



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT BUNGOMA

APPEAL NO. E012 OF 2025

BOARD OF MANAGEMENT
FRIENDS SCHOOL KIMUGUI.....

APPELLANT

VERSUS

BRENDA MABUKA KISIKA.....

.....RESPONDENT

RULING

1. The Applicant herein seeks the following orders:-

- a) That this Application be certified urgent and service of therefore be dispensed with in the first instance.

- b) That there be a temporary stay of execution of the Proclamation Notice dated 16th February, 2026 by Lufree Auctioneers pending hearing and determination of this Application inter-parties.
- c) That upon grant of prayer 'b' above, the Proclamation Notice dated 16th February, 2026 issued by Lufree Auctioneers to the applicant be permanently stayed and/or vacated.
- d) THAT this Honourable court be pleased to vary, set aside and or vacate the orders issued on 15th of January, 2026 in ELRC MISC/E013/2025.
- e) THAT upon grant of prayer 'd' above, the said Application be set down for hearing and determination by this Honourable Court. In the alternative;
- f) This Honorable Court be pleased to enlarge the time within which the Applicant can comply with the orders of this Court issued on 30th day of October, 2025 for reasons stated in ELRC MISC/E013/2025.
- g) Cost of this application be provided for.

The Application was premised on the grounds on the face of the motion supported by the affidavit of Mr. Chrisantus Wanyonyi, the Principal of the Appellant School.

2. The Respondent was opposed and filed grounds to the effect that:

- (i) THAT the application is frivolous, vexatious, scandalous and an abuse of the due process of Court and the same ought to fail with costs.
- (ii) THAT there is no appeal upon which the application is premised.
- (iii) THAT ELRC MISC NO. E013 of 2025 has never been served upon the Respondent.
- (iv) THAT orders sought are incapable of being granted.
- (v) THAT he comes to equity must come with clean hands.
- (vi) THAT Applicant cannot hide under mistake of counsel.
- (vii) THAT the orders sought have already been overtaken by events.
- (viii) THAT litigation must come to an end for justice delayed is justice denied.

3. The motion was heard on 20th February 2026 and granted the urgency discerned and the possibility of execution on Monday 23rd February 2026, the Court prepared this *ex tempore* Ruling to avert a crisis by reserving a Ruling for later delivery.

4. The Counsel for the Appellant/Applicant Ms. Masengeli argued that the Appellant/Applicant was required upon successful application for leave to file this Appeal out of time, granted, *inter alia* 60 days within which to deposit the decretal sum plus costs as a condition for the grant of leave. It was asserted that the delivery of the Ruling on 30th October 2025 was at a time Schools had closed for December holiday as the period in November and part of early December was taken up by the national exams invigilation and marking. She submitted that the Appellant/Applicant bespoke proceedings on 4th November 2025 and that these were yet to be typed and provided in order for the Appellant/Applicant satisfy the condition of filing the record of appeal within 60 days of the Ruling. She stated that the Appellant/Applicant sought to have the period

extended and that the directions on their application for extension of time were issued late on 19th December 2025 by which time their offices had closed for the December holidays to resume on 19th January 2026. Counsel submitted that they checked the Case Tracking System (CTS) and there were no orders there. She averred they waited for orders from the Court and only came to know of the existence of orders when the auctioneers M/s Lufree Auctioneers proceeded to attach the property of the Applicant. She asserted that after perusal of the CTS they found orders in Misc. E013 of 2025 had been given a hearing on 15th January 2026 and after realising the same, proceeded to file this present application. She submitted that the Appellant/Applicant is yet to receive capitation and that the Appellant was willing to comply with the Court order by collecting the sum from fees paid by student. She averred the Appellant/Applicant is ready and willing to avail the decretal sum plus costs as ordered by the Court on or before 15th March 2026. On typed proceedings, she submitted that the Registry has assured the Appellant/Applicant that a

certificate of delay will be issued as the file is yet to be reached in the typing pool.

5. In opposition to the motion, Mr. Bw'onchiri urged the Court to disallow the motion. He argued that the Respondent has always been eager to have the matter concluded unlike the Appellant/Applicant. He stated that the Appellant did not file an appeal within 30 days as stipulated in law upon the determination by the Trial Court. He submitted that Appellant/Applicant ought to have moved the Court immediately schools closed once it was evident they would not meet the conditions given by Justice Nderitu. The Respondent submitted that it only became aware of Misc. E013 of 2025 yesterday when it was served with the present application. He submitted that the Counsel for the Appellant/Applicant ought to have made follow-ups and even visited the Registry if there was delay. He further submitted that the case belongs to the party and there is nothing to show the Appellant/Applicant was diligent in following up in the event their Counsel seemed to be late in filing the record of appeal. It was argued the orders sought are incapable of

grant as the court being a court of justice has to let litigation come to an end. It was argued that the Court cannot reinstate orders in Misc. E013 of 2025 through this case as sought by the Appellant/Applicant.

6. He cited *inter alia* the case of **Iderus v Hussein & 10 others (Environment & Land Miscellaneous Case E002 of 2025) [2025] KEELC 1180 (KLR) (10 March 2025) (Ruling)** for the proposition that this application was an abuse of the court process. He argued that they ought not to run to court after failing to comply with the order of the court seeking indulgence from the same court. He argued that equity will not aid the Appellant/Applicant as its hands are unclean. He cited the case of **Kimondo & another v Progressive Credit Ltd (Civil Appeal 49 of 2023) [2025] KEHC 7297 (KLR) (21 May 2025) (Ruling)** on enlargement of time. He argued the Appellant ought not receive the indulgence of the Court.

7. In her brief reply, Ms. Masengeli submitted that the reason for the failure to comply with the orders of the Court had been explained and that it was on account of reasons beyond the control of the Appellant/Applicant. The Appellant argued that there is an appeal pending contrary to submissions to the contrary by learned Counsel for the Respondent. She submitted that the application was filed as soon as the Appellant/Applicant was aware of the orders of the Court. She submitted that the matters herein have not been overtaken by events and that the certificate of delay only comes in after the proceedings have been availed. She stated that if given time the Appellant/Applicant could avail evidence of the follow up done through a supplementary affidavit if leave was granted for that to be filed. She urged the Court to consider the parameters for grant of the stay sought.

Disposition

8. The Court has considered the rival arguments and the law in coming to this determination. The primary consideration of the Court is whether there is merit in the grant of the stay

sought and whether the Court can issue orders in respect of Bungoma ELRC Misc. E013 of 2025 which is between the parties. The principles guiding grant of a stay of execution order pending appeal are well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which provides as follows:

*“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.*

9. The Appellant/Applicant is the Applicant in Misc. E013 of 2025 at Bungoma ELRC. In the matter, the Applicant sought orders that are eerily similar to these ones. In the case, a proclamation had been issued on 7th February 2025 and that precipitated the application dated 17th February 2025 that resulted in the Ruling of my brother Nderitu J the Presiding

Judge of the Court at Bungoma which covers Kakamega ELRC.

10. The Appellant/Applicant herein was granted conditional leave by Nderitu J. It is common ground that the time given for filing a record of appeal is long past. The Appellant/Applicant in its motion asserts there was a letter that sought typed proceedings dated 4th November 2025. It is further asserted there is follow up, although no evidence was availed. Having benefited from the indulgence of the Court per Ruling of Nderitu J. in Misc. E013 of 2025, the Appellant/Applicant has been extremely indolent. It was content upon discovery that the judgment in the primary suit had been delivered in February 2025 not to move the Court or even seek proceedings to enable it file an appeal until October 2025. It then was incumbent upon the Applicant to ensure compliance with the orders of the Court issued upon the Ruling of the Court.

11. The Appellant/Applicant has not offered sufficient cause for the Court to exercise discretion in its favour. There is nothing before the Court to demonstrate the

Appellant/Applicant has made any effort to progress this appeal. Having secured reprieve from execution, the Appellant went to sleep. The alleged closure of the offices of the Counsel for the Appellant/Applicant is at odds with the capacity of Counsel and parties to track their cases on the electronic court portal commonly referred to as CTS. Directions were issued on the Miscellaneous Application No. E013 of 2025 by the Learned Judge in good time for the appearance due on 15th January 2026. There was no appearance on 15th January 2026 prompting Nderitu J. to dismiss the motion for non-attendance. Having discovered there was dismissal, the Appellant/Applicant did nothing until the proclamation on 16th February 2026.

12. The foregoing is ample to show the Court is not persuaded to grant the relief sought by the Appellant/Applicant resulting in the dismissal of the motion dated 19th February 2026 with costs to the Respondent.

It is so ordered.

Dated and delivered at Nairobi this 20th day of February

2026

Nzioki wa Makau, MCI Arb.

JUDGE

Original. Do not remove from the file.