

**IN THE COURT OF
APPEAL AT
NAKURU
(CORAM: MATIVO, GACHOKA & MURUNGI, JJ.)
A.) CIVIL APPLICATION NO. E126 OF 2025**

**BETWEEN
ROYAL HERBS EXPORTERS (SEZ) LIMITE.....APPLICANT
AND
COUNTY GOVERNMENT OF NYANDARUA.....RESPONDENT**

in
HC Petition No. E001 of 2025)

RULING OF THE COURT

1. By Notice of Motion dated 24th November 2025, the applicant has invoked the provisions of sections 3 and 3A of the Appellate Jurisdiction Act and rule 5 (2) (b) of the Court of Appeal Rules 2022 seeking the following reliefs:

1. ... Spent;
2. ... Spent;
3. THAT this Honourable Court be pleased to issue a temporary injunctive order restraining the County Government of Nyandarua either by itself or its agent or representatives, or any other person whatsoever, from imposing a cess tax, or charge, or fee on the

Applicant's

agricultural produce which is destined for export, pending the hearing and determination of the applicant's intended appeal;

4. *THAT this Honourable Court be pleased to grant a stay of execution order against the Superior Court's ruling on the sole issue of payment of those costs;*
5. *THAT this Honourable Court be pleased to grant any further orders or directions that it may deem fit under the circumstances of this case and in the interest of justice;*
6. *THAT the costs of this application be in the cause.*

2. The application is supported by the grounds on its face together with the supporting affidavit and further affidavit of Bharat Ramji, the applicant's director sworn on 24th November 2025 and 10th December 2025 respectively. The facts giving rise to the Motion are that by decision of the Nyandarua High Court in **Petition No. E001 of 2025**, dated 19th November 2025, the applicant's petition was dismissed with costs. The applicant contends that the ruling grants the respondent the free will to reinstate what it calls illegal cess tax or charge fees on its agricultural produce for export.
3. The applicant is aggrieved by those findings. It filed its notice of appeal dated 24th November 2025. It also sought typed and certified copies of the proceedings and judgment on the same date and filed its draft memorandum of appeal. The applicant

urged that the

intended appeal was arguable and would be rendered nugatory if the orders sought are not granted for the following reasons: that it would be subjected to unconstitutional and illegal county fees (without receiving any services whatsoever from the respondent), which cess demands may, if compounded, have the ripple effect on its business sustainability resulting in possible redundancies; that the respondent will continue to perpetuate an illegality for a possibly long period; that the respondent was incapable of reimbursing the applicant for its financial losses in the event the appeal succeeds as there were no known budgetary allocations to pay back illegally collected charges, fees or taxes; the balance of convenience titled in favor of the applicant; it had been served with invoices attached to the respondent's replying affidavit; and that no evidence of the supplementary budget alluded to by the respondent was annexed to its response.

- 4.** The application is opposed. The respondent relied on the affidavit of Mary Kamande, a member of the respondent's County Executive Committee for Finance, sworn on 5th December 2025, urging this Court to dismiss the application with costs. It was deposed that the application failed to meet the threshold set out in **Giella vs.**

Cassman Brown & Co. Limited [1973] EA 358. In its view, the applicant failed to demonstrate that it had a *prima facie* case, would suffer irreparable harm and the balance of convenience tilted in its favor. We must first stop here and remind the respondent that the principles it is citing apply to applications for injunction in the High Court and other courts that apply the Civil Procedure Act, not to this Court. The proceedings in this Court are governed by the Court of Appeal Rules, 2022.

5. The respondent continued that the applicant failed to demonstrate that the payment of cess constituted double taxation. That, in any event, the respondent could refund the money paid through a supplementary budget if the appeal succeeded. It was deposed that the payment made by the applicant was for the public good as the resources were utilized for health services, infrastructure (roads, water) and agricultural extension services, which the applicant also benefited from.
6. It further submitted that the applicant was the only entity that refused to pay the cess despite enjoying the services provided by the respondent. Further, the cess required to be paid by the applicant was governed by the County Finance Act of 2024. Finally, the

respondent deposed that should this Court be inclined to issue those orders, it urged this Court to direct the applicant to deposit a sum of Kshs. 982,000.00 in a joint interest-earning account as security as a condition precedent to the injunction orders sought.

7. This application was heard through the virtual platform on 9th March 2026. The applicant was represented by learned counsel Mr. Mitto holding brief for Mr. Mugane while learned counsel Mr. Mugo held brief for Mr. Gatore, acting for the respondent. The parties relied on their written submissions that were orally highlighted.
8. The applicant filed written submissions, a case digest and a list of authorities, all dated 10th December 2025. The applicant urged this Court to allow the application as the appeal was arguable and would be rendered nugatory if the orders sought were not granted. It was further submitted that there was need to secure injunctive orders irrespective of the fact that the substantive statute, the subject of this appeal, was not declared unconstitutional. The respondent in its written submissions, list and bundle of authorities dated 18th December 2025 urged this Court to dismiss the application with costs as the threshold had not been met.

9. We have considered the application, the response and the rival submissions and analyzed the law. The applicant seeks injunctive relief by dint of rule 5 (2) (b) of the Court of Appeal Rules. At the outset, we note that prayers 4 and 5 are for dismissal as the Court cannot stay a negative order and will only consider prayer 3 of the application.
10. To succeed, the applicant must successfully demonstrate the following twin principles: that the appeal is arguable and will be rendered nugatory absent stay. On the first limb, that is the arguability of the appeal, it is well settled that an arguable appeal is not one which must necessarily succeed but one which ought to be argued fully before the Court; one which is not frivolous. In addition, an appeal will be found to be arguable if a single *bonafide* ground is raised (See **National Industrial Credit Bank Ltd vs. Aquinas Francis Wasike & another** [2006] KECA 333 (KLR)).
11. The applicant has attached a draft memorandum of appeal that has raised 11 grounds disputing the findings of the learned judge. It raises among other issues, the constitutionality of the levy under the County Finance Act. Without going into the merit of the grounds of appeal, we are satisfied that they are arguable. As to

whether the

grounds of appeal are merited, we leave it to the bench that will hear and determine the appeal. We therefore find that the applicant has meet the threshold on the first limb.

12. On the nugatory aspect, this Court in **Kenya Shell Limited vs.**

Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR) held that in determining an application for a stay, the Court must address its collective mind to the question of whether to refuse it would render the appeal nugatory. The question whether an appeal will be rendered nugatory absent stay has to be determined in the circumstances of each case, as not all cases are the same on all fours.

13. In this case, the applicant at the trial court challenged the constitutionality of the County Finance Act of 2024. It is trite law that statutory provisions enjoy the cardinal principle of constitutionality unless declared otherwise (See **Attorney General & another vs. Coalition for Reform and Democracy & 7 others** [2015] eKLR). We note that the trial court declined to declare the County Finance Act unconstitutional. This means that the applicant, just like any other exporter, will be required to pay cess on its goods. With respect to the applicant, the cess that

it will

pay is well tabulated and monetary in nature. The money paid is recoverable if the appeal is successful.

14. In view of the foregoing, we find that the applicant has not demonstrated that it should be exempt from the statutory requirements. Accordingly, the applicant has failed to meet the threshold of the second limb as to whether the appeal will be rendered nugatory if the orders sought are not granted.

15. For those reasons, the present Notice of Motion dated 24th November 2025 lacks merit. It is hereby dismissed with costs to the respondent.

Dated and Delivered at Nakuru this 10th day of April, 2026.

J. MATIVO

.....
JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

MURUNGI B. KAIRARIA

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR