



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO. 48 OF 2019**

**SECRETARY-GENERAL OF ANC PARTY.....1<sup>ST</sup> APPLICANT**

**AMANI NATIONAL CONGRESS (ANC).....2<sup>ND</sup> APPLICANT**

**VERSUS**

**JACKLINE MWAKHA OKANYA.....RESPONDENT**

**RULING**

1. What is for determination is an *ex parte* Motion, dated 12<sup>th</sup> April 2019. The orders sought in the application are:

(a) that this Application be certified as urgent and service be dispensed with within the first instance;

(b) that pending the hearing and determination of this Application *inter partes* the Orders of the Chief Magistrate's Court at Kakamega, the Hon. Ochieng issued on 26<sup>th</sup> March 2019 and the further Orders issued on the 01<sup>st</sup> of April 2019 and extended on 12<sup>th</sup> April 2019 in Civil Suit No. 59 of 2019 be stayed; and

(c) that in accordance with the age-old dictum and the general law that Costs follow the Cause, Costs for this Application be provided for by the Respondent herein.

2. The Motion was served. There is no reply to it, but Malalah & Co, Advocates did file a notice of appointment on 29<sup>th</sup> April 2019.

3. The matter was initially filed at the High Court at Kisumu during the High Court vacation, but was ordered on 15<sup>th</sup> April 2019 that the same be transferred to the High Court at Kakamega. The application was placed before me and argued on 29<sup>th</sup> April 2019. Counsel on both sides addressed me extensively on jurisdiction of the lower court with respect to the proceedings that were pending before that court.

4. I have closely looked at the matter that is before me. The Motion seeks only three prayers – certification of the matter urgent, interim stay pending hearing and determination of the Motion and costs. The principal order sought in the application, in my view, is the interim stay which should subsist pending hearing and determination of the Motion. Interim orders are granted pending the doing of something. That presupposes that there are other proceedings to be conducted.

5. As stated above other than the interim stay which should last during the hearing and determination of the application, there is no other substantive order sought. There is no prayer for stay pending appeal or other such proceedings. Interim orders can only be made to await outcome of other proceedings. There are no such other proceedings in this cause. The application herein would be spent once the interim orders sought are granted. Grant of the orders sought would, therefore, determine the matter finally and totally.

6. Secondly, I doubt whether a party can obtain stay of proceedings or orders made by a trial court through a miscellaneous application unless he has filed an appeal against those orders. The orders of a lower court can only be challenged at a higher court through appeal. Interim orders would then be available to preserve *status quo* pending the hearing of the appeal. No appeal has apparently been filed in this case. The Motion before me, therefore, has no foundation or basis upon which it can stand.

7. The Motion dated 12<sup>th</sup> April 2019 is, consequently, misconceived. The orders sought are not available. It ought to be struck out and I hereby do strike the same out with costs.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 26<sup>th</sup> DAY OF July, 2019**

**W MUSYOKA**

**JUDGE**