



**REPUBLIC OF KENYA**

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

**ELECTION PETITION NO. 10 OF 2017**

**GILPHINE MOKEIRA OMWENGA.....PETITIONER**

**VERSUS**

**INDEPENDENT AND ELECTORAL**

**BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT**

**ISAAC KIPLAGAT RUTTO.....2<sup>ND</sup> RESPONDENT**

**MOSES MALULU INJENDI.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application for determination is dated 19<sup>th</sup> March 2019. It is brought at the instance of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It seeks release of security for costs deposited with the court by the petitioner and that the same, being Kshs. 500, 000.00 be shared out equally between the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It is further sought that the said amount of money be released to Wekesa & Simiyu Advocates.

2. It is averred that the petitioner herein had deposited the said amount of money in court as security for costs in keeping with the relevant elections law. It is contended that the petitioner subsequently withdrew the petition, and costs were subsequently taxed as had been ordered by the election court. The amount taxed by the court on 18<sup>th</sup> February 2019 was Kshs. 1, 569, 064.00, which the petitioner was yet to settle. The case by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is that the amount of security for costs be released to them to offset the costs awarded by the court.

3. The election court had on 16<sup>th</sup> January 2018 ordered that the security for costs deposited with the court by the petitioner be used to pay the certified costs of the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

4. With regard to the purpose of security for costs in election petitions, the court in *Patrick Ngeta Kimanzi vs. Marcus Mutua Muluvi & 2 others* HCEP No. 8 of 2013, as cited by the Court of Appeal in *Gatirau Peter Munya vs. Dickson Kithinji & 2 others* [2014] eKLR, said:

*“Security of costs ensures that the respondent is not left without recompense for any costs or charges payable to him. The duty of the court is therefore to create a level ground for all the parties involved, in this case, the proportionality of the right of the petitioner to access to justice vis-à-vis the respondent’s right to have security for any costs that may be owed to him and not to have vexatious proceedings brought against him.”*

5. As per the orders of the election court, made on 16<sup>th</sup> January 2018, the 1<sup>st</sup> and 2<sup>nd</sup> respondents are entitled to the sum of Kshs. 500, 000.00 deposited herein by the petitioner as security for costs, as part payment for their taxed or certified costs.

6. Accordingly, the application dated 19<sup>th</sup> March 2019 is hereby allowed as prayed in the following terms:

**(a) That the amount of security for costs of Kshs. 500, 000.00 deposited herein by the petitioner shall be released to the firm of Wekesa & Simiyu Advocates on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents;**

**(b) That the 1<sup>st</sup> and 2<sup>nd</sup> respondents are entitled to share the said amount equally; and**

**(c) That there shall be no costs for the instant application.**

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2019**

**W. MUSYOKA**

**JUDGE**