



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO.10 OF 2019**

**BETWEEN**

**GABRIEL NGESA MUSUNDI.....APPELLANT/APPLICANT**

**AND**

**GABRIEL FWAYA ADVOCATE.....RESPONDENT**

**RULING**

1. **Gabriel Ngesa Musundi** the appellant herein, brought an application by way of Notice of Motion under sections 38 & 42(2) of the Civil Procedure Act and Order 42 Rule 6 of the Civil Procedure rules. He is seeking the following orders:

- a) That this matter be certified urgent. (Spent)
- b) That production order in respect of the applicant be issued. (spent)
- c) Committal to jail of the applicant be stayed until the hearing of this application. (spent)
- d) Pending the hearing of this appeal, execution of orders of 16<sup>th</sup> May 2019 be stayed.

2. The application is premised on the following grounds:

- a) That the applicant was wrongly committed in civil jail.
- b) That he was committed to civil jail unheard.

3. The application was opposed on the following grounds:

- a) That the appeal which is the basis of the application is incompetent.
- b) That the application is an abuse of the due process of the court.
- c) That the application is misconceived and calculated to prejudice and embarrass the respondent.

4. I have perused the submissions by both parties and what is emerging therefrom, is that the same reasons which are being advanced for the application are the same reasons that the appellant raised as grounds of appeal. In the interest of justice and for the sake of tidiness, my opinion is that I will not comment on merits or demerits of any issues raised. I will make an order for status quo to be preserved until the hearing and determination of this appeal subject to the following conditions:

- a) The applicant to set down the appeal for hearing within 30 days.
- b) That the applicant deposits in court the taxed sum of Kshs. 57,107/= within 30 days.

Failure to meet these conditions the respondent will be at liberty to execute.

5. The costs of this application will abide with the outcome of the appeal.

**DELIVERED AND SIGNED AT BUSIA THIS 11TH DAY OF MARCH, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**