



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

PETITION NO.E 041 OF 2021

DR.MAGARE GIKENYI J. BENJAMIN.....PETITIONER

VERSUS

INDEPENDENT ELECTORAL COMMITTEE (IEC),

KENYA MEDICAL PRACTITIONERS, PHARMACISTS

AND DENTISTS' UNION (KMPDU)1ST RESPONDENT

KENYA MEDICAL PRACTITIONERS, PHARMACISTS

AND DENTISTS' UNION (KMPDU).....2ND RESPONDENT

REGISTRAR OF TRADE UNIONS.....3RD RESPONDENT

DR.MOUNDE MOKAYA ISIAH.....4TH RESPONDENT

DR.OSCAR NYAMU.....5TH RESPONDENT

DR.PAULINE KIPROP.....6TH RESPONDENT

DR.DAVIS OMBUI7TH RESPONDENT

DR.EVELYNN CHEGE.....8TH RESPONDENT

DR.MWACHONDA CHIBANZI9TH RESPONDENT

DR.OROKO SAMUEL OBEGI10TH RESPONDENT

DR.DAISY KORIR11TH RESPONDENT

DR.TITUS ONDORO12TH RESPONDENT

DR.ALLAN OCHANJI ALDOH.....13TH RESPONDENT

DR.WESLEY OOGA.....14TH RESPONDENT

DR.DENNIS MISKELLAH.....15TH RESPONDENT

DR.MOGENI RICHARD16TH RESPONDENT

DR.BRIAN AYARA17TH RESPONDENT

DR.FRANK OKADA.....18TH RESPONDENT

DR.ALEX MUTURI.....19TH RESPONDENT

AND

DR.KAHURA MUNDIA.....1ST INTERESTED PARTY

DR.KAUGIRIA THURANIRA.....2ND INTERESTED PARTY

DR.DAVJI BHIMJI ATELLAH.....3RD INTERESTED PARTY

DR.KEVIN DAN OSURI.....4TH INTERESTED PARTY

DR.ABDAN MWACHI5TH INTERESTED PARTY

DR.HARVEY MULEI6TH INTERESTED PARTY

DR.MERCY NABWIRE.....7TH INTERESTED PARTY

DR.CAREY FRANCIS)8TH INTERESTED PARTY

DR.TIM THEURI9TH INTERESTED PARTY

DR.LOLLAH MOLLA10TH INTERESTED PARTY

DR.GOR GOODY.....11TH INTERESTED PARTY

DR.DANIEL JOE BIRUNDU.....12TH INTERESTED PARTY

DR.ANBAR GANATRA.....13TH INTERESTED PARTY

DR.BENJAMIN INDUSWE.....14TH INTERESTED PARTY

DR.AHMED KASAY.....15TH INTERESTED PARTY

DR.WAKENYA NABISWA.....16TH INTERESTED PARTY

DR.KAMONZI MULEI.....17TH INTERESTED PARTY

DR.OUMA FREDRICK OLUGA.....18TH INTERESTED PARTY

RULING

The petitioner filed his application dated 26th July, 2021 seeking for orders that;

That an order suspending/staying the execution of taxation costs/bill of costs pending hearing and determination of Court of Appeal Application (CAC) No.364 of 2021 at Nairobi.

The application is supported by the affidavit of the petitioner and on the grounds that on 25th September, 2020 the Registrar of Trade Union issued notice calling for elections in trade unions and the petitioner being a member of the 1st respondent, KMPDU called for consultations so as to protect members rights with regard to the elections. On 24th March, 2021 the petitioner filed application and the petition herein and on 28th April, 2021 there was ruling without hearing the petition and directed the petitioner to pay costs.

Aggrieved, the petitioner filed Appeal No.364 of 2021 to the Court of Appeal.

Other grounds in support of the application are that the respondent made application for taxation of costs for Ksh.707,125 where parties have filed written submissions and thus seek stay of execution of the taxation of costs pending hearing of the appeal. If stay is not allowed, attachment may proceed before the appeal is heard and determined.

In reply, the respondent filed Grounds of opposition on the reasons that the application does not lie in law and is in abuse of court process as it is made too late in the day as taxation has progressed and matter pending ruling. That there is no appeal which has been filed or served upon the respondent and the application should be dismissed with costs.

The matter came up for hearing on 21st September, 2021 and only the respondent attended. In the absence of the petitioner, the respondent applied that the application be dismissed with costs.

Determination

On 6th July, 2021 parties attended before the Deputy Registrar for the taxation of the respondent's Bill of Costs at which point the petitioner had filed a Notice of Appeal.

The Deputy Registrar noted there was no stay and directed parties to file written submissions on the filed bill of costs.

The petitioner filed the instant application on 26th July, 2021. The prayer seeking suspension/stay of taxation which had effectively taken off. Save for the Notice of Appeal, *Record of Appeal* Civil Appeal No.364 of 2021 Nairobi is not indicated when this was filed. There is no other record attached as to the nature of the appeal. There is no court stamp as to which registry this is posted.

Save for the above, the suspension/stay of taxation sought is overtaken by events. Such process has taken off and to stop such process will not arrest any other matter with regard to the referenced ruling delivered herein on 28th April, 2021 and the decree thereof dated 9th July, 2021.

The orders sought for stay of taxation on their own will not stop the execution of the decree as it stands.

Even where the court were to issue stay of execution pending determination of an appeal, the instant application cannot be fitted within the dictates of Order 42 Rule 6 of the Civil Procedure Act and the Rules thereto.

The discretion given to the court must be exercised on facts and reasons founded on law or crystalized principles of law. the facts as presented by the petitioner do not invite such discretion.

Accordingly, application dated 26th July, 2021 is found without merit and is hereby dismissed with costs.

DELIVERED IN COURT AT NAIROBI THIS 27TH DAY OF SEPTEMBER, 2021.

M. MBAR

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: OKODOI

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