

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT NAKURU

ELRC MISCELLANEOUS APPLICATION NO. E002 OF
2025

*(Before Hon. Lady Justice Anna Ngibuini
Mwaure)*

JAMES WAIREGI WAMBUGU.....

APPLICANT

VERSUS

**COUNTY GOVERNMENT OF
NYANDARUA.....1ST**
RESPONDENT

**COUNTY PUBLIC SERVICE BOARD
COUNTY GOVERNMENT
OF NYANDARUA.....2ND**
RESPONDENT

**COUNTY SECRETARY
COUNTY GOVERNMENT OF
NYANDARUA.....3RD**
RESPONDENT

AND

FRANK KANJA MUCHINA.....1ST
CONTEMNOR

ALEX MWAURA.....2ND
CONTEMNOR

GLADYS KIMANDU.....3RD
CONTEMNOR

RULING

Introduction

1. The Respondents/Applicants filed a Notice of Motion dated 17th November 2024 seeking the following orders that:

1. This Honourable Court be pleased to grant a stay of the contempt proceedings pending before this court, pending the hearing and the determination of the Applicant's Application for review dated 6th December 2024.

2. This Honourable Court be pleased to make such further or other orders as it may deem fit, just and expedient in the circumstances.

3. Costs of this Application be in the cause.

2. The application is brought under ***Article 159 of the Constitution, sections 1A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6 and Order 45 Rule 1(2) of the Civil Procedure Rules, and Rules 17 and 32 of the Employment and Labour Relations Court (Procedure) Rules, 2016.***

Applicant's case

3. The application is supported by the affidavit of Alex Mwaura, the Respondent/Applicant's Chief Officer-

Public Service Management dated 14th November 2025.

4. The Respondents/Applicants avers that on 24th October 2024, the ELRC in Nyeri issued interim orders restraining any adverse employment decisions against the Applicant, including stoppage of salary or termination, pending appeal.
5. Dissatisfied with orders 2 and 3, the Applicants/Respondents aver that they filed a review application on 6th December 2024, which remains pending. Despite this, the Respondents/Applicant initiated contempt proceedings alleging disobedience of the same orders under review.
6. The Applicants/Respondents now seek a stay of the contempt proceedings until the review is determined, arguing that this is just, fair, and necessary to avoid conflicting decisions, preserve the court's dignity, and cause no prejudice to the Respondent.
7. Parties canvassed the application by way of written submissions.

Respondent/Applicant's written submissions

8. The Respondents/Applicants submitted that while obedience to court orders is a foundational principle, as emphasized in the case of ***Econet Wireless***

Kenya Ltd v Minister for Information & Communication of Kenya & another

[2005] KEHC 1767 (KLR), where the court retain discretion to prevent injustice and multiplicity of proceedings. The Respondents/Applicants argue that exceptions exist to the strict rule against hearing parties in contempt, citing the case of ***Teachers Service Commission v Kenya National Union of Teachers (KNUT) & 3 Others*** **[2015] KECA 1008 (KLR)**, where the Court of Appeal held that contemnors may still be heard if jurisdictional or substantive issues are at stake.

9. Similarly, in ***Rose Detho V Ratilal Automobiles Ltd & 6 Others*** **[2007] KECA 304 (KLR)** the Court of Appeal exercised discretion to hear a contemnor where justice required it. The Respondents/Applicants contend that the contempt application by the Applicant/Respondent is premature, as it rests on disputed facts specifically whether the dismissal process was complete which is the subject of their pending review application dated 6th December 2024. The Respondents/Applicants further rely on ***Said v Mussa & 2 Others*** **[2023] KEHC 635 (KLR)** where contempt proceedings were struck out as an abuse of court process when parallel matters were pending.

10. The Respondents/Applicants submitted that proceeding with contempt risks irreparable prejudice if the review succeeds, while a short stay would not unduly harm the Claimant. Thus, the Respondents/Applicants urge the court to stay or adjourn contempt proceedings until the review is determined, emphasizing that contempt powers must be exercised cautiously and only on accurate, uncontested facts.

11. At the time of writing this ruling, the Applicant/Respondent had not filed their submissions on CTS platform or presented a hard copy.

Analysis and determination

12. The court has considered the application, supporting affidavit, and the submissions on record; the singular issue for determination is whether the application is merited.

13. ***Order 42 Rule 6(2) of the Civil Procedure***

Rules 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.”

14. In **Rose Detho V Ratilal Automobiles Ltd & 6 Others(Supra)** where Githinji JA stated as follows:

“It is apparent therefore, that having regard to the law and circumstances of this case, the applicant would prima facie be entitled to be heard on appeal against the orders of committal although she has not purged the contempt. Mr. Nyairo seems to say that the applicant would be entitled to be heard during the hearing of the substantive appeal, but contends that she cannot be heard in an interlocutory application. In my view, the applicant would similarly be entitled to be heard on an interlocutory application seeking the stay of execution of the impugned orders pending appeal as otherwise the applicant would be

committed to prison and thus render the appeal ineffectual.”

15. In this instant case, the Respondents/Applicants are seeking stay of the contempt proceedings until the review is determined. The review touches on this court's orders issued on 24th October 2024 *inter alia* to restrain the Respondents from taking any decision adverse to the Applicant's employment including the stoppage of his salary and benefits or terminating their contract.

16. The court is cognisant the contempt proceedings refer to the orders issued on 24th October 2024 which of cause should be dispensed with. At this point, the court is not dealing with the review application *per se* and or on its merits or otherwise. It would nevertheless be just and fair to hear and determine the review application before dealing with the contempt proceedings.

17. The court will allow the stay of contempt proceedings pending the hearing and determination of the review proceedings.

18. The court has noted the Respondent/Applicant Mr. James W. Wambugu filed his submissions dated 10th February 2026 in relation to all the applications.

The Applicant in this application being the Respondents and the contemnors are given 14 days to file any responses to contempt application if not already filed and avail the same to court as well as submissions. Case will be mentioned on 12th May 2026 to confirm compliance and give a Ruling date both for the Review application and the contempt application.

19. Costs will be in the cause.

It is so ordered.

Dated, Signed and Delivered virtually at Nakuru this 3rd Day of March, 2026.

**ANNA NGIBUINI MWAURE
JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1**

of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE