



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**PETITION CASE NO. 4 OF 2015**

**TIMOTHY OTUYA AFUMBWA .....1ST PETITIONER**

**FRED MARUTI MURUNGA ..... 2ND PETITIONER**

**VERSUS**

**THE COUNTY GOVERNMENT OF TRANS NZOIA ..1ST RESPONDENT**

**RATILAL GOSAR DODHIA .....2ND RESPONDENT**

**VIPUL KANTIL SHAH .....3RD RESPONDENT**

**AVIR KANTI SHAH .....4TH RESPONDENT**

**R U L I N G**

By its application dated 17/10/2016 the 1<sup>st</sup> respondent/appellant prays that there be stay of further proceedings in this petition and stay of execution of the judgement delivered on 23/6/2016 and any other subsequent orders pending the hearing and determination of the appeal at the court of appeal.

The application is supported by the affidavit Pius Munialo dated 17/10/2016 together with the attached annexures.

Substantially all that the applicant is asking is for a second chance at the Court of Appeal. If the stay is not granted then they stand to suffer loss and damages and the hospital complex together with the investments already in place stand to be wasted.

The respondent by the replying affidavit of Timothy Otunga Afubwa has opposed the same arguing that the same is meant to delay the first conclusion of this matter and it had been made inordinately. They argue that a mere notice of Appeal prima facie does not mean that there is such an appeal but a mere intention.

Having perused the application herein and taking into consideration the totality of the issues herein I do find that the same are weighty. The issues are of such great public interest and I find that it would be in order for the decision of this court to be subjected to further scrutiny. At the heart of this matter are public resources. Both the applicants as well as the respondents will greatly benefit if a further adjudication is undertaken.

Against this backdrop I do not see what injury the respondents stand to suffer. They brought this matter on their behalf and that of the constituence of Trans Nzoia County. They still have a chance at the Court of Appeal. Moreover the applicant has a perpetual life and hopefully the Court of Appeal will determine the same speedily.

In the premises and to ensure fairness on both sides I shall allow the application as follows;

- (i) There be stay of the decree herein dated 23/6/2016 and all its consequential orders.
- (ii) The applicant to process this appeal within 90 days from the date herein.
- (iii) Should order (ii) above not complied with then the stay granted in (i) above shall stand discharged automatically.
- (iv) Each party to bear their respective costs.

Delivered this 5<sup>th</sup> day of December 2016.

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**H.K. CHEMITEI**

**JUDGE**

**In the presence of;**

**Prof. Sifuna for 1<sup>st</sup> Respondent**

**Kisa for the 2<sup>nd</sup> – 4<sup>th</sup> Respondents**

**Shiveka for the Petition**

**Kirong – Court Assistant**



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