



REPUBLIC OF KENYA



KENYA LAW
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**Independent Policing Oversight Authority v Kiragu (Civil Appeal
E032 of 2024) [2024] KEHC 5597 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E032 OF 2024
LM NJUGUNA, J
MAY 22, 2024**

BETWEEN

INDEPENDENT POLICING OVERSIGHT AUTHORITY APPLICANT

AND

JOHN NJAGI KIRAGU RESPONDENT

RULING

1. The applicant filed a notice of motion dated 08th April, 2024, being supported by the grounds set out on its face and the facts deposed in the supporting affidavit thereof. The orders sought are as follows:
 1. Spent;
 2. Spent;
 3. That pending the hearing and determination of the appeal, there be an order of stay of execution of the judgment dated 19th March 2024 delivered by Hon. Francis Kyambia in Embu CMCC No. 195 of 2021 and all other consequential orders and decree therein; and
 4. The costs of this application be provided for.
2. The applicant deposed that the trial court entered judgment in favour of the respondent and it is the applicant's intention to challenge the same in this appeal. That if the respondent executes the judgment, the appeal will be rendered nugatory and that it is in the interest of justice that stay be granted since the amount would be expended from public resources. That it is also in the interest of justice that stay be granted since the effect of the impugned judgment is to alter the law affecting the independence of the applicant.
3. The application was unopposed.
4. The issue for determination is whether the applicant deserves to be granted the orders sought.



5. Stay of execution orders may be granted when the court is satisfied of the parameters set out in Order 42 Rule 6(2) of the *Civil Procedure Rules* 2010 as follows:

(2) No order for stay of execution shall be made under subrule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

6. The applicant seeks stay of execution pending appeal. It has annexed to the application, a copy of the memorandum of appeal detailing the grounds of appeal. It is its case that if execution is left to take place, the amount will be drawn from public resources and that it is in public interest to allow the application, which is not opposed.

7. I have also perused the memorandum of appeal and I find that the appeal is arguable and it is only fair that the appellant be given a chance to prosecute and argue his appeal.

8. In my view, and in the circumstances, the application has merit and it is hereby allowed as prayed.

9. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 22ND DAY OF MAY, 2024.

L. NJUGUNA

JUDGE

..... for the Appellant/Applicant

..... for the Respondent

