

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

ELECTION PETITION APPEAL NO. 3 OF 2017

KITAVI SAMMY.....APPLICANT

VERSUS

1. INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....1ST RESPONDENT

2. RETURNING OFFICER KITUI CONSTITUENCY....2ND RESPONDENT

3. KATUMO BONIFACE KILUNGYA.....3RD RESPONDENT

R U L I N G

1. **Kitavi Sammy**, the Applicant approached this court by way of Chamber Summons that was filed during the vacation under Certificate of Urgency. The urgent plea was to have orders sought in the Application dated **26th March 2019** allowed on interim basis pending hearing of the Reference.

2. In the application dated the **26th March 2019**, the firm of **Kimathi Wanjohi Muli Advocates** sought leave to come on record and the applicant prayed for stay of the decision of the taxing officer dated the **6th November 2018** pending hearing of the application and Reference.

3. The instant application is based on grounds that the applicant's goods have been proclaimed therefore the auctioneer may sell them by way of public auction which may cause the Applicant to suffer irreparable damages.

4. This court certified the application as urgent on the 10th September 2019 and scheduled it to be heard on 18.9.2019. On the stated date the application was withdrawn. **Mr. Kithome**, counsel holding brief for Mr. Kivuva for the Applicant proceeded to notify the court that Counsel retained by the Applicant had filed submissions. It was however argued by Mr. Mwalimu, counsel for the Respondents that the submissions were irregularly on record.

5. On the **27/6/2019** this court gave directions on the matter and granted the Applicant **fourteen (14) days** within which to file and serve submissions. The Applicant purported to file submissions some **ninety four (94) days** later. The application has been filed in an election Petition Appeal where timelines are strict. The submissions that were filed without leave of this court were therefore expunged from the record.

6. In that regard, the application remained unprosecuted. Therefore it stands dismissed with costs to the 3rd Respondent.

7. It is so ordered.

Dated, signed and delivered at Kitui this 26th day of September 2019.

L.N. MUTENDE

JUDGE