

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 330 OF 2013

FESTUS LUSEKA.....PLAINTIFF/APPLICANT

VERSUS

REV. FR. CORNELUS BAHATI

RAPHAEL KATAMBANI

GABRIEL MUNYASA.....DEFENDANTS/RESPONDENTS

RULING

This application is dated 4th September 2018 and is brought under order 42 rule 6(1) of the Civil Procedure Rules 2010 of the Civil Procedure Act seeking the following orders;

1. That execution of order for costs be stayed pending the hearing and determination of Court of Appeal Civil Appeal No. 104 of 2018 Kisumu.
2. That costs be in the course.

It is based on following grounds and the supporting affidavit of the plaintiff/applicant and other reasons that the plaintiff has appealed inter alia against the award of costs. The defendants have taxed their bill for costs and are about to carry out execution against the plaintiff/applicant for the costs. Execution for costs will render the plaintiffs appeal against costs nugatory.

The respondent submitted that, this case was dismissed with costs on 1/3/2016. That the plaintiffs' application dated 9/8/2016 seeking to set aside the order of 1/3/2016 was dismissed with costs on 27/6/2018. That they filed the defendants bill of costs dated 3/7/2018 which was on 30/8/2018 by consent taxed at Ksh. 101,625/=. That the execution is solely to recover costs awarded, and an attempt to stay the process is contrary to known principles. That the applicant has not fulfilled the conditions set in order 42 rules 6 (2) of the civil Procedure Rules 2010. That the applicant has not deposited or offered to deposit the amount or any security. That they are able and will be ready to refund Ksh. 101,625 or any amount recovered. That the application is calculated to prejudice them and defeat recovery of costs awarded. That the appeal has no chances of success.

This court has carefully considered the application and the submissions therein. It is not disputed that the costs were taxed by consent. I find that this application is an afterthought and an abuse of the court process. The applicant has not offered any security nor any reason for the appeal. I find this application has no merit and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 21ST DAY OF NOVEMBER 2018.

N.A. MATHEKA

JUDGE