

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
(Coram: Mwilu; DCJ & V-P, Ibrahim, Wanjala, Njoki, & Lenaola, SCJJ)

APPLICATION NO. 9 OF 2017

—BETWEEN—

INVOLLATE WASIKE SIBOEAPPLICANT

—AND—

1. KENYA RAILWAYS CORPORATION1ST RESPONDENT

**2. THE HON. ATTORNEY-GENERAL
OF KENYA.....2ND 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*

RULING OF THE COURT

[1] UPON perusing the Notice of Motion Application dated 15th May, 2017 and filed on 19th May, 2017 for stay of execution against the Judgment and Orders of the Court of Appeal of 24th 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 15th March, 2018 and filed on 16th March, 2018; and

[3] UPON considering the written submissions by the applicant dated 29th 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 1st respondent's replying affidavit sworn on 23rd February, 2018 and filed on 8th 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:

	ORDERS	REASONS
1.	<i>The Application dated 15th May, 2017 is hereby disallowed.</i>	<i>(i) This Court lacks jurisdiction to entertain the Application herein, there being no appeal on the basis of which a stay can be granted.</i> <i>(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.</i>
2.	<i>No Orders as to Costs</i>	

DATED and DELIVERED at NAIROBI this 30th day of April, 2019.

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P. M. MWILU
DEPUTY CHIEF JUSTICE & VICE-PRESIDENT
OF THE SUPREME COURT

.....
M. K. IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
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