



**Chirchir & 32 others v Siwanyang, County Secretary West Pokot County Government & 2 others (Cause E002 of 2023) [2026] KEELRC 602 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 602 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE  
CAUSE E002 OF 2023  
MA ONYANGO, J  
FEBRUARY 27, 2026**

**BETWEEN**

**DOREEN JEMOSOP CHIRCHIR & 32 OTHERS ..... CLAIMANT**

**AND**

**JONATHAN SIWANYANG, COUNTY SECRETARY WEST POKOT COUNTY  
GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**FELIX MADAK, HUMAN RESOURCE DEPARTMENT OF WATER AND  
ENVIRONMENT WEST POKOT COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**ROBERT KATINA, COUNTY ATTORNEY WEST POKOT COUNTY  
GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application before me for determination is dated 30<sup>th</sup> October, 2025 and is filed by the Respondents. The application is made under Article 159(2)(d) of *the Constitution* of Kenya, 2010, section 3 and 12 of the *Employment and Labour Relations Court Act*, Rule 6, 16, 17 and 29 of the Employment and Labour Relations Court (Procedure) Rules, 2016, sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. The applicant seeks the following orders in the application:
  - a. That this application be certified urgent and heard on a priority basis.
  - b. That there be a stay of further proceedings in this matter pending the hearing and determination of the Applicant's appeal against the ruling delivered on 03 July 2025, wherein this Honourable Court held that it has jurisdiction to hear and determine this dispute.
  - c. That the costs of this application be provided for.



2. The application is anchored on the grounds on the face thereof and the supporting affidavit of Jonathan Siwanyang, the County Secretary, County Government of West Pokot.
3. The grounds on the face of the application which are by and large reiterated in the supporting affidavit are that:
  - a. That on 3<sup>rd</sup> July 2025, this Honourable Court delivered a ruling in this matter dismissing the Applicants' Preliminary Objections dated 18<sup>th</sup> March 2025 and 20<sup>th</sup> January 2025.
  - b. That the Preliminary Objections challenged the jurisdiction of this court, contending that
    - i. By dint of Section 77 of the County Government Act, disputes arising out of public service employment must first be ventilated before the Public Service Commission.
    - ii. The Respondent's suit was filed prematurely in violation of the doctrine of exhaustion of statutory remedies, and was therefore fatally and incurably defective.
  - c. That the Applicants have filed an appeal to the Court of Appeal being appeal case number: Eldoret Court of Appeal Case No. COACA-E073-2025: County Government of West Pokot and 2 Others v Doreen Jemosop and 39 Others challenging this Court's ruling delivered on 3<sup>rd</sup> July 2025, which held that this Court has jurisdiction to entertain the present dispute.
  - d. That the pending appeal raises a serious and arguable question of law as to whether this Court has jurisdiction to entertain this dispute in light of Article 234(2) (i) of *the Constitution*, Section 77 of the *County Governments Act*, and Section 87 of the *Public Service Commission Act*, which vest initial jurisdiction in the Public Service Commission (PSC).
  - e. That unless a stay of proceedings is granted, the matter will proceed to full hearing before a court whose jurisdiction is seriously disputed, thereby rendering the appeal nugatory and occasioning substantial loss to the Applicants.
  - f. That in the event that happens the Applicants would have effectively been deprived of one level of Appeal in the adjudicative process.
  - g. That if the appeal ultimately succeeds, the time, resources, and judicial effort expended by this Court will be rendered a nullity, thereby undermining the overarching objectives of the Employment and Labour Relations Court (Procedure) Rules.
  - h. That the Applicants stand to suffer irreversible prejudice if stay is not granted.
  - i. That the Applicants are ready to comply with any conditions the Court may impose.
  - j. That this application has been made promptly, in utmost good faith, and in the interest of justice.
4. In the submissions dated 22<sup>nd</sup> January, 2026 the Applicant sets out the principles for stay of proceedings as follows:
  - a. Whether the intended appeal is arguable and not frivolous;
  - b. Whether the appeal would be rendered nugatory if stay is not granted;
  - c. Whether the application has been made timeously;
  - d. Whether the Applicants stands to suffer irreparable if stay is denied; and
  - e. The balance of convenience and the need to avoid abuse of the court process.



5. In *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No. 43 of 2000, the Court held that in deciding whether to stay proceedings, the Court must weigh the pros and cons of granting the order, bearing in mind the need for expeditious disposal of cases, the arguability of the appeal, and the optimum utilization of judicial time.
6. In *UAP Provincial Insurance Company Limited versus Michael John Becket*, Civil Application No.204 of 2004, the Court of Appeal at Nairobi held;
 

"In order for the applicant to succeed in an application for stay of proceedings pending appeal it is necessary for the applicant to satisfy the court, firstly that the pending appeal is an arguable one, which is not frivolous, and secondly that if the stay of proceedings is not granted the appeal when ultimately heard will be a futile exercise. It is not for the Court in this type of application to go deeply into the merits of the ending appeal but only to decide whether there is an arguable appeal, which is not frivolous."
7. It is the Applicants submission that proceeding with the suit will render their appeal nugatory. They rely on the decision in *Owners of the Motor Vessel Lillian S v Caltex Oil (Kenya) Ltd* where the court held that a court acting without jurisdiction acts in vain.
8. They further argue that the appeal raises a weighty question of law, namely whether disputes arising from county public service employment must, in the first instance, be subjected to the dispute resolution mechanisms before the Public Service Commission.
9. They submit that whether an appeal is arguable or not is not assessed on the likelihood of success, but on whether it raises a bona fide point deserving consideration by the appellate court. This threshold is clearly met.
10. The Applicants further rely on the decision of the Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank & others* where the court stated that a court's jurisdiction is derived from *the Constitution* and other written law and further that a court cannot entertain any proceedings without jurisdiction.
11. It is submitted that the court ought to deal with a matter of jurisdiction if raised, at the earliest possible opportunity as was held by the Court of Appeal if the question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency's action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself.
12. It is submitted that the exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. That this encourages alternative dispute resolution mechanisms in line with Article 159 of *the Constitution* and was aptly elucidated by the High Court in *R vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR, where the Court opined thus:

This doctrine is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in *Speaker of National Assembly v Karume* [1992] KLR 21 in the following oft-repeated words: Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures."



13. It is submitted that the Court of Appeal affirmed the above decision in *Kenya Wildlife Service v James Mutembei*.
14. On irreparable loss the Applicants submit that harm is not only speculative or procedural, but substantive and irreversible. It is submitted that should the proceedings herein be allowed to proceed the Applicants will suffer irreparable loss that cannot be compensated with costs should their appeal be allowed by the Court of Appeal.
15. On whether they approached the court timeously the Applicants submit that they filed notice of appeal within the prescribed time and made payment for the record of appeal without undue delay.
16. On balance of convenience the Applicants submit that the same tilts heavily in favour of granting the orders sought to avoid an embarrassing situation should the decision of the Court of Appeal be in their favour after the suit herein has gone through full hearing. That the grant of the orders sought would further save on precious time and ensure that the matter is ultimately determined by a court of competent jurisdiction.
17. The Applicants state that they are willing to comply with any conditions that the court may impose.
18. The application is opposed by the Claimants who filed a replying affidavit sworn by Ambrose Ruto Tiamale, the 31<sup>st</sup> Claimant on 26<sup>th</sup> November, 2025.
19. Mr. Tiamale deposes that the Applicants' application lacks merit and is made in bad faith, that the same is a delaying tactic designed to frustrate the legitimate claims of the Claimants, that this court has jurisdiction to hear and determine this matter, and the ruling delivered on 3rd July 2025 dismissing the Applicants' Preliminary Objections was proper, well-reasoned, and grounded in law.
20. He further deposes that the Applicants' contention that disputes arising out of public service employment must first be ventilated before the Public Service Commission is misconceived and was properly dismissed by this Court.
21. He deposes that the Claimants filed their Statement of Claim on 7th February 2023 before this Court, invoking the jurisdiction of this court under the *Employment and Labour Relations Court Act*, and have a legitimate expectation to have their matter determined under the legal regime they invoked, that the Applicants' appeal does not raise an arguable appeal with prima facie chances of success.
22. He further deposes that according to established legal principles and the case law cited in Halsbury's Laws of England, 4th Edition, stay of proceedings is a serious, grave' and fundamental interruption in the right that a party has to conduct litigation toward trial on the basis of the substantive merits of the case, and therefore stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not be allowed to continue. That this power should be exercised sparingly and only in exceptional circumstances.
23. Mr. Tiamale deposes that the Applicants have not demonstrated any exceptional circumstances to warrant a stay of proceedings in this matter, that the instant application offends the guiding principles of an application for stay of proceedings to wit; whether the applicant has established that he/she has a prima facie arguable case; whether the application was filed expeditiously and whether the application has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought, which conditions the Applicants have failed to satisfy.
24. Mr. Tiamale deposes that this matter has been in court for almost 3 years yet the same has not proceeded to hearing due to the diabolical attempts by Respondents to frustrate the hearing of the matter. That as a matter of fact, the Respondents have not filed any response to the claim and now desire to frustrate



the Claimants from prosecuting their matter much the same way they frustrated them from receiving their salaries for the last 3 years in blatant disobedience of the orders issued by this Court on 1<sup>st</sup> February 2023.

25. Mr. Tiamale further deposes that the Applicants have not demonstrated that they have a prima facie arguable appeal. That the issue of jurisdiction was thoroughly canvassed before this Court, and the ruling delivered on 3<sup>rd</sup> July 2025 properly considered the provisions of Article 234(2(L) of *the Constitution*, section 77 of the *County Governments Act*, and Section 87 of the *Public Service Commission Act*.
26. It is further the deposition of Mr. Tiamale that the Applicants have not made any deposition or demonstrated what substantial loss they are likely to suffer should this court refuse to grant a stay of proceedings. That the burden of proof lies on the Applicants, and they have failed to discharge that burden.
27. Mr. Tiamale deposes that granting a stay of proceedings will effectively deny the Claimants access to justice and will render the entire proceedings nugatory and meaningless, thereby defeating the constitutional imperative of expeditious dispute resolution, that the principle of 'justice delayed is justice denied' is applicable in this case, and granting a stay will effectively deny the Claimants their constitutional right to timely access to justice.
28. It is deposed that should the appeal ultimately succeed, the time, resources, and judicial effort expended by this Court will not be rendered a nullity, as the Applicants allege, but rather would be part of the judicial process aimed at achieving substantive justice.
29. Mr. Tiamale reiterates that in the circumstances, the Applicants' application for stay of proceedings is made in bad faith, after inordinate delay, and amounts to an abuse of the court process, and should be dismissed with costs. That the interests of justice will be best served by dismissing the Applicants' application and allowing this matter to proceed to full hearing and determination on merit without further delay.
30. The Claimants also filed submissions dated 2<sup>nd</sup> February, 2026.  
According to the Claimants the only issue for determination is whether the applicant has satisfied all conditions for stay of proceedings he Claimants.
31. The Claimants submit that the conditions for stay of proceedings were stated in *Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi* [2014] eKLR, where C.W Githua J. held as follows;  

“To my mind, the courts discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles; a) Whether the applicant has established that he/she has a prima facie arguable case. b) Whether the application was filed expeditiously and Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.”
32. The Claimants submit that this Court is vested with proper jurisdiction. That section 12 (1) of the *Employment and Labour Relations Court Act* is specific in defining the jurisdiction conferred on this court and provides inter alia:

- “(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the*



Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including —

- a. disputes relating to or arising out of employment between an employer and an employee;”

33. The Claimants submit that the Applicants have not demonstrated that the Public Service Commission can issue preservation orders, which were sought by the Claimants from this Court. That in the circumstances, the Applicants have not demonstrated a prima facie arguable case.
34. On whether the application was filed expeditiously the Claimants submit that application was filed on 30th October 2025, three (3) months and 27 days after the ruling of this Court. They submit that there is clear inordinate delay in the filing of this instant application. That the delay has not been reasonably explained as the Respondents were adequately represented and were aware of the ruling and in fact, went ahead to file a Notice of Appeal dated 16th July 2025. They submit that the application is thus an afterthought.
35. On whether the applicants have established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the discretionary orders sought, the Claimants submit that the Applicant is guilty of laches. That the Applicant is employing delaying tactics only meant delay the determination of the matter and has approached this Court for an equitable remedy despite the applicant being an indolent party.
36. The Claimants further submit that this matter being a 2023 matter and the Claimants having not received their salaries from 1st April 2022 four years later, it is greatly prejudicial if the proceedings are stayed.
37. The Claimants submit that the Respondents have acted with utmost bad faith and total impunity against the Claimants who were forced to leave their jobs one year after engagement. That it is in the interest of justice that this claim be determined soonest. That allowing the application in the circumstances of this case would not only be against the interests of justice but will also frustrate the court’s overriding objective of facilitating affordable and expeditious resolution of civil disputes.
38. In concluding, the Claimants urged the court to be guided by the decision in the case Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 where it was held as follows:

“ As I understand the law, whether or not to grant a stay of proceedings or further proceedings on [http: www.kenyalaw.org](http://www.kenyalaw.org) - Page 3/6 Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi [2014] eKLR a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”

39. The Claimants prayed that the application be dismissed with costs.



## Analysis and Determination

40. I have considered the application, the grounds and affidavit in support thereof as well as the grounds of opposition against it. I have further considered the rival submissions filed by the parties. In my considered view the single issue that arises for determination by this court is whether the applicants have met the threshold for grant of the orders sought in the application dated 30<sup>th</sup> October, 2025.
41. As appreciated by both parties in their submissions, courts have come up with several principles or what can be referred to as conditions for allowing stay of proceedings pending appeal.
42. In the case of *Global Tours & Travels Limited Nairobi Winding Up Cause No. 43 of 2000* cited by the Applicant, the court stated that in deciding whether or not to stay proceedings the court must weigh the pros and cons for granting such order, bearing in mind the need for expeditious disposal of cases, the agreeability of the appeal, and the optimum utilization of judicial time.
43. The Applicant further set out the factors that the court ought to consider which inter alia are whether the appeal is arguable or frivolous, whether the appeal would be rendered nugatory, whether the application was filed timeously, if the applicant would suffer irreparable harm if denied the orders sought and the balance of convenience.
44. The orders sought are thus discretionary. The court must however exercise such discretion judiciously.
45. I think the history of this case is a material factor in considering whether or not to exercise discretion in favour of the Applicants. As can be derived from the grounds in support of the application, affidavits filed by the parties and submissions of the parties as summarized above, this suit was filed on or about 7<sup>th</sup> February, 2023. This court suspended the letters of termination that were issued to the Claimants by the Respondent which is the subject matter of these proceedings. The suspension of the letters was through an ex parte order following application by the Claimants under certificate of urgency.
46. The Respondents never paid the salaries of the Claimants until their contracts expired, despite the court orders whose compliance has been the subject of several applications by both parties.
47. The Applicants filed a notice of preliminary objection on grounds of non-exhaustion of procedure under both the *County Governments Act* and *Public Service Commission Act* which require that appeals against the decisions of County Public Service Board be referred to the Public Service Commission as the first level of appeal before the employees can approach this court.
48. It is this court's ruling on the preliminary objection that is the subject of the appeal to the Court of Appeal by the Applicants.
49. The ruling of this court was delivered on 3<sup>rd</sup> July, 2025 and the Respondents timeously filed Notice of Appeal dated 16<sup>th</sup> July, 2025. The Applicants filed their Memorandum of Appeal which is dated 11<sup>th</sup> September, 2025.
50. The instant application is dated 30<sup>th</sup> October, 2025. It is my view that the delay in filing the application, almost 4 months after the ruling, has not been explained.
51. The position of the Applicants that the application was made timeously flies in the face of a delay from 3<sup>rd</sup> July to 30<sup>th</sup> October, a delay of 4 months short of 3 days.
52. The Applicants have further not explained what prejudice they would suffer should the orders sought in the instant application not be granted. On the contrary, the Claimants were made to work without



salary until their contract some of which were for durations of 2 years and others of 3 years, lapsed. The court does not see what prejudice the Respondents would suffer.

53. On whether or not the appeal is arguable and not frivolous, this court has looked at the Memorandum of Appeal and is of the view that the same is not frivolous.
54. Considering the totality of this matter including the age of this suit which was filed about 3 years ago, the length of time likely to be taken in the determination of the Appeal, the subject matter in this suit, and the fact that the Respondents have never filed their defence to the suit which technically remains undefended more than 3 years after filing, it is my considered view that the interests of justice tilts in favour of declining the orders sought in the application dated 30<sup>th</sup> October, 2025.
55. It is the view of this court that the prejudice to be suffered by the Claimants is real while none has been cited by the Respondents.
56. I accordingly dismiss the application with costs.

**DATED, DELIVERED AND SIGNED AT ELDORET THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**M. ONYANGO**

**JUDGE**

