



**Mutua v Independent Electoral and Boundaries Commission & 3 others  
(Civil Application 13 of 2018) [2018] KESC 43 (KLR) (26 June 2018) (Order)**

*Alfred Nganga Mutua v Independent Electoral and Boundaries Commission & 3 others [2018] eKLR*

Neutral citation: [2018] KESC 43 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
CIVIL APPLICATION 13 OF 2018**

**DK MARAGA, CJ, PM MWILU, DCJ & V-P, MK  
IBRAHIM, JB OJWANG & NS NDUNGU, SCJJ**

**JUNE 26, 2018**

**BETWEEN**

**ALFRED NGANGA MUTUA ..... APPELLANT**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 1<sup>ST</sup>  
RESPONDENT**

**MACHAKOS COUNTY RETURNING OFFICER ..... 2<sup>ND</sup> RESPONDENT**

**WAVINYA NDETI ..... 3<sup>RD</sup> RESPONDENT**

**PETER MATHUKI ..... 4<sup>TH</sup> RESPONDENT**

**Court grants stay of execution of the judgment nullifying the Machakos gubernatorial elections pending hearing and determination of an appeal challenging the said judgment**

*Court grants stay of execution of the judgment nullifying the Machakos gubernatorial elections pending hearing and determination of an appeal challenging the said judgment.*

Reported by Kakai Toili

***Civil Practice and Procedure*** – orders – stay orders – where an applicant sought stay of a judgment nullifying his election - whether the applicant was entitled to a stay of execution of the judgment nullifying the Machakos gubernatorial elections pending hearing and determination of an appeal challenging the said judgment

**Brief facts**

The applicant filed the instant application seeking orders that a stay of execution against the Judgment and Decree delivered on June 8, 2018, that the 1<sup>st</sup> respondent be restrained from certifying the gubernatorial seat of Machakos County vacant pending the hearing and determination of the appeal, that the Speaker of the County Assembly of Machakos be restrained from assuming office as the Governor of Machakos County pending



the hearing and determination of the appeal and that the 1<sup>st</sup> respondent be restrained from announcing or conducting gubernatorial elections in Machakos County pending the hearing and determination of the appeal among other orders.

### **Issues**

Whether the applicant was entitled to a stay of execution of the judgment nullifying the Machakos gubernatorial elections pending hearing and determination of an appeal challenging the said judgment.

### **Held**

1. The subsequent determination of the case by the Supreme Court was not to be prejudiced to uphold the authority of the court and to secure ends of justice.

*Application allowed*

### **Orders**

- i. *A stay of execution issued against the Judgment and Decree of June 8, 2018 pending the hearing and determination of the case.*
- ii. *A conservatory order issued restraining the 1<sup>st</sup> Respondent from certifying the gubernatorial seat of Machakos County vacant pending the hearing and determination of the appeal.*
- iii. *A conservatory order issued against the Speaker of the County Assembly of Machakos County, from assuming the office of Governor of that County, pending the hearing and determination of the appeal.*
- iv. *A conservatory order issued restraining the 1<sup>st</sup> Respondent from announcing or conducting gubernatorial elections in Machakos County pending the hearing and determination of the appeal.*
- v. *Costs of the application to abide the disposal of the main cause.*

### **Citations**

#### **Statutes**

None referred to

#### **Advocates**

None mentioned

## **ORDER**

- [1]. Lying before the Supreme Court is the applicant's Petition of Appeal, dated 21 June 2018 and filed on 22 June 2018. The applicant has filed a Certificate of Urgency dated 11 June 2018, lodged in Court on 12 June 2018, the same supported by his affidavit of 11 June 2018.
- [2]. Accompanying the Certificate of Urgency is a Notice of Motion application of even date, as follows:
  1. ....
  - "2. That there be a stay of execution against the Judgement and Decree delivered on 8 June 2018 pending inter partes hearing and final determination....
  - "3. That a conservatory Order do issue restraining the 1<sup>st</sup> Respondent from certifying the gubernatorial seat of Machakos County vacant pending the hearing and determination of the appeal.
  - "4. That a conservatory Order do issue against the Speaker of the County Assembly of Machakos... assuming office as the Governor of Machakos County pending the hearing and determination of the appeal.



“5. THAT a conservatory Order do issue restraining the 1<sup>st</sup> Respondent from announcing or conducting gubernatorial elections in Machakos County pending the hearing and determination of the appeal.”

[3]. The foregoing contentions are substantiated in the applicant’s detailed supporting affidavit of 11 June 2018, as well by a further affidavit of 14 June 2018 and written submissions of his counsel, of even date. The applicant also filed a list of authorities on 18 June 2018, in support of his application.

[4]. The respondents too have filed their replying affidavit (on 21 June 2018) as well as written submissions, and a bundle of authorities.

[5]. A consideration of all such material lodged in Court has led us to take certain positions at this preliminary stage.

[6]. In these circumstances, we hold that the subsequent determination of the case by this Court, must not be prejudiced – to uphold the authority of the Court, and to secure ends of justice.

[7]. We have decided and now issue Orders as follows:

(a) There shall be a stay of execution against the Judgment and Decree of 8 June 2018 pending the hearing and determination of the case.

(b) We hereby issue a conservatory Order restraining the 1<sup>st</sup> Respondent from certifying the gubernatorial seat of Machakos County vacant pending the hearing and determination of the appeal.

(c) We also issue a conservatory Order against the Speaker of the County Assembly of Machakos County, from assuming the office of Governor of that County, pending the hearing and determination of the appeal.

(d) We likewise issue a conservatory Order restraining the 1<sup>st</sup> Respondent from announcing or conducting gubernatorial elections in Machakos County pending the hearing and determination of the appeal.

[8]. The costs of this application shall abide the disposal of the main cause.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE, 2018**

.....

**D.K. MARAGA P.M. MWILU**

**CHIEF JUSTICE/PRESIDENT DEPUTY CHIEF JUSTICE/VICE PRESIDENT  
OF THE SUPREME COURT OF THE SUPREME COURT**

.....

**M.K. IBRAHIM J.B. OJWANG**

**JUSTICE OF THE SUPREME COURT JUSTICE OF THE SUPREME COURT**

.....

**NJOKI NDUNGU**

**JUSTICE OF THE SUPREME COURT**



I certify that this is a true copy of the original

**REGISTRAR,**

**SUPREME COURT OF KENYA**

