



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

JUDICIAL REVIEW NO. 9 OF 2015

IN THE MATTER OF AN APPLICATION BY JEREMIAH M'NJOGU M'TORUGOJI

AND

IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF MERU MUNICIPALITY BLCOK 11/792 & BLOCK 11/793

JEREMIAH M'NJOGU M'TORUGOJI.....APPLICANT

VERSUS

THE COUNTY GOVERNMENT OF MERU.....1<sup>ST</sup> RESPONDENT

THE HON. ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT

CHARLES KABURU KABARUA .....3<sup>RD</sup> RESPONDENT

EVANGELINE T. ARITHI ..... INTERESTED PARTY

RULING

1. The application dated **19.3.2020** brought under **Order 42 rule 6** seeks the court to first substantiate its judgment delivered on **19.2.2020** and secondly, review costs awarded to the respondents.
2. It is supported by grounds on the face of it and a supporting affidavits sworn by **Jeremiah M'Njogu M'Norugoji** sworn on **19.3.2020** and **11.8.2020** respectively. Through a judgment delivered on **7.2.2020**, this court dismissed the applicant's notice of motion dated **22.6.2015** with costs.
3. **Order 42 rule 6** provides that for a court to grant stay of execution pending appeal it has to be satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay.
4. The applicant herein has not indicated if he has preferred any appeal to the Court of Appeal regarding the aforesaid judgment. He has not stated if there is an impending execution against him and that he is likely to suffer substantial loss unless a stay is granted.
5. The prayers sought are not for stay of execution pending appeal but for the court to substantiate its judgment and review the order for costs. The judgment was self-explanatory. Under the **Black Laws Dictionary 11<sup>th</sup> edition** the word substantiate means “**to establish the existence or truth of fact by competent evidence.**” There can be no doubt the judgment as written is as per **Order 21 of the Civil Procedure Rules**. It is self-explanatory and does not need any further explanation. The court is therefore **functus officio** and cannot offer a simpler version of its decision.
6. Secondly regarding review of costs, Under **Section 27 & 28 of the Civil Procedure Act** costs follow the event. It is the discretion of the court upon delivery of a judgment to determine whether or not to award costs to any party. ***Party of Independent Candidates of Kenya –vs- Mutula Kilonzo & 2 [2013] eKLR 2 Others***, it was held a trial court has judicial discretion to award costs to a successful party unless there are good grounds or cause to withhold costs.

7. There is no material before court to disturb the orders granted. I have not seen any bill of costs for assessment by the respondents in this matter due for taxation and or already taxed and which there is an impending execution.

8. For the above reasons I find the notice of motion dated 19.3.2020 not only premature but lacking merits. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2021**

**In presence of:**

Kieti For 3<sup>rd</sup> Respondent

Nyenyire absent

Court Clerk: Kananu

**HON. C.K. NZILI**

**ELC**

**JUDGE**