



**Teachers Service Commission & another v Obita (Civil Application E170 of 2025) [2026] KECA 598 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KECA 598 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E170 OF 2025  
MS ASIKE-MAKHANDIA, LK KIMARU & JM NGUGI, JJA  
MARCH 16, 2026**

**BETWEEN**

**TEACHERS SERVICE COMMISSION ..... 1<sup>ST</sup> APPLICANT**

**KISII TSC COUNTY DIRECTOR ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FRED APIMA OBITA ..... RESPONDENT**

*(Being an application against the judgment of the Employment and Labour Relations Court at Kisumu (Makau, J.) dated 17th June 2025 in Cause No. E004 of 2025)*

**RULING**

1. This is an application for stay of execution, pending the filing and determination of the intended appeal, filed by Mr. Sitima learned counsel for the applicants. After the court engaged Mr. Sitima extensively on the viability of this application, more so, the question of the nugatory aspect in the event of the appeal succeeding, he opted to leave the determination of the application entirely to the court.
2. The respondent on his part opted to rely on the documents he had filed in court in opposition to the application and asked for the dismissal of the application with costs.
3. Having considered the filings by both parties, we are satisfied that whereas the appeal is eminently arguable, we are not however satisfied that it will be rendered nugatory if stay of execution is not granted and the intended appeal succeeds. This is because the respondent is still an employee of the applicant which fact the applicant has not disputed. In the event the intended appeal succeeds, the applicant will still have recourse to his monthly emoluments to recoup the decretal sum paid out to the respondent. The respondent has also deposed and demonstrated that he is a person of means, who will be able to reimburse the decretal sum in the event that the appeal succeeds. The assertion was not sufficiently countered by the applicant.



4. The applicant having failed to demonstrate to our satisfaction the nugatory aspect, and since the applicant is required to satisfy both limbs, that is, arguability and the nugatory aspect, in order to succeed in an application of this nature, we are constrained to dismiss the application with costs to the respondent.

**DATED AND DELIVERED AT KISUMU THIS 16<sup>TH</sup> DAY OF MARCH, 2026.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

**JOEL NGUGI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

