



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL APPEAL NO. 89 OF 2013**

**PATEL PRABHAKAR.....APPELLANT**

**VERSUS**

**RICHARD CHACHA IMBOSA.....RESPONDENT**

***(An appeal arising from the decision of the Hon. Kendagor, in Kakamega PMCCC No. 521 of 2012)***

**JUDGMENT**

1. The appeal herein was initiated through a memorandum of appeal filed herein on 6<sup>th</sup> August 2013, to challenge a decision that had been made in Kakamega CMCCC No. 521 of 2012, said to have had pitted the appellant against the respondent. I have not seen a record of appeal with respect to the appeal the subject of the memorandum of appeal lodged herein on 6<sup>th</sup> August 2013 and of even date.
2. During the pendency of the said appeal several applications were filed and determined. There is an application that Dulu J determined on 3<sup>rd</sup> April 2014, wherein he declined to grant stay of execution of the decree of the trial court. Another ruling was delivered herein on 6<sup>th</sup> November 2015, by Mrima J, allowing stay of execution of the decree in Kakamega CMCCC No. 521 of 2012, conditioned on deposit of a sum of Kshs. 650, 000.00 in the joint names of counsel on record, within forty-five days. Lastly, there is a ruling dated 8<sup>th</sup> March 2018 delivered by Hon. Khapoya, Senior Resident Magistrate (SRM), wherein he dismissed an application dated 6<sup>th</sup> September 2017, which had sought temporary stay of warrants of arrest.
3. The matter before me can only be described as a litany errors. As stated elsewhere, the appeal herein was filed challenging a decision that had been made in Kakamega CMCCC No. 521 of 2012 by Hon. Kendagor. I have scrupulously ploughed through the record but I have unable to find a record of appeal relating to that decision. What I have seen is a record of appeal relating to a decision made by Hon Khapoya on 8<sup>th</sup> March 2018, not in Kakamega CMCCC No. 521 of 2012, but in this appeal. It would appear, therefore, that I am being invited to determine an appeal within an appeal, which is odd.
4. The parties appeared before me for directions on 17<sup>th</sup> September 2019 and confirmed that they had filed written submissions to dispose of the appeal. The only submissions I have on record are from Anwar & Company, advocates for the appellant, and they are submissions on a memorandum of appeal against a decision by the Deputy Registrar dated 8<sup>th</sup> March 2018. This is a throwback to the appeal within an appeal, which I have referred to in paragraph 3 here above, and which I have stated is an oddity in law. Secondly, the decision on record of that date was by a Senior Resident Magistrate, there is no decision on record by the Deputy Registrar, since the decision the subject of the ill-fated memorandum of appeal was made by a Senior Resident Magistrate. Whether a Senior Resident Magistrate can make orders or deliver rulings in an appeal at the High Court is moot.
5. If a memorandum of appeal was lodged herein, dated 8<sup>th</sup> August 2018, then the same must have been filed in abuse of court process for there is the memorandum of appeal, dated 6<sup>th</sup> August 2013, which originated this cause. There cannot possibly be two memoranda of appeal in the same appeal cause. It would mean that the latter memorandum of appeal was filed in abuse of court process and it should not stand. No steps have been taken since 2013 on the present appeal and I shall presume that it has been abandoned.
6. I shall accordingly strike out the appeal herein with no orders as to costs.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 11<sup>th</sup> DAY OF December, 2019.**

**W. MUSYOKA**

**JUDGE**