

**IN THE COURT OF  
APPEAL AT NYERI**

**(CORAM: KANTAI, LESIIT & ALI - ARONI,**

**JJ.A.) CIVIL APPLICATION NO. E019 OF 2025**

**BETWEEN**

**ISIOLO COUNTY GOVERNMENT.....1<sup>ST</sup>  
APPLICANT ISIOLO COUNTY  
SECRETARY.....2<sup>ND</sup> APPLICANT ISIOLO  
COUNTY PUBLIC SERVICE.....3<sup>RD</sup> APPLICANT**

**AND**

**STEVE SAIMU LELERUK.....1<sup>ST</sup>  
RESPONDENT HADIJA  
ANDIRAHMAN.....2<sup>ND</sup> RESPONDENT ROSE  
ROB GOLOMPO.....3<sup>RD</sup> RESPONDENT  
FATUMA ALI.....4<sup>TH</sup>  
RESPONDENT ABISHAG NJERI NYAGA (DECEASED)  
.....  
RESPONDENT  
HAMIDA ABDULLAHI.....5<sup>TH</sup>  
RESPONDENT  
PAUL MUTIITHI.....6<sup>TH</sup>  
RESPONDENT DAVID  
KIMATH.....7<sup>TH</sup> RESPONDENT  
JANET NDURU.....8<sup>TH</sup>  
RESPONDENT KHADIJA  
MOHAMMED.....9<sup>TH</sup> RESPONDENT  
MUSLIMA BONAYA.....10<sup>TH</sup>  
RESPONDENT MUGO ERICK.....  
11<sup>TH</sup> RESPONDENT JEREMIAH  
MWITI.....12<sup>TH</sup>  
RESPONDENT SHUKRIA  
All.....13<sup>TH</sup> RESPONDENT  
HASSAN HUSSEIN.....14<sup>TH</sup>  
RESPONDENT MARY MURIGE.....  
15<sup>TH</sup> RESPONDENT ALI HALAKHE  
DUBA.....16<sup>TH</sup> RESPONDENT SADIK  
SHARAMO.....17<sup>TH</sup> RESPONDENT  
SHUKRI GALGALO.....18<sup>TH</sup>  
RESPONDENT EMILY  
KENDI.....19<sup>TH</sup> RESPONDENT**



**KHADIJA ADEN.....29<sup>TH</sup>**  
**RESPONDENT JULIETA NAKIPAK ETODO**  
**.....30<sup>TH</sup> RESPONDENT**  
**MOLU ALI GALGALO.....31<sup>ST</sup>**  
**RESPONDENT MOHAMMED OSMAN DAMBALA .....**  
**32<sup>ND</sup> RESPONDENT MORINE KAGENI**  
**MURANGIRI.....33<sup>RD</sup> RESPONDENT**  
**ISSA ISACK HARET.....34<sup>TH</sup>**  
**RESPONDENT HASSAN FUN AN**  
**WARE.....35<sup>TH</sup> RESPONDENT SHUKRI**  
**HASSAN BADA.....36<sup>TH</sup> RESPONDENT**  
**HASSAN ALI GALGALO.....37<sup>TH</sup>**  
**RESPONDENT ADAM KOTO HUKA.....**  
**38<sup>TH</sup> RESPONDENT HADIJA WARIO.....**  
**.....39<sup>TH</sup> RESPONDENT ABGUDO ADAN ALI**  
**.....40<sup>TH</sup> RESPONDENT ABDI**  
**ROBA.....41<sup>ST</sup> RESPONDENT**  
**HASSAN MOHAMMED.....42<sup>ND</sup>**  
**RESPONDENT**

*(An application for stay of execution against the Judgment and Decree of the Employment and Labour Relations Court at Nyeri (O. N. Makau, J.) delivered on 24<sup>th</sup> January, 2025*

*in*  
**E.L.R.C Petition No. E010 of 2023.)**  
 \*\*\*\*\*

### **RULING OF THE COURT**

The applicants, **Isiolo County Government, Isiolo County Secretary and Isiolo County Public Service Board** have by Motion brought against the 42 respondents under various provisions of law including **rule 5 (2)(b)** of the **Court of Appeal Rules** prayed in the main that pending the hearing and determination of the application and the intended appeal we be pleased to grant an order of stay of execution of the judgment delivered on 24<sup>th</sup> January, 2025, and the resultant orders arising from Meru ELRC Petition E010 of 2023. In grounds in support of

the Motion and in a supporting affidavit of **Dade Boru**, the County Secretary of the 1<sup>st</sup> applicant it is stated amongst other things that after the said judgment the Judge (**Makau, J.**) declined an application for stay of execution pending

appeal; that the respondents may execute that judgment at any time; that the judgment has been appealed which appeal has high chances of success; that in case the appeal succeeds there are no means known to the applicant for recovering moneys paid out to the respondents whose financial status is not ascertainable; that there is no inordinate delay in bringing the application. Further, that the applicants have applied for certified copies of proceedings to enable them appeal. Grounds to be argued in the appeal include: that the Judge erred in law and fact in finding that he had jurisdiction to entertain the petition but overlooked provisions of section 77 of the County Government Act which mandates Public Service Commission to entertain and hear employment appeals emanating from County Governments including recruitment, selection, appointment, qualification to office, remuneration and terms of service; that the Judge erred in law and fact in finding that the Public Service Commission was only mandated to hear appeals from County Public Service Board and could not grant reliefs and, therefore, that the petitioners (respondents) did not have to pursue the Public Service Commission appeal route; amongst other grounds. The applicants further state that they are likely to suffer loss that cannot be compensated; that it is just that the application be granted.

Attached to the Motion is a copy of the impugned judgment, Notice of Appeal to appeal against the whole judgment; letter bespeaking proceedings and draft Memorandum of Appeal.

There is a replying affidavit by **Anthony Muriithi** (the 28<sup>th</sup> respondent) who with authority of the other respondents states, *inter alia*, that they authorized KUDHEIHA (a union under the Labour Relations Act) to represent them; that they objected before the Judge to the application for stay of execution because: “...we are still employees of the applicants up to date and still continue to suffer ...” He gives various facts leading to the filing of the petition, its prosecution, judgment and events post judgment deponing that there is no arguable appeal.

When the Motion was heard on 28<sup>th</sup> April, 2025 we gave interim orders of stay of execution of that judgment pending this ruling. These are the reasons why we took that action.

For an applicant to succeed in this Court in an application for stay of execution pending appeal, it must, firstly, demonstrate that the appeal, or intended appeal, as the case may be, is arguable, which is the same as saying that the appeal is not frivolous. Such an applicant must, in addition, show that the appeal would be rendered nugatory absent stay - see for a summary of those principles in **Stanley Kangethe Kinyanjui vs. Tony Ketter & Others [2013] eKLR.**

Emerging jurisprudence shows that the public interest is also a necessary consideration in such an application.

We have perused draft Memorandum of Appeal attached to the Motion. It is intended to be argued on appeal, for instance, that the Employment and Labour Relations Court lacked jurisdiction to

entertain the petition in view of the provisions of section 77 of the County Government Act. It is further intended to be argued on appeal that the Judge erred in rewriting the employment contracts between the applicants and the respondents. We find those to be not idle grounds, they are arguable grounds on appeal calling for the attention and determination of this Court. As has been held by this Court in various pronouncements an arguable ground on appeal is not one that will succeed, it is one that ought to be fully argued before the Court for determination - see **Damji Pragji Mandavia vs. Sara Lee Household & Body Care (K) Ltd Civil Application No. Nai 345 of 2004.**

The applicants submit, on the nugatory aspect, that the appeal will be rendered nugatory if they (the applicants) proceed to convert the respondents' contracts from casual to those on permanent basis as ordered by the Judge; that this will create chaos because the County payroll has been cleaned up and budgetary allocations made. It is also submitted that the respondents have no capacity to refund what would have been paid to them if the appeal was to succeed. The respondents have not responded to this claim. It was held by this Court in **National Industrial Credit Bank Ltd vs. Aquinas Francis Wasike & Another [2006] eKLR:**

***"Once an applicant expresses a reasonable fear that a respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the respondent to show what resources he has since that is a matter which is peculiarly within his knowledge — see for example section***

**112 of the Evidence Act, Chapter 80 Laws of Kenya."**

The respondents have not shown that they can put the applicants back to the original position if the appeal succeeds. Considering the facts of the case we think that the public interest leans in favour of the applicants as their financial operations may become chaotic if they have to get into new financial arrangements as they implement the judgment appealed from.

The applicants have satisfied the principles that apply in an application of this nature. We allow the Motion. Costs will be in the appeal.

**Dated and delivered at Nyeri this 27<sup>th</sup> day of February, 2026.**

**S. ole KANTAI**

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

**J. LESIIT**

.....  
**JUDGE OF**

**APPEAL ALI-**

**ARONI**

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

*I certify that this is  
a True copy of the  
original*

*Signed*  
**DEPUTY REGISTRAR**