

**IN THE COURT OF
APPEAL AT KISUMU**

**(CORAM: ASIKE-MAKHANDIA, JA (IN
CHAMBERS) CIVIL APPLICATION NO. E136 OF
2025**

BETWEEN

**KISII COUNTY ASSEMBLY SERVICE BOARD.....1ST
APPLICANT
CLERK, KISII COUNTY ASSEMBLY2ND
APPLICANT**

AND

**SAMUEL KEROSI ONDIEKI.....1ST
RESPONDENT
KISII COUNTY ASSEMBLY.....2ND RESPONDENT**

*(Being an application for stay of execution under Rule 5(2)(b) of
the Court of Appeal Rules, 2022, pending the hearing and
determination of an intended appeal from the Judgment of the
Employment and Labour Relations Court at Kisumu, (Radido, J.)
dated 15th April, 2023*

in

ELRC Cause No. 087 of 2019)

RULING

**[1] The county Assembly Service Board of Kisii and the
Clerk, Kisii County Assembly, “the applicants”, filed under a
certificate of urgency an application dated 28th August, 2025,**

seeking a stay of execution of the judgment and decree of the Employment and Labour Relations Court “**the ELRC**” at Kisumu.

[2]The application was placed before me on 24th September, 2025 for

directions. Upon perusing the application, I was not satisfied that it

was urgent and accordingly I declined to certify it as such. This was communicated to the applicants by our Deputy Registrar.

[3] However, by a letter dated 24th October, 2025, the applicants have implored the Court to fast track the hearing of the application, as the respondents have since commenced execution of the decree through Judicial Review proceedings for an order of mandamus to compel the 2nd respondent to pay the 1st respondent the sum of Kshs.8,529,030/- being the decretal sum together with awarded costs of Kshs.133,550/-. The applicants have also brought to the fore the fact that the 1st respondent has also filed a contempt application against the 2nd applicant which is scheduled for hearing on 6th November, 2025 (now past).

[4] All these new facts were not available to me at the time I declined to certify the application urgent. I note that the application was served on the parties for interpartes hearing on the question of urgency. However, only the applicants have filed their written submissions but these submissions merely dwell on the prayer for stay of execution. They are therefore irrelevant for this discourse.

[5] Although served with hearing notice for today by court on 17th November, 2025, if a copy of the hearing notice on record, is

anything

to go by, the respondents have not reacted to the new issues raised by the applicants and therefore I take them as true.

[6] In the premises, I am inclined to review my earlier directions, and now certify the application as urgent and be set down for interpartes hearing as soon as possible considering that all the parties have filed their respective submissions on the substantive application. Costs shall be in the appeal.

Dated and delivered at Kisumu this 18th day of November, 2025.

ASIKE-MAKHANDIA

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original

signed
DEPUTY REGISTRAR