



REPUBLIC OF KENYA



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

Bungoma County Government & 2 others v Mangoli & 2 others (Civil Appeal 87 of 2020) [2022] KEHC 3329 (KLR) (30 June 2022) (Ruling)

Neutral citation: [2022] KEHC 3329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL 87 OF 2020**

SN RIECHI, J

JUNE 30, 2022

BETWEEN

**BUNGOMA COUNTY GOVERNMENT 1ST APPLICANT
COUNTY SECRETARY 2ND APPLICANT
HEAD OF PUBLIC SERVICE 3RD APPLICANT**

AND

**ZIPPORAH NANJALA MANGOLI 1ST RESPONDENT
PATRICIA WANJIKU MAINA 2ND RESPONDENT
MAXMA & ZZ ENTERPRENEURS BUILDING & GENERAL
CONTRACTOR 3RD RESPONDENT**

RULING

1. This ruling is in respect of the Notice of Motion application dated 11/2/2021 brought under the provisions of Order 42 Rule 6 and 8 of the [Civil Procedure Rules](#) 2010 in which the applicants pray for the following orders;
 1. There be an order of stay of execution of the ruling made on 25/8/ 2020 in the subordinate court vide Bungoma CMCC No. 31 of 2017 pending the hearing and determination of the application inter-parties.
 2. There be an order of stay of execution of the ruling made on 25/8/2020 in the subordinate court in Bungoma CMCC No. 31 of 2017 pending the hearing and determination of the appeal herein.
 3. Costs of the application.



2. The application is predicated on the grounds in the face of the moiton and supported by the sworn affidavit of Cyril S. Wanyong'o the first appellant's attorney who depones that this court made an order on 30/10/2020 staying the execution of the decree and ordered the appeal to be heard and determined within 90 days. That upon the lapse of the 90 days, the proceedings in the lower court were not ready after applying and paying for them on 27/8/2020 and despite several follow-ups by the appellant's counsel, they have not secured the same.
3. He depones that on 27/1/2021, a registry staff informed the appellants' counsel that the proceedings were awaiting proof reading and therefore the delay in preparing and compiling the record of appeal was occasioned by factors beyond their control.
4. The application is opposed through the 1st respondent's affidavit who depones that the application lacks merit since a period of 90 days was sufficient for the applicants to obtain proceedings and secondly that the applicants have not shown how the appeal will be rendered nugatory if the orders sought are declined. The application was disposed of by way of written submissions. Both parties complied, the same is on record and have been considered.
5. The sole issue for determination in this application is whether the applicants have met the threshold for a grant of the orders sought. It is common ground that this court gave orders on 30/10/2020 giving the appellant 90 days to have the appeal heard and determined. From the instant application it is discernible that the 90-days period lapsed on or about 30/1/2021 which time the applicant depones they had not obtained certified proceedings from the trial court's registry.
6. Having perused this file, I note that the applicants filed their Record of Appeal on 23/2/2021. To this end and in the interest of justice, the applicants have demonstrated to the satisfaction of the court the circumstances leading up to the delay to comply with the orders.
7. The 90 days having lapsed before the appeal could be determined, the following orders issue;
 1. The 90-days period given on 30/10/2020 is hereby extended for a further 60 days from the date hereof when the appeal should have been heard and determined failure of which the appeal shall stand dismissed and execution to proceed.
 2. Costs of the application shall abide the outcome of the appeal.

DATED AT BUNGOMA THIS 30TH DAY OF JUNE, 2022

S.N. RIECHI

JUDGE

