



REPUBLIC OF KENYA



KENYA LAW
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**Rumba & another v Anyango (Civil Appeal E046 of 2024)
[2025] KEHC 3463 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E046 OF 2024
WM MUSYOKA, J
MARCH 21, 2025**

BETWEEN

**PHILIP RUMBA, PRINCIPAL, BOM, BUJWANGA SECONDARY
SCHOOL 1ST APPELLANT**

**BOARD OF MANAGEMENT, BUJWANGA SECONDARY SCHOOL 2ND
APPELLANT**

AND

CAROLYNE ANYANGO RESPONDENT

*(Being an appeal from the judgement of Hon. Kassim Akida, in
Busia SCCC No. E047 of 2024, delivered on 2nd September 2024)*

RULING

1. I am called upon to determine an application, dated 9th September 2024. It seeks stay of execution and enforcement of a judgement delivered in Busia SCCC No. E047 of 2024, on 9th September 2024, pending the hearing and determination of the appeal herein, among other orders.
2. The affidavit, sworn in support, is by Philip Rumba, the Principal and Secretary of the Board of Management of the Bujwanga Secondary School, hereafter the School, on 9th September 2024. He avers that judgement was not delivered in open court, and, therefore, there was no opportunity to apply orally for temporary stay pending appeal. He states that the 2nd respondent has since sought execution of the decree. He argues that the School is a government entity, hence it ought not be required to deposit the decretal amount in court. He further argues that the proclamation is illegal, as it is based on a decree that has since been set aside. He submits that the respondent should have sought execution in accordance with the *Government Proceedings Act*, Cap 40, Laws of Kenya. He further argues that the execution would disrupt and paralyse the operations of the School.



3. The reaction, to the application, is in the form of grounds of opposition, dated 23rd September 2024. The respondent avers that the application is frivolous, vexatious and an abuse of the court process, as no security for costs had been deposited, contrary to Order 42 rule 14 of the Civil Procedure Rules; it has not been demonstrated that the appeal has chances of success; and there is bad faith, designed to prolong the matter; and an order ought to be made for deposit of the decretal amount in court.
4. Directions were made, on 14th October 2024, for canvassing of the application by way of written submissions. Both sides have complied.
5. The applicants argue that stay is granted based on Order 42 rule 6 of the Civil Procedure Rules, which emphasises substantial loss and furnishing of security. They cite *Butt vs. Rent Restriction Tribunal [1979] eKLR (Madan, Wambuzi & Law, JJA)*, to submit that stay should be granted or denied in such a way as not to prevent an appeal. They submit that they have satisfied the requirements of Order 42 rule 6 of the Civil Procedure Rules, and that the memorandum of appeal filed discloses an arguable appeal. There are also the arguments that the respondent has not demonstrated that she was a person of means, and that a public school is a government institution, in respect of which no security should be furnished, according to Order 42 rule 8 of the Civil Procedure Rules. They cite *Board of Management St. Catherine Nangina Girls Secondary School & another vs. Egesa & another (suing as administrator and next friend of Pauline Apiyo Ouma [2024] KEHC 5620 (KLR)(Musyoka, J))*.
6. The respondent submits that the application is not properly founded on Order 42 rule 6 and 14 of the Civil Procedure Rules, going by the way it is framed. It is submitted that the overriding consideration should be whether grant of stay would be in the interest of justice or would serve the ends of justice. The respondent cites *Global Tours and Travels Limited WC No. 43 of 2000 UR (Ringera, J)* and *Waweru Wanguru vs. Kamau Kama [1988] 1 KAR 780*. It is argued that the application is couched in a language which brings it within the mould of the stay applications meant to be filed at subordinate courts.
7. The impugned judgement was delivered on 2nd September 2022. It is not clear when the memorandum of appeal herein was filed, but it is dated 9th September 2024. It is also not clear when the application was filed, but it is dated 9th September 2024. I see that it was placed before the Judge, under certificate of urgency, on 9th September 2024. The appeal and the application were, therefore, filed in court without any delay.
8. Is the said decree capable of being executed? Yes, it is. It is a money decree. I note, though, that the proclamation made is based on a non-existent decree, dated 23rd May 2024, given that that decree was set aside by the orders made in the ruling of 18th July 2024. However, I do note that the trial court has issued warrants of attachment, dated 5th September 2024, which should pave way for execution.
9. Is the appeal arguable? It is not a requirement, at this stage, according to Order 42 of the Civil Procedure Rules, for the appellant to demonstrate, and the court to consider, whether there is an arguable appeal. I have, nevertheless, perused the grounds in the memorandum of appeal, as against the judgement of 2nd September 2024, and I am persuaded that they are not idle.
10. Should I stay execution of the decree? It is argued that the attached assets belong to Government, and the process to levy such assets was not followed. The *Government Proceedings Act*, Cap 40, Laws of Kenya, has been cited. I have perused the *Basic Education Act*, No. 14 of 2014, Laws of Kenya, but I have not seen any provisions there governing execution of decrees obtained against Government or public schools. None of the judicial decisions the applicants have cited dwell on that. It would appear to be a grey area.



11. I note that the assets available for execution, being movable property, could be for benefit of schoolchildren, and their attachment and sale may affect provision of education to the children. I am alive to the paramountcy of the welfare of children, and the fact that anything which would affect that should be approached with some level of caution. I am also alive to the fact that where a person suffers loss, on account of the actions of the management of a school, the welfare of children argument should not be used to shield the managers of the institution from scrutiny, for that principle does not absolve the managers from liability, responsibility and accountability. However, a decree holder should not levy execution in a manner which prejudices the children, and should adopt modes of execution which do not disrupt the education of the children.
12. I will, on account of the welfare of the children or the students at the School in question, stay execution of the decree herein, pending appeal. I, accordingly, allow the application herein, dated 9th September 2024, in terms of prayer 3 thereof. To move the matter forward, I direct the appellants to file and serve the record of appeal in the next 30 days. The matter shall be mentioned on 29th April 2025, for directions on disposal of the appeal. Orders accordingly.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 21ST DAY OF MARCH 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Gilbert Tarus, instructed by the Attorney General, for the appellants.

Mr. Muyala, instructed by Wambo Muyala & Company, Advocates for the respondent.

