



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

ELECTION PETITION APPEAL NO. 2 OF 2018

BETWEEN

IBRAHIM ARUNA ARAMADHANI.....APPELLANT

AND

EVANS BWIRE BARASA.....1ST RESPONDENT

THE INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION.....2ND RESPONDENT

RULING

1. Ibrahim Aruna Aramadhani, the appellant/applicant herein, moved the court by way Notice of Motion dated 23rd January 2019. The application was premised on section 1A of the Civil Procedure Act, Order 40 Rule 7 and Order 51 Rule 3 of the Civil Procedure Rules. He is seeking the following orders:

- a. That the application be certified urgent and service be dispensed with at the first instance. (Spent)
- b. That this court be pleased to issue a stay of execution of orders issued herein on 17th October 2018 and all the decrees/orders issued pursuant thereto pending the hearing and determination of this application.
- c. That the applicant be granted leave to pay the 1st respondent's costs of Kshs.283495/= by monthly instalments of Kshs. 10,000/=
- d. That the cost of this application be provided for.

2. The application was based on the following grounds:

- a. That the orders of 17th October 2018 emanated from the costs awarded to the 1st respondent upon the determination of the appeal herein.
- b. That the Applicant is ready and willing to pay the 1st Respondent's costs of Kshs.283,495 through monthly installments of Kshs.10,000/= until completion.
- c. That the applicant's goods were on 18th January 2019 proclaimed by Eshikhoni Auctioneers in execution of the Certificate of Costs issued herein on 17th October 2018.
- d. That unless stay of execution orders are granted the 1st respondent may proceed with execution against the applicant to the detriment of the applicant.
- e. That this application has been made without unreasonable delay.

3. The application was opposed on the following grounds:

- a. That the proposal made is unreasonable.
- b. That the applicant has not undertaken to deposit any security.
- c. That no order of stay can issue on costs.

4. Since the filing of this application which was brought under certificate of urgency, the applicant has not demonstrated any good faith by making any deposit as he had proposed. By the time of reserving the ruling, he could have paid 12 instalments.

5. I do agree with the respondent that his intention was to frustrate the respondent. He did not file and serve his submissions by August 2019 as expected. Six months later, an extension of time was still sought. This surely is not a serious applicant who moved court under certificate of urgency.

6. What is in issue is not a decretal sum arising out of a claim but these are costs incurred by the respondent. I have been urged to find that the proposed monthly instalments of Kshs. 10,000/= to be too low. I agree with the respondent.

7. The court of Appeal in the case of **Francis Kabaa vs. Nancy Wambui and Jane Wanjiru Civil Application No. Nai 298 of 1996 (113/96 UR)** stated the following:

Before us the applicant says that what he wants is a stay of an order that he should pay costs. But this is not really the order of Amin, J was all about. In any case, even if that were so, the appellant, if he succeeds in his appeal, would be refunded his costs. Furthermore, we don't think that stay can be granted in respect of costs. The appellant has also not given any cogent reasons why he should be granted stay.

8. The applicant herein other than describing himself as a peasant farmer has also not given any cogent reasons why he should be granted the orders he is seeking. It would be repugnant and a travesty to justice for the applicant to take the respondent through litigation and then when it comes to costs he claims to be a pauper.

9. From the foregoing analysis of the evidence I find that the application lacks merit and the same is dismissed with costs.

DELIVERED and SIGNED at BUSIA this 8th day of April, 2020

KIARIE WAWERU KIARIE

JUDGE