



REPUBLIC OF KENYA



**Jomo Kenyatta University of Agriculture and Technology v Mugo & 2 others
(Civil Appeal E091 of 2024) [2024] KEHC 9296 (KLR) (30 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9296 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E091 OF 2024
FN MUCHEMI, J
JULY 30, 2024**

BETWEEN

**JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND
TECHNOLOGY APPELLANT**

AND

CECILIA NYAMBURA MUGO 1ST RESPONDENT

FRANCIS GACHUNGA WAMBURU 2ND RESPONDENT

CHRISTOPHER NGERA 3RD RESPONDENT

RULING

1. The applicant filed an application seeking for stay of execution pending appeal. The application dated 8th May 2024 was filed under certificate of urgency. The court gave interim orders for stay and directed the applicant do deposit half of the decretal amount in court within 45 days and in default, the orders were to be vacated.
2. The applicant filed a 2nd application under certificate of urgency dated 26th June 2024 seeking for review of the orders made in the first application. The court directed that the two applications be heard together and that directions be taken on 17/06/2024.
3. On 17/06/2024, the matter came for mention before the Deputy Registrar of this court and a mention date for taking directing before this court was given. On the said dated 25/07/2024, the counsel for the applicant informally presented his application based on fact that it was very urgent and that it would be overtake by events if not heard and determined before the vacation commenced on 01/08/2024.
4. The counsel Mukele submitted that he was representing the applicant Jomo Kenyatta (Universtiy of Agriculture and Technology (JKUAT) which organization is currently facing financial constraints and



- could not afford to deposit KSh.10 million which was half of the decretal amount. He added that the position is not likely to improve soon until the new students are admitted in August this year.
5. Mr. Mukele offered a bank guarantee of KSh.3000,000/= which his client could afford given the balances in the applicant's bank account and on which the bank guarantee would be based, should the court allow their prayer for review.
 6. The respondent had already filed grounds of opposition opposing the review of the initial orders. Ms Muthungu who held brief for Mr. Kimathi for the respondent opposed the application saying the propose of the bank guarantee would be unfair to the respondent if allowed. She urged the court to raise the bank guarantee to KSh.10,000,000/= should it grant the orders for review.
 7. It is noted that the applicant filed the auditor's report of the applicant which reflects the dire financial position the applicant is in at the moment. It was also mentioned that the Government may take to allocate funds to the University which makes the applicant unable to raise the bank guarantee to KSh.10,000,000/=.
 8. I have considered the arguments of the parties in this application for review.
 9. Orders of the Civil Procedure Rule requires that new evidence be produced in an application for review. The applicant relies on the dire financial state of the applicant at the moment and which may take time to improve. At the time, the first application was received in court and interim orders given, the information of the financial state of the applicant was not known. The court granted interim orders upon considering the material before it. The applicant may not have known what to expect in form the security to be deposited, It is after the initial orders were granted that the application for review was brought.
 10. I have considered the material before me and appreciated that the applicant is entitled to his right of appeal. If the terms of deposit become unaffordable, this right will have to be forfeited or lost. As for the respondent, the security deposited upon grant of orders for stay secures the costs that may be incurred in the appeal. Moreover, the respondent has a judgment that is quite substantial whose execution is likely to be delayed due to the process of preparing the appeal for hearing and finally, for the court to hear and determine the appeal. This court must therefore balance the rights of the parties in granting orders for stay and the conditions to be set thereof.
 11. I come to a conclusion that this application for review should be allowed on terms that will not be oppressive to any of the parties.
 12. I hereby allow the application for review dated 26th June 2024 and the initial application for stay of execution in the following terms: -
 - (a) That stay is hereby granted pending appeal.
 - (b) That the applicant do deposit a bank guarantee of Kshs.5,000,000/= within 30 days.
 - (c) That in default of the deposit order these stay orders to stand vacated.
 - (d) That the appellant do file the record of appeal within 45 days.
 - (e) That the registry do call for the original file within 30 days.
 - (f) Mention for directions on 14th October 2024.
 13. It is hereby so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY OF
JULY 2024.**

F. MUCHEMI

JUDGE

