



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

ELECTION PETITION NO. 12 OF 2017

ANDREW TOBOSO ANYANGA.....PETITIONER/APPLICANT

VERSUS

MWALE NICHOLAS SCOTT TINDI1ST RESPONDENT

HABIL NAJENDO BUSHURU2ND RESPONDENT

RETURNING OFFICER (BUTERE CONSTITUENCY)3RD RESPONDENT

THE INDEPENDENT ELECTORAL & .

BOUNDARIES COMMISSION4TH RESPONDENT

RULING

1. The petitioner/applicant has filed a notice of motion dated 23/10/2019 seeking that he be allowed to defray the cost of the suit owing to the 3rd and 4th respondents of Ksh. 749,719/= in monthly instalments of Ksh. 50,000/= . The same was supported by the affidavit of the applicant.
2. The application was opposed by the 3rd and 4th respondents vide the replying affidavit of their advocate **Mr. Mulama Flavian**. Mr. Mulama states in his affidavit that the bill of costs in this matter was taxed in October, 2018. That in the same month they wrote to the applicant's advocates asking for payment but their letters and reminders went unheeded. That the applicant has had 11 months to pay the costs but ignored and/or neglected to do so. That they are opposed to monthly instalments of Ksh. 50,000/= but are amenable to two instalments of Ksh. 374,859.50 otherwise execution should proceed.
3. The application came up for hearing today, the 9/10/19. The advocates for the 3rd and 4th respondents did not turn up. **Mr. Mbaka** holding brief for Amasakha & Co. Advocates for the applicant requested the court to allow the applicant to pay the sum owing in monthly instalments of Ksh. 50,000/=.
4. I have considered the application and the reasons in objection thereto. The applicant has not given any reasons why he should be granted time to pay the sum owing in monthly instalments of Ksh. 50,000/=. He has not told the court what he does for a living. He has not hinted as to whether he has any financial constraints. He has only stated in his affidavit that the notice given to him to pay the sum owing was not reasonable.
5. The costs owing to the respondents have been unpaid for the last one year. The offer to settle the sum owing in a monthly instalments of Ksh. 50,000/= is not reasonable. That will take about 15 months to pay in full.
6. I have considered that the respondents are ready to accept payment in two equal instalments. In the premises I order the applicant to defray the owing sum in two equal instalments of Ksh. 374,859.50 starting on or before the 10/11/19 and ending on 10/12/2019. The respondents are at liberty to proceed with execution in case of the applicant failing to pay any single instalment.

Delivered, dated and signed in open court at Kakamega this 9th day of October, 2019.

J. NJAGI

JUDGE

In the presence of:

Mr. Mbaka holding brief for Amasakha for petitioner/applicant

No appearance for 3rd and 4th respondents

Parties: Petitioner/applicant - absent

3rd and 4th respondents - absent

Court Assistant - George