



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Appeal 62”A” of 2010**

AHMED YASSIN1ST APPELLANT
MUSA YASSIN.....2ND APPELLANT

ABDO YASSIN.....3RD APPELLANT
VERSUS

SOFIYA CHELIMO.....1ST RESPONDENT
RUKIYA CHEROGONYI.....2ND RESPONDENT
HALIMA YASSIN.....3RD RESPONDENT
JAMILA YUSUF.....4TH RESPONDENT

RULING

The Appellant has taken out a Notice of Motion under Order XLI Rule 4 and Order XXI Rule 22 (1) of the Civil Procedure Rules praying for temporary orders of stay of proceedings and/or execution of the decree. It is brought on the main ground that unless the orders sought are granted the appeal will be rendered nugatory and the Appellant will suffer irreparable loss and damage.

The Appeal is against the Bill of Costs as taxed by the Kadhi as the same is said to have been taxed without regard to the Law and the relevant facts. Save for the memorandum of Appeal and the Ruling of 21/04/2010 refusing stay of proceedings nothing else was annexed to the application to enable this court decipher the correctness or otherwise of the matters the subject of the appeal.

The court notes that the complaint is that the Bill of costs was taxed wrongly. The main cause was still going on when this appeal was filed. It has not been shown in what way the matters complained of were against law and fact whatever they may be as nothing was annexed. The ground of Appeal that complained of the Bill of costs, schedule of expenses and receipts not being official is bare and nothing was filed or submitted to justify a grant of an order of stay of proceedings. As for the stay of execution for the costs, though actual details/particulars as to how the costs arose are similarly not given, it appears that these were costs that arose due to some event, not explained, that occurred during the proceedings of the Cause before the honourable Kadhi. That Cause is still proceeding and at the end of it costs will be ordered payable by some party. However that is in the future. In the present no material is placed before this court to justify the grant of the orders sought. No decree, which was said to be in the process of being executed, was annexed to the application. The court wonders how there would be a decree and not a certificate of costs in light of what is stated in the Memorandum of Appeal. This court comes to the conclusion that this Notice of Motion was not well thought out and it is devoid of merit. The same is for dismissal in its entirety and it is so dismissed.

It is so ordered.

DATED SIGNED AND DELIVERED AT ELDORET THIS 7TH DAY OF JULY 2010.

P.M.MWILU

JUDGE

IN THE PRESENCE OF

Shibanda - Advocate for Appellant/Applicant

N/A - Advocate for Respondent

Andrew Omwenga - Court clerk

P.M.MWILU
JUDGE