



Republic v The County Executive Committee Member, Finance , Economic Planning & ICT County Government of Meru & another; Mithika (Interested Party); Kimani (Exparte) (Judicial Review E005 of 2021) [2022] KEHC 12535 (KLR) (28 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12535 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
JUDICIAL REVIEW E005 OF 2021
EM MURIITHI, J
JULY 28, 2022**

BETWEEN

REPUBLIC APPLICANT

AND

**THE COUNTY EXECUTIVE COMMITTEE MEMBER, FINANCE , ECONOMIC
PLANNING & ICT COUNTY GOVERNMENT OF MERU 1ST RESPONDENT
THE CHI OFFICER, FINANCE ECONOMIC PLANNING & ICT, COUNTY
GOVERNMENT OF MERU 2ND RESPONDENT**

AND

JOHN MITHIKA INTERESTED PARTY

AND

DAVID KINYUA KIMANI EXPARTE

RULING

1. The court has considered the respondent’s application dated 18/5/2022 seeking the stay of warrants of arrest in execution against the respondents for failure to pay the decretal sum as ordered by the order of mandamus herein, together with the oral submissions of counsel for the parties thereon, and observed as follows:
 1. Judgment in the trial court Maua CMCC No 15B of 2013 was delivered on October 23, 2018.
 2. The order for mandamus in this judicial review proceedings was issued on November 15, 2021.
 3. Memorandum of appeal from the judgment dated October 23, 2018 was filed on December 16, 2021.



4. Memorandum of appeal is required to be filed with 30 days from the date of judgment or order appealed from in accordance with section 79G of the [Civil procedure Act](#) which provides as follows:

“79G. Time for filing appeals from subordinate courts

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

[Act No 10 of 1969, Sch.]”

5. Appeal to the High Court is by filing a memorandum of appeal in accordance with order 42 rule 1 (1) of the [Civil Procedure Rules](#) as follows:

“Form of appeal [order 42, rule 1.]

Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.”

6. The memorandum of appeal in this case was 3 years after the judgement appealed from and no extension of time or leave to appeal out of time has, to the knowledge of this court, been sought and obtained today.
 1. It is clear that the applicant’s appeal and the present application are only brought to counter the execution of the valid orders of the trial court and members by this court. There being no valid appeal before any court at this point, there is no substratum upon which the orders for stay sought herein can be granted.
 2. Moreover, the judicial review proceedings herein are at an end and only execution of the order for mandamus remain. There is no appeal from the court’s order granting he order of mandamus to found an application for stay pending appeal.

Conclusion

4. The application is without merit. However, in recognition of the applicants public office the court shall grant them opportunity to pay before the execution may be due, in accordance with the warrants already served by the ex-parte applicant.
5. The court considers that a period of further 14 days is sufficient for the applicants to make arrangements for the payment of the decretal amount herein.

Orders

6. Accordingly for the reasons set out above the court shall in the interests of justice order a stay of warrants of arrest herein issued for a period of fourteen (14) days only to allow the respondents to make arrangements for the payment of the decretal amount.



7. In the default of payment of the decretal sum, costs and interest accrued herein, the order for stay shall lapse and be of no effect.

order accordingly

DATED AND DELIVERED THIS 28TH DAY OF JULY 2022.

EDWARD M. MURIITHI

JUDGE

APPEARANCES

Ms. Ungu Advocate for the Ex Parte applicant.

Mr. Kiruai Advocate for the Respondents/applicants.

