



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ELECTION PETITION NO. 3 OF 2017

JONAS MISTO VINCENT KUKO.....PETITIONER/APPLICANT

VERSES

I. E. B .C.....1ST RESPONDENT

STANLEY KIPKORE.....2ND RESPONDENT

HON. CALEB AMISI LUYAL.....3RD RESPONDENT

RULING

1. The Applicant herein **JONAS MISTO VINCENT KUKO** lost the election petition herein and he was slapped with costs. The 3rd Respondent has since then taxed his bill and moved to execute against the Applicant. The Applicant has filed his motion dated 23rd May, 2019 in which he has prayed for the following reliefs:

(a) There be stay of execution pending the determination of this application and the attachment of the proclaimed assets as per the proclamation dated 16th May, 2019.

(b) The Petitioner be allowed to settle part of the decretal sum from the security deposited in court and part from costs to be taxed in Election Petition No.9 of 2013 between DAVID WAFULA, FARAH ABDI IBRAHIM & IEBC which costs were capped at kshs. 1,500,000 against the returning officer and IEBC.

(c) The Petitioner be allowed to settle taxed costs of Kshs. 3,145,700 in monthly instalments of Kshs. 30,000 with effect from 15th September, 2019 till payment in full.

2. The Applicant's supporting affidavit dated the even date indicates that he lost the election petition and he was thus ordered to pay the costs which now totalled Kshs 4,568,082 inclusive of his Counsel's fees. He has not denied the same but all that he is praying is to be allowed to pay the same by instalments.

3. He alleges that his meagre resources cannot allow him to pay in full and that is why he is seeking that he be allowed to pay by instalments.

4. The parties have filed written submissions which the court has perused. All that the 3rd Respondent is stating is that the Applicant has not demonstrated any sufficient cause to warrant the application to be allowed. He said that there is no nexus between this petition and petition no 9 of 2013 since the issues are very different and in any case it was incumbent upon the Applicant to tax that bill separately.

5. The Respondent in essence submits that the proposal is too low in the circumstances noting that the Applicant has not made any effort to settle the decree in any way whatsoever. That he has not demonstrated any substantial loss he stands to suffer should execution be allowed to proceed.

6. Both parties have relied on several authorities in their rival submissions which this court has gladly perused.

7. This question of payment by instalments of money decree was well captured in the old case of **KESHAVJI JETHABHAI & BROS LIMITED V. SALEH ABDULLA (1959) EA 260** where the court stated inter alia the issues to be considered in making any consideration, namely;

(a) Whilst creditor's rights must be considered each case must be considered on its own merit and discretion exercised accordingly.

(b) The mere inability of a debtor to pay in full and once is not sufficient reason for the exercise of the discretion.

(c) The debtor should be required to show his bona fides by arranging prompt payment of a fair proportion.

(d) Hardship of the debtor might be a factor but it is a question in each case whether some indulgence can fairly be given to the debtor without prejudicing the creditor.

8. Having looked at the application it is clear that all that the Applicant is stating is to be allowed to settle the debt by instalments. The afore cited authority lays down the grounds to be considered. The discretion of this court is paramount but the same must be considered taking into totality the attitude taken by the applicant in attempting to settle the decree.

9. In the case at hand, there is no demonstrated effort by the Applicant to settle the same. In fact, between the date of filing this application and the delivery of this ruling there is no evidence that he has attempted to pay the Kshs. 30,000 he has proposed to pay by monthly instalments or at all.

10. The court agrees with the Respondent that the issue of Petition No. 9 of 2013 has no relevance in this case. If at all he was awarded some costs therein, then it was his responsibility to recover from the judgment debtor and not to use this application to aid him. As a matter of fact, he should have done so way before the 2017 general elections if he was serious. Suffice to state that that prayer is hereby denied.

11. The issue of the security deposited being applied is not for this court to decide as the same must have been contained in the judgment of the court and the parties were to comply as directed.

12. This court notes that although the application may not be very meritorious there is some iota of evidence that the Applicant is facing some other decrees which he is yet to settle. Taking the above consideration and the economic hardship generally facing the populace this court shall make the following orders;

(a) The Applicant shall pay to the Respondent a sum of Kshs. 500,000 within 30 days from the date hereof.

(b) The Applicant shall thereafter pay a monthly instalment of kshs. 50,000 per month payable on the 30th day of each month till payment in full.

(c) In default of any instalments, the execution shall issue forthwith for the whole amount.

(d) The Respondent shall have the costs of this application and the auctioneer's charges if any shall be paid by the Applicant which shall be agreed or taxed.

Dated, signed and delivered in open court at Kitale this 10th day of February, 2020.

H. K. CHEMITEI

JUDGE

10/2/2020

In the presence of:-

Parties absent

Court Assistant – Kirong

Ruling delivered in open court.