



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO. 88 OF 2013

CHEPKOILEL MATATU SAVINGS &

CREDIT CO-OPERATIVE SOCIETY LTD.....APPELLANT/APPLICANT

=VERSUS=

FREDRICK KIBON CHANGWONY.....RESPONDENT/RESPONDENT

RULING

The application before me is for stay of execution of the orders made on 7th June, 2013 and on 30th September, 2013, until the appeal is heard and determined.

The Appellant, **CHEPKOILEL MATATU SAVINGS & CREDIT CO-OPERATIVE SOCIETY LIMITED**, have submitted that their appeal had overwhelming chances of success. Therefore, if the stay was not granted, they would suffer irreparable loss, as the Respondent would have compelled the Appellant to allow him to operate his bus at the Appellant's stage.

Mr. Mwaka, the learned advocate for the Appellant, submitted that although his client had not expressly offered any security, this Court had the discretion to order the Appellant to provide appropriate security.

In answer to the application, **Mr. Mutai**, the learned advocate for the Respondent, submitted that if his client was allowed to operate his vehicle, the Appellant would not suffer any loss.

On the other hand, if this court did grant an order for stay of execution of the orders made by the trial court, the Respondent says that that would cause him to suffer irreparable loss.

Indeed, an order of stay of execution was described as a means of rendering the appeal meaningless.

The Record of Appeal herein was filed on 26th June, 2013. The said appeal is indicated to be in relation to the Ruling delivered on 11th June, 2013.

However, I have failed to trace any Ruling which was delivered on 7th June, 2013.

The Ruling in relation to the application dated 8th May, 2013, was delivered on 11th June,

2013; not 7th June, 2013.

Therefore, if the Appellant's application is founded on his dissatisfaction with a Ruling delivered on 7th June, 2013, I can only say that I have not seen any such a Ruling, nor have I seen an appeal arising from the alleged Ruling.

The Memorandum of Appeal was filed on 26th June, 2013. Therefore, it could not possibly reflect the Appellant's alleged dissatisfaction with the Ruling delivered on 30th September, 2013. That Memorandum of Appeal was lodged before the Ruling dated 30th September, 2013.

It would thus appear that the grounds upon which the application was founded, have no proper foundation. Accordingly, the application could be dismissed on that basis alone.

But because there is actually a Memorandum of Appeal which is on record, I am prepared to assume that the date of the Ruling which the Appellant wished to cite in his application, was 11th June, 2013, as cited in the Memorandum of Appeal.

The Appellant asserts that their appeal has overwhelming chances of success.

The orders which the Appellant are complaining about, allow the Respondent to operate his Matatu at the stage located at Utalii Street, Eldoret Town.

Thus, the orders being sought in this current application, would stop the Respondent from operating at that stage.

If the Respondent was allowed to operate at the said stage, the Appellant says that the appeal would be rendered nugatory.

The deponent said that he would suffer substantial loss and great mental anguish.

The Appellant did not indicate the nature of loss which they would suffer. Therefore, this court will resist the temptation to engage in guess-work.

I have noted that the learned trial magistrate made an express finding of fact, that the Respondent had complied with all the required mandatory procedures. Therefore, the court was of the view that the Respondent had adhered to all the legal stipulations.

The learned Magistrate expressed herself thus:

**“Counsel, in his arguments in this application, has
averred that if the Applicant have since complied,
he will have no objection to their plying the said route.”**

To my mind, if the Respondent had met all the legal requirements, that would entitle him to operate his Matatu from the stage at Utalii Street, Eldoret, as was alluded to by the learned advocate for the Appellant, it would be unreasonable and unjust to stop him from operating from that stage, whilst the appeal was pending.

In effect, I find no merit in the application. It is therefore dismissed, with costs to the Respondent.

Finally, I wish to make it clear that the Respondent, although he is now able to operate from the Utalii Street Stage in Eldoret town, must continue to comply with all the requisite provisions of the law.

DATED, SIGNED AND DELIVERED AT ELDORET,THIS 17TH DAY OF JANUARY, 2014.

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FRED A. OCHIENG

JUDGE.