the three applicants to prison for a period of six months for alleged contempt of court, in the Judge’s own words; “*on the face of the record*”; secondly, a stay of an order by the same Judge for exhumation of the body of the late **Charles Kinyanjui Njoroge** which was buried at Langata Cemetery. The applicants want the orders to operate until their intended appeal against the orders and rulings of the superior court is heard and determined.

We have heard submissions on the matter from both sides and it is clear to us that the intended appeal is arguable. Learned counsel for the respondent Mr. Kimathi also informs us that there is no real objection to the release of the applicants from prison provided that the body of the deceased is exhumed and returned to the mortuary. We understand from Mr. Opande, learned counsel for the applicants, that the order for exhumation is currently being executed but there is no verification of that assertion.

In view of the foregoing we hereby grant an order of stay of execution of the order committing the three applicants to prison, the effect of which will be the release of the applicants from prison forthwith. We further order a stay of the exhumation of the deceased’s body if the same has not been exhumed by the time this order is extracted and served on the person or persons charged with such exhumation, among

them the Officer Commanding Division, Langata Police Division (OCPD).

Costs shall be in the intended appeal.

Made at Nairobi this 15th day of February, 2007.

R.S.C. OMOLO

.....

JUDGE OF APPEAL

E.O. O’KUBASU

.....

JUDGE OF APPEAL

P.N. WAKI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR