



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**ELECTION PETITION NO. 1 OF 2017**

**MUSA CHERUTICH SIRMA.....PETITIONER/APPLICANT**

**VERSUS**

**THE INDEPENDENT ELECTORAL AND BOUNDARIES**

**COMMISSION (I.E.B.C.....1<sup>ST</sup> RESPONDENT**

**THE ELDAMA RAVINE CONSTITUENCY RETURNING**

**OFFICER (NDIRANGU PETER KURIA).....2<sup>ND</sup> RESPONDENT**

**MOSES LESSONET.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. By Notice of Motion dated 3/1/2019 the Applicant/Petitioner moved the Court for specific orders as follow:

- 1) **THAT** This Honourable Court be pleased to certify this application as urgent and heard on priority basis and service of the same be dispensed with at the first instance.
- 2) **THAT** The Honourable Court be pleased to grant stay of execution and/or of further proceedings herein pending the hearing and determination of this Application.
- 3) **THAT** The Honourable Court be pleased to grant stay of execution and/or of further proceedings herein pending the determination of by Supreme Court in the matter herein in Petition No. 3 of 2018.
- 4) **THAT** costs of this application be provided for.

2. At the time of hearing the Notice of Motion only prayer 3 is live, prayer no. 2 being spent by the very act of hearing of the Motion on 24/1/2019.

3. By its Judgment of 18/1/19, the Supreme Court disallowed the appeal by the applicant from the decision of the Court of Appeal striking out the appeal for the determination of Election Court, as follows:

**c) Reliefs**

**[61]** The above holding disposes of the prayers in the Petition of Appeal that the “appeal be allowed” and “the Ruling and subsequent orders of the Court of Appeal delivered on 31<sup>st</sup> May 2018 be set aside in its entirety”. We have shown why those orders cannot be granted. The prayer for hearing of the Appeal at the Court of Appeal on its merits is a consequential one and it is obvious why it cannot be allowed.

**[62]** Regarding the striking out of the Record of Appeal, once we have found that the Notice of Appeal was properly struck out, no record of appeal can stand.

**d) Costs**

*[63] The only remaining issue at this point is to decide on who is to bear the burden of costs in these proceedings. Ordinarily, costs follow the event. However, in this case, we shall exercise our discretion and direct the parties to bear their own costs (See Jasbir Singh Rai & 3 Others v. Tarlocham Singh Rai & 4 Others SC Petition No. 4 of 2012; [2014] eKLR.)*

4. The Supreme Court's decision above has put the matter to rest and effectively taken away the substratum of the Petitioner's application before this Court by Notice of Motion dated 3/1/19. The same cannot stand, as it is pegged to the pendency of the appeal, which has now been finalized.

5. No orders can therefore issue upon the Notice of Motion herein, which must be adjudged as overtaken by the event of the Supreme Court's final decision on the matter. Accordingly, the Notice of Motion dated 3/1/19 is declined.

6. Following on the prompting of the Supreme Court, there shall be no order as to costs in this application.

*Order accordingly.*

**DATED AND DELIVERED THIS 19<sup>TH</sup> DAY OF FEBRUARY 2019**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

1. M/S Prof. Tom Ojienda & Associates for Petitioner
2. M/S Gordon Ogolla, Kipkoech & Co. Advocates for the 3<sup>rd</sup> Respondent
3. M/S Mirugi Kariuki & Co. Advocates for 1<sup>st</sup> & 2<sup>nd</sup> Respondent