

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

(Coram: Maraga: CJ & President, Ibrahim, Ojwang, Wanjala, & Lenaola, SCJJ)

CRIMINAL APPLICATION NO. 2 OF 2018

—BETWEEN—

REPUBLIC.....APPLICANT

—AND—

1. AHMAD ABOLFATHI MOHAMMED.....1ST RESPONDENT

2. SAYEED MANSOUR MOUSAVI.....2ND RESPONDENT

(Being an application for review of the decision of the Court of Appeal delivered on 16th February, 2018, by (R. N. Nambuye, D. K. Musinga, S. Gatembu Kairu JJ.A)

RULING

[1] The Notice of Motion before this Court is dated 19th February, 2018 and filed on 20th February, 2018. On that day, a single Judge of this Court (*Ojwang, SCJ*) certified the same as urgent and pending its hearing and determination, the respondents were Ordered to remain within the jurisdiction of the Court.

[2] The Motion was then fixed for hearing inter-parties today 23rd February, 2018, noting its unique circumstances.

[3] Mr. Ahmednassir, SC, has now applied for an adjournment of the hearing for the main reason that there is pending before this Court, Application No. 21 of 2016, ***Goldenline International Ltd. v. Blue Sea Shopping Mall Ltd. &***

3 Others whose determination would dispose of the main question in the Motion before us.

[4] He also applied for the discharge of the Orders made by *Ojwang, SCJ* so as to result in the immediate release of the respondents.

[5] Both limbs of Mr. Ahmednassir's submissions were responded to by Mr. Okello, representing the applicant who states that he has no objection to the matter being adjourned but was opposed to the release of the respondents. His main ground for taking that position is that the current proceedings would be rendered nugatory as the respondents would have left the jurisdiction of Kenya.

[6] In response to Mr. Okello's submissions, Mr. Ahmednassir suggested that the respondents, pending the determination of the present Motion, could be held in a hotel environment as opposed to any form of custodial confinement.

[7] Having considered the submissions by Counsel and noting the unique circumstances of the present case, we give the following directions:

- (i) ***The application for adjournment for the reasons given by Mr. Ahmednassir is hereby denied. However, noting the time of the day when this Ruling is being delivered, it is not possible to hear it today. The Motion is now set for hearing on its merits on 13th March, 2018 at 11.00 a.m.***
- (ii) ***Pending the hearing of the aforesaid and in view of the fact that the respondents have been acquitted of all criminal charges that were preferred against them by an Order of a Court of competent jurisdiction (the Court of Appeal in Criminal Appeal No. 135 of 2016) and further taking into account the fact that the determination of the present Motion is dependent on the continued presence of the respondents within the jurisdiction of Kenya, we***

hereby direct that arrangements be made by the Applicant to ensure the continued presence of the respondents within the jurisdiction of Kenya without infringing on their liberties as guaranteed by the Constitution.

It is so Ordered.

DATED and DELIVERED at NAIROBI this 23RD Day of February, 2018.

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D. K. MARAGA
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

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

.....
J. B. OJWANG
JUSTICE OF THE SUPREME COURT

.....
S. C. WANJALA
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 OF KENYA