

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome, CJ & P; Ibrahim, Wanjala, Njoki & Ouko, SCJJ.)

MISC. APPLICATION NO. 22 OF 2020

- BETWEEN -

DIRECTOR OF PUBLIC PROSECUTIONS.....APPLICANT

AND

CHRYSANTHUS BARNABUS OKEMO..... 1ST RESPONDENT

SAMUEL KIMUNCHU GICHURU..... 2ND RESPONDENT

ATTORNEY GENERAL3RD RESPONDENT

CHIEF MAGISTRATES' COURT 4TH RESPONDENT

ETHICS AND ANTI-CORRUPTION

COMMISSION.....5TH RESPONDENT

*(From the judgment of the Court of Appeal (E.M. Githinji, Okwengu & J. Mohammed, JJ.A.) delivered on 2nd day of March, 2018
in Civil Appeal No. 5 of 2016)*

DIRECTIONS OF THE COURT

[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;

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- M.K. KOOME**
CHIEF JUSTICE
& PRESIDENT OF THE SUPREME COURT
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- IBRAHIM** **S.C. WANJALA**
OF THE SUPREME COURT **JUSTICE OF THE SUPREME COURT**
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- INDUNGU** **W. OUKO**
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