**Berkeley North Market and others v Attorney-General and others**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 6 May 2005

**Case Number:** 74/05

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**Before:** Githinji, Waki JJA and Deverell AJA

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*[1] Judicial review – Application for* certiorari *and prohibition – Appeal against dismissal of an*

*application for prohibition and* certiorari *– Factors for the court to consider.*

**Editor’s Summary**

The applicants filed a judicial review application in the High Court seeking orders for prohibition and *certiorari* remedies to prohibit the prosecution from proceeding with their intended prosecution and quashing the charge sheet brought under section 129 of the Penal Code.

The judicial review application was dismissed and the applicants filed a notice of appeal.

Subsequently, they filed this application seeking a stay.

**Held** – If the appeal is allowed and the charge sheets and the convictions, if any, are quashed, the appeal will be nugatory since, irrespective of the result of the criminal proceedings, the applicants will have been forced to undergo anxiety and adverse publicity that inevitably flows from being tried for a criminal offence.

It is necessary for the applicants to satisfy the court that the intended appeals are not frivolous or are arguable.

At this stage of an application to stay criminal proceedings it is not for the court to make a final determination; it only needs to be satisfied that a sole bona fide contention is not unarguable or frivolous.

Application allowed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Berkely Hackett and others v Attorney-General and others* miscellaneous case number 448 of 2003

*Republic v Berkely North Hackett and Bernard Nthuli c*riminal case number 1712 of 2003