



**Siboe v Kenya Railways Corporation & another (Application  
9 of 2017) [2019] KESC 39 (KLR) (30 April 2019) (Ruling)**

*Invollate Wasike Siboe v Kenya Railways Corporation & another [2019] eKLR*

Neutral citation: [2019] KESC 39 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA**

**APPLICATION 9 OF 2017**

**PM MWILU, DCJ & VP, MK IBRAHIM, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ**

**APRIL 30, 2019**

**BETWEEN**

**INVOLLATE WASIKE SIBOE ..... APPLICANT**

**AND**

**KENYA RAILWAYS CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

*((Being an application for stay of the Judgment and Orders of the Court of Appeal in Civil Appeal No. 157 of 2014 (Makhandia, Ouko & M'Inoti, JJ.A) delivered on 24th March, 2017))*

**The Supreme Court lacks the jurisdiction to issue an order for stay of execution where there is no pending appeal**

*In a ruling, the Supreme Court held that there was no basis for the exercise of its jurisdiction in an application for stay of execution where the intended appeal had not been filed and the certification allowing for the hearing and determination of the intended appeal as an appeal involving matters of general public importance, had not been sought.*

Reported by Ian Kiptoo

**Civil Practice and Procedure** - stay of execution - application for - where there was no pending appeal before a court - whether the Supreme Court had jurisdiction to issue an order for stay of execution where there was no pending appeal.

**Jurisdiction** - jurisdiction of the Supreme Court - appellate jurisdiction of the Supreme Court - matters of general public importance - certification of appeals as appeals involving matters of general public importance - where certification had not been sought or granted - whether the Supreme Court had jurisdiction to hear and determine an intended appeal, on a claim that it was of general public importance, where no certification had been sought and granted - Constitution of Kenya, 2010, article 163 (4) (b).



### **Brief facts**

The application before the court was for stay of the judgment and orders of the Court of Appeal. The applicant urged that the court was vested with jurisdiction to grant the interlocutory orders under sections 21 and 24(1) & (4) of the Supreme Court Act, 2011; that the intended appeal involved a matter of general public importance; and that the application met the requirements for an application for stay.

The respondent contended that the application was fatally defective since the applicant had not sought certification to appeal from the Court of Appeal or the Supreme Court; that the orders sought could not be granted in a vacuum since there was no pending appeal the substratum of which was sought to be preserved; and that the application was merely intended to prolong the applicant's stay.

### **Issues**

- i. Whether the Supreme Court had jurisdiction to issue an order for stay of execution where there was no pending appeal.
- ii. Whether the Supreme Court had jurisdiction to hear and determine an intended appeal, on a claim that it was of general public importance, where no certification had been sought and granted.

### **Held**

1. The Supreme Court lacked jurisdiction to entertain the application there being no appeal on the basis of which a stay could be granted. Although the application was predicated upon the provisions of article 163 (4) (b) of the Constitution of Kenya, 2010, no certification to appeal had been sought and granted either by the Court of Appeal or the Supreme Court.

*Application disallowed, no orders as to costs.*

### **Citations**

#### **Statutes**

None referred to

#### **Advocates**

None mentioned

## **RULING**

1. Upon perusing the Notice of Motion Application dated 15<sup>th</sup> May, 2017 and filed on 19<sup>th</sup> May, 2017 for stay of execution against the Judgment and Orders of the Court of Appeal of 24<sup>th</sup> March, 2017 in Civil Appeal No. 157 of 2014 and predicated on the provisions of Articles 159(2)(a), (d) & (e), 163(4) and 259(1) of the Constitution, 2010; and
2. Upon reading the undated supporting affidavit of the applicant and a further supplementary affidavit sworn on 15<sup>th</sup> March, 2018 and filed on 16<sup>th</sup> March, 2018; and
3. Upon considering the written submissions by the applicant dated 29<sup>th</sup> May, 2017 wherein it is urged that:
  - (i) This Court is vested with jurisdiction to grant the interlocutory Orders sought under Sections 21 and 24(1) & (4) of the Supreme Court Act, 2011;
  - (ii) that the intended appeal involves a matter of general public importance; and
  - (iii) The application for stay satisfies the conditions set out by this Court in *Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others*; Application No. 5 of 2014.



4. Upon reading the 1<sup>st</sup> respondent's replying affidavit sworn on 23<sup>rd</sup> February, 2018 and filed on 8<sup>th</sup> March, 2018 and considering the written submissions of even date, wherein it is contended that:
- (i) The application is fatally defective since the applicant has not sought certification to appeal from the Court of Appeal or this Court;
  - (ii) The orders sought cannot be granted in a vacuum since there is no pending appeal the substratum of which is sought to be preserved; and
  - (iii) The application is merely intended to prolong the applicant's stay on the premises, there being no arguable appeal
5. We have considered the application and response thereto and by unanimous decision of this Bench, pursuant to the provisions of Section 21(2) and 23(2)(b) of the Supreme Court Act, 2011 and Rules 21, 23 and 53 of the Supreme Court Rules 2012; we make the following Orders:

	<b>Orders</b>	<b>Reasons</b>
1.	The Application dated 15 <sup>th</sup> May, 2017 is hereby disallowed.	(i) This Court lacks jurisdiction to entertain the Application herein, there being no appeal on the basis of which a stay can be granted.  (ii) Although the application is predicated upon the provisions of Article 163(4) (b), no certification to appeal has been sought and granted either by the Court of Appeal or the Supreme Court.
	2.	No Orders as to Costs

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2019.**

.....

**M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT**

.....

**M. K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

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**S. C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

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**NJOKI NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

.....

**I. LENAOLA**  
**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original  
**REGISTRAR, SUPREME COURT**

