



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mahamud v Mohamed & 3 others (Application
6 of 2018) [2018] KESC 47 (KLR) (3 May 2018) (Order)**

Mohamed Abdi Mahamud v Ahmed Abdullahi Mohamed & 3 others [2018] eKLR

Neutral citation: [2018] KESC 47 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA**

APPLICATION 6 OF 2018

DK MARAGA, CJ, PM MWILU, DCJ & V-P, MK IBRAHIM, JB OJWANG & I LENAOLA, SCJJ

MAY 3, 2018

BETWEEN

MOHAMED ABDI MAHAMUD APPELLANT

AND

AHMED ABDULLAHI MOHAMED 1ST RESPONDENT

AHMED MUHUMED ABDI 2ND RESPONDENT

GICHOHI GATUMA PATRICK 3RD RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 4TH
RESPONDENT**

*(Appeal from the Judgment and decree of the Court of Appeal at Nairobi by Hon. Justice
Phillip Waki, Hon. Justice Patrick Kiage and Hon. Justice Makhandia dated 20 April 2018)*

Supreme Court issues an order of stay to preserve the subject matter of the appeal.

The Supreme Court issued an order staying all actions bearing on the occupancy of the office of the Governor of Wajir County for purposes of ensuring that the matter was heard before the court and to preserve the integrity of the findings and orders of the court.

Reported by Felix Okiri

Jurisdiction - appellate jurisdiction - appellate jurisdiction of the Supreme Court - application for order of stay – whether the court could issue an order of stay on all actions bearing on the occupancy of the Governor’s office on account of the Applicant’s apprehension of vacancy on the said office.

Brief facts

The applicant filed an appeal from the judgment and decree of the Court of Appeal at Nairobi. The applicant’s counsel had filed a certificate of urgency, supported by the affidavit of the sitting Governor of Wajir County. It



was averred that the Governor's office was destined to fall vacant and to be occupied by the holder of the Office of Speaker on account of delay in hearing the applicant's case on the merits and disposing of it.

Issues

Whether the Court could issue an order of stay on all actions bearing on the occupancy of the Wajir County Governor's Office on account of the applicant's apprehension of vacancy on the said office.

Held

1. While the appeal awaited hearing, there was an urgent situation affecting the Office of Governor of Wajir County. In order to secure the slated hearing before the Supreme Court, and to sustain the integrity of such finding and orders as the Supreme Court could ultimately make, it was essential to preserve the subject matter of the appeal.

Application allowed.

Orders

1. *An order of stay issued staying all actions bearing on the occupancy of the Governor's office.*
2. *The status quo was not to be disturbed pending the hearing and determination of the matter pending before the Supreme Court.*

Citations

Statutes

None referred to

Advocates

None mentioned

ORDER

1. While the appeal awaits hearing, there is an urgent situation affecting the Office of Governor of Wajir County. The applicant's counsel has filed a certificate of urgency, supported by the affidavit of Mohamed Abdi Mohamad, the sitting Governor of Wajir County, dated 23rd April, 2018. It is averred that the Governor's office is destined to fall vacant and to be occupied by the holder of the Office of Speaker, on account of delay in hearing the applicant's case on the merits and disposing of it.
2. In order to secure the forthcoming hearing before the Supreme Court, and to sustain the integrity of such finding and Orders as the Supreme Court may ultimately make, it is essential to preserve the subject matter of the appeal.
3. Accordingly, we hereby make this order staying any and all actions bearing on the occupancy of the Governor's office. The status quo shall not be disturbed pending the hearing and determination of the matter pending before the Supreme Court.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF MAY, 2018

.....

D.K. MARAGA

CHIEF JUSTICE/PRESIDENT OF THE SUPREME COURT

.....

P.M. MWILU



DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

.....

M.K. IBRAHIM

JUSTICE OF THE SUPREME COURT

.....

J.B. OJWANG

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

