



Republic v Accounting Officer, Ministry of Roads County Government of Bungoma & 3 others (Judicial Review E001 of 2026) [2026] KEHC 1254 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
JUDICIAL REVIEW E001 OF 2026
MS SHARIFF, J
FEBRUARY 5, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

**THE ACCOUNTING OFFICER, MINISTRY OF ROADS COUNTY
GOVERNMENT OF BUNGOMA 1ST RESPONDENT**

**THE COUNTY GOVERNMENT OF BUNGOMA & 2 OTHERS & 2 OTHERS &
2 OTHERS 2ND RESPONDENT**

RULING

1. Whereas the respondents have craved for 4 days to file their responses to the ex parte applicants notice of motion dated 3-2-2026 Ms Khisa for the Applicant has conceded to that request save that she has applied for orders of stay of the road construction works pending hearing of the substantive application least, she submits the application heard be rendered nugatory.

2. This prayer by Ms Khisa has been resisted by Mr Waswa and Ms Walaka for the respondents.

Mr Waswa has submitted that the applicant has not met the threshold under Order 4 Rule 6 for grant of stay. Ms Walaka has maintained that the respondents appreciate the urgency of this matter hence their pray for 4 days to respond.

It is the respondent's position that this court ought to make a determination on whether to grant stay after considering the case of all parties hence the need for the respondents to be allowed to file their responses.

The respondent's counsel have taken issue with the delay on the part of the ex parte applicant in effecting service. Ms Khisa has on rejoinder submitted that her prayer is not premised an order 42 Rule 6 but rather on Order 53 Rule 1 (4) of the Civil Procedure Rules which provides that leave to file a Judicial Review applicant can operate as a stay.



1. I have considered this application made by Ms Khisa and the rival submissions of parties advocates and I do note that whereas I had granted the ex parte applicant leave on 14.1.2026, it was not until the 3rd day of February 2026 that she filed her substantive application and that explains why it was served on 4.2.2026. The Ex-parte applicant had 21 days to comply and it was up to her to demonstrate urgency by filing the substantive motion expeditiously. I will agree with the respondents that the ex-parte Applicant exhibited indolence in light of the fact that she now craves for orders of stay of the road construction works.
2. The substantive prayers are yet to be responded to and it is indeed only fair and just that the respondents be allowed to file their responses before this court can make an informed determination on any issues that shall be placed before this court. This court did not grant the ex-parte applicant stay at the initial stage for reasons that the photographs exhibited in the statutory statement had indicated that this construction works were already underway. There is a financial implication that will be visited upon the respondents if a stay order was to issue.
3. At this juncture I am not inclined to grant any stay orders and I direct the respondents to file their responses within 4 days from this date. This matter shall be mentioned on 12.2.2026 for further directions.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 5TH DAY OF FEBRUARY, 2026.

MWANAISHA S. SHARIFF

JUDGE

