



**Director of Public Prosecutions v Okemo & 4 others (Miscellaneous Application 22 of 2020) [2021] KESC 40 (KLR) (6 August 2021) (Directions)**

*Director of Public Prosecutions v Chrysanthus Barnabus Okemo & 4 others [2021] eKLR*

Neutral citation: [2021] KESC 40 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
MISCELLANEOUS APPLICATION 22 OF 2020  
MK KOOME, CJ & P, MK IBRAHIM, SC WANJALA, NS NDUNGU & W OUKO, SCJJ  
AUGUST 6, 2021**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... APPLICANT**

**AND**

**CHRYSANTHUS BARNABUS OKEMO ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL KIMUNCHU GICHURU ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**CHIEF MAGISTRATES' COURT ..... 4<sup>TH</sup> RESPONDENT**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 5<sup>TH</sup> RESPONDENT**

**Nature of directions that the Supreme Court could issue about the consideration of an application for a stay of execution**

Reported by Beryl Ikamari

*Civil Practice and Procedure – directions – issuance of directions by the Supreme Court – directions about the consideration of an application for a stay of execution – nature of directions that the Supreme Court could issue.*

**Brief facts**

The Court of Appeal declared that extradition proceedings instituted before the Magistrate's Court against the 1<sup>st</sup> and 2<sup>nd</sup> respondent by the applicant (the Director of Public Prosecutions) were without the Attorney General's authority and were therefore a nullity in law. The Court of Appeal held that it was the Attorney General that had power to commence and conduct such proceedings. The applicant filed a Petition of Appeal No 14 of 2020 with leave of court for purposes of challenging the Court of Appeal's decision. The applicant also filed a notice of motion application for a stay of execution of the Court of Appeal decision.



## Issues

- i. What directions could the Supreme Court give with respect to the consideration of an application for a stay of execution?

## Held

1. The application was listed for consideration on the basis of written submissions under rule 31 of the Supreme Court Rules. Considering the nature of the dispute and the fact that the appeal had been listed for hearing on October 5, 2021 and in order to save judicial resources, the court directed that: -
  - a. *The notice of motion dated August 12, 2020 was taken out of the hearing list.*
  - b. *The notice of motion be listed for further directions during the hearing of Petition No. 14 of 2020 on October 5, 2021.*
  - c. *There were no orders as to costs.*

## Orders

1. *The notice of motion dated August 12, 2020 was taken out of the hearing list.*
2. *The notice of motion be listed for further directions during the hearing of Petition No. 14 of 2020 on October 5, 2021.*
3. *There were no orders as to costs.*

## Citations

## Statutes

None referred to

## Advocates

None mentioned

## DIRECTIONS

1. Intending to challenge the decision of the Court of Appeal made on 2nd March, 2018, the Director of Public Prosecutions, (the applicant) has, with the Court's leave, lodged Petition of Appeal No. 14 of 2020. It was declared by that decision that extradition proceedings instituted before the magistrate's court against Chrysanthus Barnabus Okemo and Samuel Kimunchu Gichuru (the 1st and 2nd respondents) by the applicant were without the authority of the 3rd Respondent (the Attorney General) and therefore a nullity; and that, in law, it is only the latter who is vested with the power to commence and conduct such proceedings.
2. Aggrieved by that determination and apprehensive that the decision may be executed by the Attorney General before the appeal is heard, the applicant has taken out this Notice of Motion, praying that, pending the hearing and determination of the appeal, this Court be pleased to issue an order to stay the execution of the aforesaid decision of the Court Appeal.
3. The application was listed for consideration on the basis of written submissions pursuant to Rule 31 of the Court's Rules. However, having regard to the nature of the dispute in the pending appeal; bearing in mind that the main appeal has now been listed for hearing on 5th October, 2021, and in order to save on judicial resources, we direct that;
  - i. The Notice of Motion dated 12th August, 2020 be and is hereby taken out of the hearing list;
  - ii. The Notice of Motion be listed for further directions during the hearing of Petition No. 14 of 2020 on 5th October, 2021;
  - iii. We make no orders as to costs.



DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF AUGUST, 2021.

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**M.K. KOOME**

**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT**

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**M.K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

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**S.C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**

**JUSTICE OF THE SUPREME COURT**

.....

**W. OUKO**

**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

**REGISTRAR**

**SUPREME COURT OF KENYA**

