



**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: OMOLO, TUNOI, JJ.A. & DEVERELL, AG.J.A.)
CIVIL APPLICATION NO. NAI. 310 OF 2004 (159/2004 UR)

BETWEEN

REPUBLIC APPLICANT

AND

HONOURABLE JACKSON MWALULU 1ST RESPONDENT

KIRIRO WA NGUGI2ND RESPONDENT

KEPTA OMBATI 3RD RESPONDENT

SANDE OYOLO 4TH RESPONDENT

MUTEMBEI MARETE 5TH RESPONDENT

JACOB OPIYO6TH RESPONDENT

CYPRIAN NYAMWAMU7TH RESPONDENT

WAMBUA MUNYWOKI 8TH RESPONDENT

PAUL THUMBI9TH RESPONDENT

EX-PARTE

THE JUDICIAL COMMISSION OF INQUIRY

INTO THE GOLDENBERG AFFAIR 1ST RESPONDENT

HON. JUSTICE S.E.O. BOSIRE2ND RESPONDENT

PETER LE PELLEY 3RD RESPONDENT

NZAMBA KITONGA4TH RESPONDENT

(Application for stay pending the determination of the appeal against the ruling and order of the High Court of Kenya at Nairobi (Nyamu, Ibrahim & Makhandia, JJ.) dated 26 th November, 2004

in

MISC. CIVIL APPLICATION NO. 1279 OF 2004)

RULING OF THE COURT

We have been asked for an adjournment by Mr. Kibe, learned counsel for the Respondents. We have listened to the arguments for and against the application. We do not see any reason for reciting those arguments in this ruling. As we pointed out to counsel, the question of whether or not to grant an adjournment is at the sole discretion of the Court, of course taking into account all the relevant factors. We take into account the fact that the motion for hearing before us was certified urgent and we also take into account the nature of the prayers made in the motion. We do not wish to compel Mr. Mungai to proceed. We grant his application for an adjournment but at the same time we order an interim stay of execution of all the orders made by the High Court on 26th November, 2004 .Those orders are stayed until the hearing and final determination of the current motion. We fix the motion for hearing on 21st December, 2004 at 9:00 a.m. We also direct, though we think this is not necessary, that the Commission itself and all its members shall stay adjourned until further orders of the Court. The costs of to-day shall be in the motion.

Dated at Nairobi this 9th day of December, 2004.

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

W.S. DEVERELL

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AG.JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR