



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

MISCELLANEOUS APPLICATION NO. 5 OF 2020

IN THE MATTER OF: KSHS.4,249,785.90 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT EQUITY BANK LIMITED.

- . KSHS.1,465,576.80 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT EQUITY BANK LIMITED.**
- . KSHS.2,906,213.90 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT EQUITY BANK LIMITED.**
- . KSHS.2,692,704.50 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT EQUITY BANK LIMITED.**
- . KSHS.1,296,033.07 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT EQUITY BANK LIMITED.**
- . USD 20,906.90 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT EQUITY BANK LIMITED.**
- . KSHS.2,235,015.27 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT DIAMOND TRUST BANK LIMITED.**
- . KSHS.1,161,889.29 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF HON. MBUVI GIDION KIOKO HELD AT CO-OPERATIVE BANK LIMITED.**
- . USD 7,573.03 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT DIAMOND TRUST BANK LIMITED, CAPITAL CENTRE BRANCH NAIROBI.**
- . USD 39,426.50 HELD IN ACCOUNT NUMBER [...] IN THE NAME OF MIKE SONKO MBUVI GIDION KIOKO HELD AT DIAMOND TRUST BANK LIMITED, NYALI BRANCH.**

LESIT, J

ASSETS RECOVERY AGENCY.....APPLICANT

VERSUS

MIKE SONKO MBUVI GIDEON KIOKO.....RESPONDENT

RULING ON APPLICATION

BETWEEN

MIKE SONKO MBUVI GIDEON KIOKO.....APPLICANT

AND

ASSETS RECOVERY AGENCY.....RESPONDENT

1. Mr. Kinyanjui for the Respondent in this matter has made an application informally after delivery of a ruling to his client's application dated May 18, 2020. He seeks three orders. One, he seeks orders for stay of these proceedings and any other or further proceedings which may arise thereunder, pending appeal. Two, he sought for certified copies of proceedings for purposes of filing an intended appeal. Three, he also applied for stay of execution of costs pending the intended appeal.
2. The application is premised under **Order 42 Rule 6 (5)** of the **Civil Procedure Rules** which gives power to an aggrieved party to apply for stay of execution, and provides that it can be made informally. He urged that **Rule 6** gives powers to High Court to grant stay of execution.
3. Ms. Muchiri for the State opposed the application and urged the court to decline the stay for reason there is a pending application for Forfeiture. She further asked the court to give directions for the hearing of the Forfeiture application pending before court.
4. Mr. Kinyanjui in a rejoinder argued that the State did not show that he was outside the scope of the law when he made this application. He argued that due to the peculiarity we are in, the difficulty in having access to the court due to the lockdown, and to access the proceedings, **Order 42 Rule 6(5)** permits the application to be made informally. He urged that if on appeal it is found that the right to a fair trial under **Article 25** of the **Constitution** was abridged, the Applicant's rights would have been violated. Lastly, Mr. Kinyanjui urged court to take note of the fact that High Court is going on vacation.
5. I have considered the application by Mr. Kinyanjui on behalf of his client. The order of stay of proceedings is a discretionary power of the court exercised judiciously and not capriciously. Order 42 which the Applicant has invoked makes it clear that the court may grant or decline to grant an order of stay of proceedings pending appeal. It provides that there must be sufficient cause shown to the court to justify the granting of such orders. The court should also be satisfied that substantial loss will be suffered unless the order is granted. Finally, the Applicant should provide security for costs. Those are the provisions of **Order 42 Rule 6 of the CPR**.
6. The court has considered the application and finds no merit in it. No sufficient cause has been established by the Applicant why he should be granted the order sought. Furthermore, there was no demonstration of any substantial loss the Applicant stands to suffer. Lastly no security for costs have been offered.
7. In the result I find that the Applicant is undeserving of an order for Stay of Proceedings, both the instant ones and those that may arise hereunder or in consequence thereof. In the same vain the Applicant's application for stay of execution for costs is wholly unmerited and is accordingly declined.
8. In the result the application for stay of proceedings pending an intended appeal, and stay of execution for costs is dismissed

DATED AT NAIROBI THIS 30TH DAY OF JULY, 2020.

LESIT, J.

JUDGE