



REPUBLIC OF KENYA



**Board of Governors, Nyakach Technical Vocational College v Otiato (Appeal E083 of 2025) [2026] KEELRC 140 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 140 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**  
**APPEAL E083 OF 2025**  
**JK GAKERI, J**  
**JANUARY 28, 2026**

**BETWEEN**

**BOARD OF GOVERNORS, NYAKACH TECHNICAL VOCATIONAL COLLEGE ..... APPELLANT**

**AND**

**MILDRED AKOTH OTIATO ..... RESPONDENT**

**RULING**

1. Before the court for determination is the Appellant's Notice of Motion dated 30<sup>th</sup> October 2025 filed under Certificate of Urgency seeking Orders that:
  1. Spent.
  2. There be a stay of execution of the judgment in Winam ELRC No. E18 of 2024 pending inter partes hearing of this application and appeal
  3. There be a stay of proceedings in Winam ELRC No. E018 of 2024 pending inter partes hearing of this application and appeal.
  4. Costs of this application be in the cause.
2. The Notice of Motion is expressed under no provision of law and is based on the grounds enumerated on its face and the Supporting Affidavit of Risper Adhiambo, the Principal of Nyakach Technical and Vocational College who deposes that the trial court did not grant a stay of execution on 15<sup>th</sup> October 2025 when it delivered judgment in Winam E018 of 2024 and the intended appeal raises triable issues.
3. The affiant deponed the appellant is a public institution and no security was required and the application was filed without undue delay.



4. When the matter came up on 4<sup>th</sup> November 2025, the court did not certify it urgent but granted a temporary stay of execution of judgment in Winam ELRC No. E018 of 2024 and directed the applicant to serve. The respondent was to respond within 14 days.
5. On 24<sup>th</sup> November 2025 the respondent was absent. Counsel for the applicant informed the court that service had been effected including service of submissions, proposed another mention to enable the respondent respond to the application and a mention was slated for 11<sup>th</sup> December 2025 when none of the parties was present.

The respondent did not file a response to the application.

### **Applicant's submissions**

6. Concerning the threshold for a stay of execution, counsel relied on the decisions in *Gatirau Peter Munya V Dickson Mwenda Kithinji & 2 others* [2014] eKLR and *Stanley Kangethe Kinyanjui V Tony Keter & 5 others* [2015] eKLR for the proposition that the applicant is required to demonstrate the presence of an arguable appeal, that the appeal would be rendered nugatory if the stay Order was not granted and it was in the public interest that the stay Order be granted.
7. Reliance was also placed on the decisions in *Public Service Commission & 72 others V Okiya OMtatah & 4 others* and *Okiya Omatatah & another V Public Service Commission & 73 others*; *Law Society of Kenya & another (Interested Parties) 2021* eKLR on aguability of the appeal, to urge that the Memorandum of Appeal raised triable issues on termination of the respondent's employment and the awards made.
8. On rendering the intended appeal nugatory, reliance was placed on the sentiments of the Court of Appeal in *Julius Wahinya Kangethe & another V Muhia Muchiri Ng'ang'a* [2017] eKLR on reversibility of the act sought to be stayed, to urge that if stay of execution was denied, the circumstances would be irreversible and the appellant would suffer substantial loss.
9. On security, reliance was placed under Order 42 Rule of the Civil Procedure Rules to urge that no security was required from the Government.
10. Counsel submitted that the applicant had met the threshold for grant of the stay of execution.
11. The principles that govern the grant of stay of execution pending appeal are well settled as captured in Order 42 Rule 6(2) of the Civil Procedure Rules, namely substantial loss, absence of unreasonable delay in the filing of the application and security.
12. As held in *Butt V Rent Restriction Tribunal*, the court's power to grant or decline an application for stay of execution pending appeal is discretionary and such discretion is exercisable within the ambit of Order 42 Rule 6(2) of the Civil Procedure Rules.
13. Regrettably, the applicant did not file any affidavit of service of the application, submissions or notice of the mention on 11<sup>th</sup> December 2025. However, having heard counsel on the issue of service and his wish to accord the respondent time to respond to the application, the court is satisfied that service was effected.
14. It is common ground that appellant is a public institution financed by the public and is represented by the Office of the Attorney General and as such, no security is required.
15. Second, since the judgment sought to be appealed against was delivered on 15<sup>th</sup> October 2025 and the instant application was filed on 3<sup>rd</sup> November 2025, it was filed without undue delay and the applicant demonstrated that it stood to suffer substantial loss if the order sought was not granted.



16. Consequently, the applicant's Notice of Motion dated 30<sup>th</sup> October 2025 is merited and is allowed on terms that there shall be a stay of execution of the Judgment in WINAM MECLRC NO. E018 OF 2024 delivered on 15<sup>th</sup> October 2025, pending the hearing and determination of the intended appeal.
17. The appellant shall endeavour to file and serve the Record of Appeal within 45 days for hearing and determination of the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 28<sup>TH</sup> DAY OF JANUARY 2026.**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

