



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Civil Appeal 63 of 2008**

**SORA ADI ABDI ..... APPELLANT**

**VERSUS**

**KUMPA HASSAN DIBA ..... 1<sup>ST</sup> RESPONDENT**  
**ELECTORAL COMMISSION OF KENYA ..... 2<sup>ND</sup> RESPONDENT**  
**RETURNING OFFICER ISIOLO**  
**NORTH CONSTITUENCY ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

Following the local authority election of Yamicha Ward, Isiolo North Constituency, the first respondent filed an inquiry of those elections before the Chief Magistrate Court, Meru. The appellant is the serving councillor of that constituency. Before the Chief Magistrate Court when the inquiry came for hearing, he raised a preliminary objection. The court rejected that objection. The appellant filed this appeal challenging that rejection. The appellant on filing this appeal obtained a stay of that inquiry before the Chief Magistrate Court Meru on 5<sup>th</sup> August 2008. By this court's judgment of 7<sup>th</sup> May 2010, the appellant appeal was dismissed. The effect of that dismissal was that the inquiry before the Chief Magistrate Court could proceed for hearing. The appellant brought before this court an application under Order XLI Rule 4 of the Civil Procedure Rules. It is by way of Notice of Motion dated 27<sup>th</sup> May 2010. By that application, the appellant seeks stay of proceedings in the local government inquiry before the Chief Magistrate Court Meru. He also seeks a stay of execution of the decree of 7<sup>th</sup> May 2010. The appellant in support of that application argued that on the court passing the decree against him on 7<sup>th</sup> May 2010, he filed a Notice of Appeal before the Court of Appeal on 12<sup>th</sup> May 2010. He argued that his appeal before the Court of Appeal has high chances of success and if stay of proceedings before the Chief Magistrate Court is not granted, his appeal will be rendered nugatory. I would comment that this court has no mandate to consider the chances of success of the appeal filed in Court of Appeal. This court also does not consider whether an appeal will be rendered nugatory. The only consideration in an application for stay of proceedings is as provided under order XLI Rule 4. That is, the applicants ought to show that he will suffer substantial loss if stay is not granted. The applicant also ought to have filed the application without unreasonable delay and ought to provide security for due performance of the decree. The applicant did not show what if any would be the substantial loss if stay of execution is not granted. The appellant did not show that the respondents would be unable to refund to him the costs that were awarded to the respondents if his appeal was successful before the Court of Appeal. The appellant also failed to show what prejudice he would suffer if the inquiry before the Chief Magistrate Court proceeded for hearing. As correctly argued by the respondents, the appellant's attempt to stay the inquiry before the Chief Magistrate Court could be an attempt by him to serve the five year term under which he was elected a councillor. That term is due to end in the year 2012. The appellant has continued to hold the elective seat since the year 2007 despite the inquiry that was filed before the Chief Magistrate Court. I find that the Notice of Motion dated 27<sup>th</sup> May 2010 has no merit and is dismissed with costs being awarded to the respondents.

Dated and delivered at Meru this 26<sup>th</sup> day of July 2010.

**MARY KASANGO**  
**JUDGE**