



**Mitu & 4 others v Kimaita & 3 others (Civil Application  
E035 of 2025) [2025] KEHC 13838 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13838 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPLICATION E035 OF 2025  
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA  
OCTOBER 3, 2025**

**BETWEEN**

**JULIUS KAINGA MITU ..... 1<sup>ST</sup> APPLICANT  
JUSTUS KIAMBI ARITHI ..... 2<sup>ND</sup> APPLICANT  
HELLEN NKIROTE MUGAMBI ..... 3<sup>RD</sup> APPLICANT  
MARTIN MUTUMA KUBAI ..... 4<sup>TH</sup> APPLICANT  
JULIUS GITONGA KABUI ..... 5<sup>TH</sup> APPLICANT**

**AND**

**EARNEST KIMAITA ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF MERU ..... 2<sup>ND</sup> RESPONDENT  
COUNTY SECRETARY, MERU COUNTY ..... 3<sup>RD</sup> RESPONDENT  
MERU COUNTY PUBLIC SERVICE BOARD ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for stay against the Ruling, decision and  
Orders of the Court of Kenya at Meru (H.M. Nyaga, J.) delivered  
on 13th February, 2025 in H.C. Const. Petition No. E006 of 2023)*

**RULING**

1. The applicants here Julius Kainga Mitu, Justus Kiambi Ariithi, Hellen Nkirote Mugambi, Martin Mutuma Kubai and Julius Gitonga Kabui pray in the Motion brought under section 3A of the [Appellate Jurisdiction Act](#), rule 1(2), 5 (2)(b) of the Court of Appeal Rules, 2022 in the main that the ruling, decision and orders of the High Court of Kenya at Meru delivered on 19<sup>th</sup> September, 2024 be stayed pending the filing, service, hearing and determination of the application and of an intended appeal. In grounds in support of the motion and in an affidavit of Julius Kainga Mitu, it is stated



amongst other things that on 16<sup>th</sup> May, 2024 the trial court (Cherere, J.) delivered a judgment and ordered inter alia that:

- “(i) The court however finds that the composition of the 3<sup>rd</sup> respondent violates the provisions of Article 27(8) and 175 (c) of *the Constitution*
- (ii) On the strength of orders issued by this court in *Kiaga v. Meru County Assembly Service Board & Another* (Constitutional Petition E029 of 2022), the 3<sup>rd</sup> respondent has six months from 1<sup>st</sup> March, 2024 within which to ensure compliance with the two thirds gender rule enunciated under the provisions of Article 27(8) and 175(c) of *the Constitution*..”;

that the matter was mentioned on 19<sup>th</sup> September, 2024 for purposes of confirming compliance when the Judge in the absence of the advocate for the 3<sup>rd</sup> respondent and the 1<sup>st</sup> to 5<sup>th</sup> applicants and without any formal written application before the court delivered a ruling where she directed for the dissolution of the 3<sup>rd</sup> respondent of which the applicants are members of on the grounds that the 3<sup>rd</sup> respondent/applicant has never complied with the judgement of trial court delivered on 16<sup>th</sup> May, 2024 which directed the applicants to comply with the constitutional provisions under Articles 27(8) and 175(c) of *the Constitution*; that the said ruling was made *ex parte* without according the 3<sup>rd</sup> respondent/applicant and the 1<sup>st</sup> to 5<sup>th</sup> applicants an opportunity to be heard contrary to provisions of Articles 47 and 50 of *the Constitution*; that the effect of the ruling is that the 3<sup>rd</sup> respondent/applicant which is a statutory body established under the provisions of the County Government Act will be dissolved which is contrary to the requirements of section 57(a) of the Act which stipulate that: “a County Public Service Body is a Body Corporate with perpetual succession and a seal.” Consequently the implementation of the impugned ruling will directly affect the legality and operations of the 3<sup>rd</sup> respondent and its ability to exist as a statutory body legally mandated to be the employer body for Meru County Government; that the ruling directly interferes and infringes upon the contracts of employment of the 1<sup>st</sup> to 5<sup>th</sup> applicants who have fixed terms of employment and enjoy security of tenure of office and they can only be removed from office or cease to be members of the 3<sup>rd</sup> respondent/applicant when removed from office under section 58(5) of the *County Governments Act*; that on 30<sup>th</sup> September, 2024 the 3<sup>rd</sup> respondent/applicant and the 1<sup>st</sup> to 5<sup>th</sup> applicants being dissatisfied with the ruling applied to the trial court seeking for orders that the ruling be vacated or set aside; that the trial court in the ruling of 13<sup>th</sup> February, 2025 dismissed the application; that the 3<sup>rd</sup> respondent/applicant and the 1<sup>st</sup> to 5<sup>th</sup> applicants dissatisfied with the said ruling have filed a notice of appeal and requested for certified copies of typed proceedings; that the applicants moved the said court for stay of execution of the ruling but the same was dismissed; that the said dismissal interferes and violates the applicant’s contract of employment and also the operations of the 3<sup>rd</sup> respondent; that the ruling of the court requires the 3<sup>rd</sup> respondent be dissolved immediately without any or formal handover; that this application encompasses matters of public interest and unless the application is granted the intended appeal shall be rendered nugatory if new members of the board are nominated, approved and appointed to replace the existing members when the fixed terms of office of the present members has not expired and that by the time the appeal is heard and determined their tenure of office will have expired and therefore make it impossible for them to resume their offices.

2. Further, that the 3<sup>rd</sup> respondent/applicant and the 1<sup>st</sup> to 5<sup>th</sup> respondents should be allowed to ventilate their issues before this Court and it is in the interest of justice that this Court stays the orders to be appealed.
3. Set out in the motion is a table showing that the board comprises of 4 male persons and 2 females meaning that the board as constituted complies with the gender rule.



4. In a replying affidavit by Earnest Kimaita, the 1<sup>st</sup> respondent, it is said that the application seeks to stay a ruling delivered on 19<sup>th</sup> September, 2024; that on 13<sup>th</sup> February, 2025 Nyaga, J. made a finding that an application before him lacked merit and dismissed it; that that ruling made a negative order; that there is no arguable appeal; that the court had found that the composition of Meru County Public Service Board was not gender compliant and that the court should dismiss the application.
5. We have seen the written submissions filed on behalf of the parties.
6. The principles that govern applications for stay pending appeal in this Court are well known. For an applicant to succeed he must firstly demonstrate that the appeal, or intended appeal, as the case may be, is arguable, which is the same as saying that it is not frivolous. For an applicant to succeed he must also show that the appeal will be rendered nugatory absent stay. Emerging jurisprudence also recognizes that for a matter like this one public interest is a relevant consideration.
7. It is intended to be argued on appeal that the court gave orders *ex parte* which affect the interest of parties who were not heard. It is intended to be argued also that the court found the Meru County Public Service Board none compliant on the requirement for gender representation when in fact that board is gender compliant. We find these to be arguable points on appeal. An arguable point on appeal is not one that will succeed, it is one calling for consideration and determination by this Court – See *Damji Pragji Mandavia vs. Sara Lee Household & Body Care (K) Ltd* Civil Application No. Nai 345 of 2004.
8. On the nugatory aspect it is argued that if the board is dissolved it will create a vacuum. We find that the appeal will be rendered nugatory if that were to happen. It is also in the public interest that the board as constituted remain in place pending the determination of the appeal. We allow the motion. Let costs be in the intended appeal.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**J. LESIIT**

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**JUDGE OF APPEAL**

**ALI- ARONI**

.....  
**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

