



REPUBLIC OF KENYA



**Mbugua v Nursing Council of Kenya (Civil Appeal E390 of 2022)  
[2022] KEHC 14495 (KLR) (Civ) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14495 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E390 OF 2022**

**JN NJAGI, J  
OCTOBER 26, 2022**

**BETWEEN**

**GEORGE MBUGUA ..... APPLICANT**

**AND**

**NURSING COUNCIL OF KENYA ..... RESPONDENT**

**RULING**

1. The Appellant/Applicant has filed a Notice of Motion dated June 13, 2022 seeking for stay of execution of the order and or decision of the respondent made on May 10, 2022 and all consequential orders arising therefrom in inquiry into the alleged malpractice at Sipili Maternity and Nursing Home pending the hearing and determination of the appeal filed herein.
2. The application is based on grounds on the face of the application and supported by the affidavit of the applicant. The applicant states that he is a member of the respondent. That on the February 25, 2022 he appeared before the disciplinary committee of the respondent on allegations of professional misconduct. That the respondent on the 10/5/2022 delivered a ruling in which they ordered the suspension of the applicant for a period of two years. He subsequently filed an appeal against the ruling. He contends that the appeal raises triable issues and has good chances of success. He states that if stay of execution of the order is not granted pending the hearing and determination of the appeal, the appeal if successful will be rendered nugatory. That he will suffer substantial loss as the respondent will execute the ruling/order by suspending and removing him from the Respondent's Register of professionals thereby halting his practice which is his only source of earning a living. That the execution thereof will expose him to payment of practice licence penalties for every month of unpaid annual licence fee and penalty charges. He urged the court to grant the prayers sought.
3. The application was opposed by the Respondent vide the replying affidavit of its Director of Legal Services, Caroline Muchina, wherein she deposes that there is no positive order in the ruling delivered



by the respondent that is capable of being enforced. That the law is that where there is no order capable of enforcement, an application for stay of execution is ineffective. That the dismissal of the application will not adversely affect his appeal nor render it nugatory. That the applicant is not entitled to any of the remedies that he is seeking.

4. I have considered the application, the pleadings, the grounds in support thereof and the grounds in opposition thereto. The application is made pursuant to Order 42 Rule 6 of the Civil Procedure Rules. Under that rule an applicant for stay of execution pending appeal has to satisfy the court that:
  - (1) Substantial loss may result to him/her unless the order is made;
  - (2) The application has been made without unreasonable delay; and
  - (3) The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
5. The ruling in the matter was delivered on 10/5/2022 and the instant application was filed on 13/6/2022 which was within a month of the delivery of the ruling. The application was thus filed without delay. This condition has therefore been met.
6. The orders the respondent made against the applicant were the suspension of the application for a period of 2 years and payment of a fine of Ksh.35,625/= within 6 months of the ruling in default of which his practicing certificate would be suspended for a further period of 2 years. Suspension of the Applicant from being a member of the Nursing Council and suspension of his licence are positive orders capable of being enforced by the Respondent. The argument by the respondent that there are no positive orders capable of being enforced is not correct. I find that the applicant will suffer substantial loss if the stated orders are enforced before the hearing and determination of the appeal as the applicant will be unable to run his practice pending the pendency of the appeal. The condition for substantial loss has been met.
7. The third condition is for security. The applicant has not offered any security. He has however stated in his application that he is ready and willing to abide by any terms that this court may deem just. I deem it fair and just that the Applicant should deposit into court the sum of Ksh.35,625/= to act as security for the fine, which amount will be released to the respondent in the event that the appeal is unsuccessful.
8. The upshot is that the application for stay of execution is granted on condition that the applicant deposits the stated sum into court within one month from the date hereof, failure to which the stay orders will stand vacated.
9. The costs of the application to abide by the outcome of the appeal.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26<sup>TH</sup> DAY OF OCTOBER 2022.**

**J. NYAGA NJAGI**

**JUDGE**

**In the presence of:**

Mr. Wangai for Applicant

Mr. Muturi holding brief Mr. Abuo for Respondent

Court Assistant Miss Mumo

30 days R/A

