



REPUBLIC OF KENYA

High Court at Embu

Miscellaneous Application 2 of 2011

KAMBIRW NURSERY SCHOOL.....PLANTIFF/APPLICANT

V

JOHNKINYANGAYAMWANGI.....RESPONDENT/DEFENDANT

R U L I N G

This is the Notice of Motion dated 20/4/2012 brought under Order 42 Rule 6 (1&2) and 7(1) of the Civil Procedure Rules seeking stay of execution of the Ruling and orders of the Court made on 25/1/2012 pending the hearing of Embu HCA No. 120/2011.

The grounds are on the face of the application. The main ground is that the Applicant is organizing itself, as there has been replacement of officials. The same is supported by an affidavit sworn by the applicant's affidavit.

The Respondent has opposed the application through his replying affidavit. I have carefully read the affidavits filed herein. The order the applicant wishes to have stayed is the order of taxing costs of the Misc. Application No. 2/2011. In Misc. Application No. 2/2011, the Applicant sought leave to file an appeal out of time. A consent was entered to the effect that ***“leave be granted and appeal be filed within 14 days. And costs be paid by the applicant”***.

These are the costs that were taxed on 25/1/2012 by the Deputy Registrar. The applicant wants the Order stayed until the HCA No. 120/2011 is heard and determined. My finding is that the miscellaneous application has been spent as the applicant got the Leave he wanted.

There is no connection between the order in the miscellaneous application and the appeal. The issue of the management change at the school is irrelevant because it is not an individual paying the costs but an institution. It does not therefore make any difference as long as there is somebody in office.

I find no merit in this application which I dismiss with costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF MAY 2013.

H.I. ONG'UDI

J U D G E

In the presence of:-

N/A for or by parties

Njue CC