

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CONSTITUTIONAL PETITION NO. 12 OF 2017

FRANCIS KABURU INGOSI.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

THE ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA.....2ND RESPONDENT

RAMADHAN MUNYASIA.....3RD RESPONDENT

ISAAC WABUKA NABUTO.....4TH RESPONDENT

RULING

1. On 17th January 2020, I delivered a judgment herein, where I dismissed the petition herein. Thereafter, the petitioner filed a Motion, dated 22nd January 2020, seeking stay of execution of the judgment of 17th January 2020.
2. The said Motion came up for hearing several times. It was placed before Njagi J. on 24th January 2020, when it was directed that the application be placed before me for hearing on 9th March 2020. Come 9th March 2020, the advocates for the respondents, that is to say Ms. Omondi and Mr. Namatsi, attended court, but neither the petitioner nor his advocate, Mr. Munyendo, were in court to argue the Motion. The advocates for the respondents applied for its dismissal, which application I granted.
3. This ruling is in respect of a Motion, dated 28th April 2020, that the petitioner has brought, seeking to have the application dated 22nd January 2020 reinstated, together with a stay of execution of the order made on 29th January 2020. The petitioner explained that his advocate did not attend court as he was mourning another advocate who had died, and that he, and other advocates, were involved in funeral arrangements. He further explains that when the matter was called out his advocate was before another court, and his clerk was unable to get another advocate to hold his brief since there were no other advocates present. The advocate showed up in court just after the matter had been called out and the application dismissed. He explained further that his advocate still had the matter mentioned before the Judge, who ordered that no adverse action be taken in the matter. There is a reply to the application, by the 3rd respondent, who avers that the application was designed to merely delay the finalization of the matter before the criminal court.
4. Due to the Covid-19 pandemic, I directed the parties to canvass the application through written submissions. Both sides complied, by filing their respective written submissions, which I have read through and noted the arguments made.
5. The petitioner appears to take two contradictory positions. One, he says that his advocate was mourning a departed colleague, and was planning his burial, and that was why he did not attend court. Two, he says that the advocate was held up in another court. The advocates for the respondents were also bereaved, and mourning the departed. He was also their colleague, yet they still attended court to dispose of their matters first before going out to mourn. These sound that like excuses, and the petitioner is undecided on which of the two inconsistent positions to stick to. I find the explanations given by the petitioner, that his advocate was engaged elsewhere unbelievable, but I shall give him the benefit of the doubt, since his advocate did come to the court shortly after the file had been called out and the application, dated 22nd January 2020, dismissed. He made a quick effort to make good his mistake.
6. Consequently, I do hereby allow the application dated 28th April 2020. The application dated 22nd January 2020 is hereby reinstated, together with the interim orders made on 29th January 2020. Let the petitioner move with speed to have his Motion dated 22nd January 2020 fixed for mention for directions on its disposal. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 3rd DAY OF July 2020

W MUSYOKA

JUDGE