



Association of Muslim Lawyers & another v Governor, County Government of Nairobi & 2 others (Civil Application E448 of 2022) [2023] KECA 545 (KLR) (12 May 2023) (Ruling)

Neutral citation: [2023] KECA 545 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E448 OF 2022
DK MUSINGA, KI LAIBUTA & GWN MACHARIA, JJA
MAY 12, 2023**

BETWEEN

THE ASSOCIATION OF MUSLIM LAWYERS 1ST APPLICANT

THE NUBIAN RIGHTS FORUM 2ND APPLICANT

AND

**THE GOVERNOR, COUNTY GOVERNMENT OF NAIROBI 1ST
RESPONDENT**

COUNTY GOVERNMENT OF NAIROBI 2ND RESPONDENT

SPEAKER, COUNTY ASSEMBLY OF NAIROBI 3RD RESPONDENT

(Being an application for stay of execution of the Ruling and Orders of the Employment & Labour Relations Court at Nairobi (Mwaure, J.) dated 30th November 2022 in ELRC Petition No. E184 of 2022)

RULING

1. The applicant's notice of motion dated December 1, 2022 is brought under the provisions of rule 5 (2)(b) of the Rules of this Court and sections 3 & 3A of the Appellate Jurisdiction Act seeks stay of execution of the ruling and orders of the Employment & Labour Relations Court dated November 30, 2022 in ELRC Petition No E184 of 2022 pending the applicant's intended appeal; and an injunction to restrain the respondents from vetting, approving or appointing, swearing in or taking office of the nominees of the County Executive Committee (CEC) Members, County Secretary and senior advisors of the Governor of Nairobi.
2. At the hearing of this application, Mr Abdiaziz appeared for the applicants while Mr Okatch was present for the 1st and 3rd respondents. Mr Jaoko appeared for the 2nd respondent. When the application was called out, Mr Abdiaziz sought to withdraw it with no orders as to costs on the grounds that the



same had been overtaken by events. The application for withdrawal was not opposed by Mr Okatch, save to note that he prayed for costs. On his part, Mr Jaoko, though not opposed to the withdrawal, left the issue of costs for our determination.

3. The applicants having declared their intention to withdraw their application and there being no objection to the withdrawal, the only issue for our determination is costs.
4. The withdrawal of applications is guided by the provisions of rule 54 of the Rules of this court. An applicant may, at any time, apply to the court for leave to withdraw an application. However, where the issue of costs is contested, the application to withdraw is to be heard by a single judge or by the court if it is raised on the date of the hearing.
5. The application was served upon all the respondents' advocates on December 8, 2022. The 2nd respondent opposed the application through a replying affidavit sworn on December 21, 2022, but filed in Court on January 12, 2023. The registry sent out a hearing notice to the parties on February 3, 2023. Parties were required to file their respective written submissions before the hearing slated for February 20, 2023. Only the 1st and 3rd respondents filed their written submissions on February 19, 2023, a day to the hearing of the application which also happened to be on a Sunday.
6. At the time of making the application for withdrawal, only the 2nd respondent had filed a replying affidavit opposing the application. The 1st and 3rd respondent filed their written submissions on the eve of the hearing of the application. The Court, as well as the opposing counsel, did not have the opportunity to peruse the written submissions.
7. It is trite law that costs follow the event. The Supreme Court in Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR stated thus:

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent- to the actual process of litigation.”

8. Although costs ordinarily follow the event, we are persuaded that the suit that gave rise to the application that was withdrawn was instituted to protect public interest, and not for any personal benefit of the applicant. In the circumstances, the ends of justice would be better served if we decline to award costs to the respondents. Accordingly, we order that each party bears its own costs.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY MAY., 2023.

D. K. MUSINGA, (P).

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

