



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**PETITION CASE NO. 07 OF 2013**

MARTIN SARAWE WECHULI .....PETITIONER

VERSUS

INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT

BUMULA CONSTITUENCY.....2<sup>ND</sup> RESPONDENT

BONFACE OKHIYA OTSIULA .....3<sup>RD</sup> RESPONDENT

**RULING**

1. The application before court is by way of Notice of Motion dated 16<sup>th</sup> November, 2015 by the 1<sup>st</sup> and 2<sup>nd</sup> respondents seeking to have the security deposited in court be shared equally among the 3 respondents in the sum of Kshs. 166,666/= to each so that the sum of Kshs. 333,332/= would be paid out to the 1<sup>st</sup> and 2<sup>nd</sup> respondents counsel.
2. The application was opposed in part by the 3<sup>rd</sup> respondents by way of a replying affidavit. The objector is to the extent that the 1<sup>st</sup> and 2<sup>nd</sup> respondents employed one counsel, filed one bill of costs and the proposed sharing would prejudice the 3<sup>rd</sup> respondent.
3. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a joint bill of costs dated 17<sup>th</sup> March, 2014. Upon hearing the matter the taxing officer jointly awarded the 1<sup>st</sup> and 2<sup>nd</sup> respondents costs amounting to Kshs. 890, 214/= in total.
4. The 3<sup>rd</sup> respondent equally filed his bill of costs filed on 17<sup>th</sup> April, 2014 and the court awarded him costs of Kshs. 809,558/=.
5. It is not lost to the court that the 2<sup>nd</sup> respondent was an agent of the 1<sup>st</sup> respondent and sued as such.
6. With the above background, I am of the view that the amount being held as security for costs being amounts due to the parties as their costs cannot possibly go to each of the parties in view of the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It would therefore be reasonable to share the sum of kshs. 500,000/- between 1<sup>st</sup> and 2<sup>nd</sup> respondents together and 3<sup>rd</sup> respondent separately for avoidance of doubt the sum of Kshs. 250,000/= to go to the 1<sup>st</sup> and 2<sup>nd</sup> respondents and the other half being Kshs. 250,000/= to go the 3<sup>rd</sup> respondent.

**DATED AND DELIVERED AT BUNGOMA THIS 19<sup>TH</sup> DAY OF JANUARY, 2017.**

**ALI-ARONI**

**JUDGE.**