

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CIVIL APPEAL NO. E026 OF 2025**

**COUNTY GOVERNMENT OF**

**MURANG'A.....APPLICANT**

**VERSUS**

**JENNIFER WANJIKU NYAMBURA.....**

**RESPONDENT**

**RULING**

1. The application for determination by this court is the Notice of Motion dated 27<sup>th</sup> January 2025 in which the applicant, the *County Government of Murang'a*, principally seeks stay of execution of the judgement delivered in Murang'a Small Claims Court Civil Suit No. E112 of 2024 pending hearing and determination of the instant appeal. The applicant also prays that costs of the application be borne by the Respondent.

2. The application is anchored on grounds stated on its face which are replicated in the depositions made in the supporting affidavit sworn on 28<sup>th</sup> February 2025 by *Mr. James Thuku*, the applicant's County Attorney.

In a nutshell, besides giving a detailed background against which the appeal was filed, *Mr. Thuku* deposed that on 13<sup>th</sup> February 2025, the Small Claims Court entered judgement in favour of the Respondent against the applicant in the sum of Kshs.500,540 together with interest assessed at Kshs.48,000; that the applicant was aggrieved by that decision hence this appeal; that unless orders of stay of execution were granted, the respondent was likely to commence execution which would occasion loss of public funds; that if the decree was executed, the appeal will be rendered nugatory and reduced to a mere academic exercise yet it had very high chances of success.

3. Further, the applicant averred that being a public entity, it was exempted from furnishing or depositing security as a precondition for stay pending appeal.

4. The application is contested through a replying affidavit sworn on 21<sup>st</sup> March 2025 by the respondent, *Ms. Jennifer Wanjiku Nyambura*. The respondent contended that the application failed to meet the threshold for grant of stay of execution pending appeal as the applicant had not demonstrated that it was likely to suffer substantial loss if stay was not granted. The applicant had also failed to furnish security for due performance of the decree and that the above two conditions were prerequisites for grant of stay pending appeal. It was the respondent's case that the application was filed in bad faith with the aim of delaying enjoyment of fruits of her judgement.
5. When the application came up for hearing, the court prompted the parties to negotiate and see whether they could compromise the application in the interest of expediting hearing of the appeal. *Mr. Nkomejimana*, learned counsel for the Respondent informed the court that the respondent was willing to concede to the application if the applicant deposited the decretal amount in an interest

earning account as security for due performance of the decree. *Mr. Kuria* who was holding brief for *Ms. Munyua* for the applicant maintained that the applicant, being a County Government, was exempted from depositing security as a condition for grant of stay.

6. Given that the parties only point of divergence was their different positions regarding whether the applicant was legally obligated to provide security for due performance of the decree issued by the lower court as a condition for stay pending appeal, i directed the parties to file written submissions limited to that issue only. The court record shows that both parties filed their respective written submissions on 11<sup>th</sup> June 2025.
7. In its submissions, the applicant, relying on several constitutional provisions and two persuasive authorities namely, **County Government of Kilifi V Robinson Onyango Malombo t/a O.M. Robinson Advocates [2018] eKLR** and **Zedka Mechanical Services Ltd V County Government of Uasin Gishu & 3 others [2020]**

**eKLR** argued that it was a Government within the meaning of *Order 42 Rule 8* of the *Civil Procedure Rules* (CPR) and it was therefore exempted from furnishing security as a condition for stay of execution pending appeal.

8. On her part, the respondent disputed the applicant's assertion and submitted that *Order 42 Rule 8* CPR only applied to the National Government and public officers; that County Governments are established under *Section 6* of the *County Government Act* as body corporates with power to sue and be sued and they were therefore not shielded from the requirement to furnish security as a condition for stay. For this proposition, the respondent relied on two other persuasive authorities, namely, ***Titus Gatitu Njau V Municipal Council of Eldoret [2016] KEHC 5685 (KLR)*** and ***National Transport & Safety Authority V Elisha Z. Ongoya & 2 others 2019 EKLR.***
9. It is trite that the court's power to grant stay of execution pending appeal is discretionary but that discretion, being a judicial one, must be exercised judiciously on the basis of

evidence presented before the court and in accordance with the law. The law governing grant of stay of execution pending appeal is set out in *Order 42 Rule 6 (2)* of the *Civil Procedure Rules* which states that;

***“No order for stay of execution shall be made under sub rule (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”.***

*Order 42 Rule 8* proceeds to provide that;

***“No such security as is mentioned in rules 6 and 7 shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him in his official capacity.”***

**10.** Having considered the parties' written submissions, I will now proceed to determine whether the applicant was under a legal obligation to provide security for the due performance of a decree as a condition for stay pending appeal or whether it was protected from doing so by *Order 42 Rule 8 Civil Procedure Rules*.

**11.** I will start by looking at the legal definition of the term Government which is set out in ***Black Law Dictionary, 8<sup>th</sup> Edition*** at page 810 as follows;

***“ The structure of principles and rules determining how a State or organization is regulated.***

***The sovereign power in a Nation or State.***

***An organisation through which a body of people exercises political authority; the machinery by which sovereign power is expressed ..... In this sense, the terms refers collectively to the political organs of a country regardless of their function or level, and regardless of the subject matter they deal with [emphasis added].***

I will revert to this definition later in this ruling.

**12.** Although it is true as submitted by the respondent that County Governments are described in *Section 6* of the *County Government Act 2012* as body corporates with power to sue or be sued, this definition by itself does not necessarily put them at the same level as all other body corporates like companies or other institutions. I agree with the submissions made by *Ms. Munyua*, learned counsel for the applicant, that County Governments are not ordinary body corporates because they are creations of the Constitution through which, like the National Government, sovereign power of the people of Kenya is exercised.

**13.** *Article 176 (1)* of the Constitution establishes County Governments and provides that;

***(i) There shall be a county government for each county, consisting of a county assembly and a county executive.***

***(ii) Each county government consists of a county assembly and a county executive.***

*Article 177 (1) of the Constitution speaks to membership of a County Assembly and provides that a County Assembly is constituted by;*

***a) Members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year”***

***b).....***

**14.** It is clear from the above constitutional provisions that a County Assembly which is part and parcel of a County Government consists of elected representatives of the people at the ward level. It is also common knowledge that the County Executive is led by a Governor who is also an elected representative of the people.

**15.** Under *Article 1* of the Constitution which speaks to sovereignty of the people and supremacy of the constitution, the sovereign power of the people of Kenya is delegated to several State organs which are the following;

- i) Parliament and the legislative assemblies in the County Governments;
- ii) the National Executive and the executive structures in the County Governments;
- iii) The Judiciary and Independent tribunals.

*Article 1 (4)* proceeds to establish two levels of Government. It decrees that the sovereign power of the people is exercised at both the National level and at the County level.

**16.** Given the foregoing constitutional provisions, I have no doubt in my mind that a County Government like the applicant in this appeal fits the definition of Government as envisaged under *Order 42 Rule 8* of the *Civil Procedure Rules*. It is one of the political organs of the state through which the sovereignty of the people of Kenya is exercised at the county level. It is therefore my conclusion that the applicant is exempted from the requirement of furnishing security under *Order 42 Rule 6 (2)* of the *Civil Procedure Rules (CPR)*.

**17.** It is important to mention at this juncture, that in arriving at the above conclusion, I have also considered several authorities in which the High Court has previously

pronounced itself on the subject under consideration. Some of those authorities have been cited by the applicant but I see no need to refer to all of them.

It is sufficient for the purposes of this ruling to cite the case of **Zedka Technical Services Ltd V County Government of Uasin Gishu & 3 others (supra)**. In this case, the court had directed the County Government of Uasin Gishu to deposit security in the sum of Ksh.26,447,700 as a condition for stay of execution pending appeal. In allowing an application for review of its orders, the court cited with approval the decision in **County Government of Kilifi V Robinson Onyango Malombo t/a O.M. Robinson Advocates [2018] eKLR** and expressed itself as follows;

***“It is evident from the various authorities that the position in law is that no orders for deposit of security shall issue against the government and this includes the County Government. I do agree with the applicants that the error is an error of law, capable of ascertainment. It is ascertainable that the error on record is that of requiring the government deposit security.***

I entirely agree.

- 18.** I have also considered the two authorities cited by the respondent and with due respect, it is my finding that the authorities are irrelevant and are inapplicable to the issue I was called upon to determine in this application. In **National Transport and Safety Authority V Elisha Ongoya & 2 Others (Supra)** the applicant was a public institution not a County Government whereas in **Titus Gatitu Njau V Municipal Council of Eldoret (Supra)**, the application of *Order 42 Rule 8* of the CPR was not raised and was not one of the issues determined by the court.
- 19.** Considering that the respondent had conceded to grant of stay subject to the applicant furnishing security which condition I have held is inapplicable to the applicant by virtue of operation of *Order 42 Rule 8* of the CPR, I will now proceed to determine the application on terms which in my view will balance the competing rights and interests of both parties. The applicant has both a constitutional and statutory right of appeal which should be promoted and safeguarded while the respondent has a right to access fruits of her judgement in the shortest time possible.

**20.** In view of the foregoing, I allow the application and grant stay of execution of the trial court's judgement pending determination of the instant appeal on condition that the applicant files and serves its record of appeal within the next 60 days. Thereafter, mention dates for directions on admission and for directions on disposal of the appeal shall be fixed on a priority basis.

**21.** Costs of the application shall abide outcome of the appeal.

It is so ordered.

**DATED, SIGNED and DELIVERED** at **MURANGA** this 12<sup>th</sup> day of March 2026.

**HON. C. W. GITHUA**

**JUDGE**

**In the presence of:**

*Ms. Munyua* for the applicant

*Mr. Ian Nkomejimana* for the Respondent

*Ms. Susan Waiganjo*, Court Assistant