



Nyanuaya (Chairman) & 2 others (Of the Kisumu Centre Jua-Kali Artisans Association) v Otieno (Civil Application E007 of 2026) [2026] KECA 809 (KLR) (24 April 2026) (Ruling)

Neutral citation: [2026] KECA 809 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E007 OF 2026
MS ASIKE-MAKHANDIA, M NGUGI & LK KIMARU, JJA
APRIL 24, 2026

BETWEEN

JACOB NYANUAYA (CHAIRMAN) 1ST APPLICANT
DAVID OTIENO ODANGA (SECRETARY) 2ND APPLICANT
EVELYNE EGESA (TREASURER) 3RD APPLICANT
OF THE KISUMU CENTRE JUA-KALI ARTISANS ASSOCIATION

AND

FRANCIS OUMA OTIENO RESPONDENT

(Seeking that conservatory orders be issued staying the execution and/or implementation of the judgment and decree of the High Court of Kenya at Kisumu delivered on 19th December 2025 in HCCC Case No. E017 of 2023)

RULING

1. Before us is an application dated 7th January, 2026, brought under sections 3A and 3B of the [Appellate Jurisdiction Act](#), rule 5(2) (b) of the Court of Appeal Rules, the Court of Appeal Vacation Rules, and all other enabling provisions of the law.
2. The applicants, namely Jacob Nyanuaya, David Odanga and Evelyne Egesa, who are the chairman, secretary and treasurer respectively of the Kisumu Centre Jua-Kali Artisans Association “the Association” seek in the main that an order staying the execution of the judgment and decree of the High Court of Kenya at Kisumu, issued on 19th December 2025 in Civil Case No. HCCC/E017/2023, by Mabeya J. be issued pending the hearing and determination of the intended appeal. They further seek that the status quo ante judgment be preserved, which will allow them to remain in office and discharge their official duties without any hindrance, and which will also restrain the respondent from taking any steps towards convening an Annual General Meeting “AGM”, holding elections,



- furnishing audited accounts or membership registers, or recognizing the respondent as a member of the Association until the appeal is finally heard and determined.
3. The application is supported by the grounds on its face to wit: that the applicants have lodged a Notice of Appeal; that the impugned judgment and decree directs them to furnish audited accounts, convene an Annual General Meeting “AGM”, recognize the respondent as a member of the Association, and implement corrective governance orders; that the implementation of these orders will fundamentally alter the Association’s governance and membership structures affecting thousands of members; that unless stay of execution orders sought are granted, the substratum of the appeal will be rendered nugatory as the actions ordered cannot be undone; that the respondent will suffer no prejudice if stay of execution is granted whereas the applicants and the Association will suffer irreversible prejudice; that the appeal is arguable and raises substantial issues of law and fact; and that the application has been filed expeditiously and in good faith.
 4. The application is further supported by the affidavit of the 2nd applicant, sworn on 7th December, 2025, on his own behalf and on behalf of the other applicants. In his deposition, he states that the respondent, as a member of the Association, had filed a suit in the High Court of Kenya at Kisumu alleging irregularities in the management of, lack of transparency in financial matters, and disputes regarding membership rights of the Association. He depones that they filed a defence and counterclaim denying the allegations and seeking declarations on the respondent’s membership status and orders restraining his interference with the Association’s affairs. They also sought Kshs.73,510/- on account of monies spent by the association on the aborted elections resulting from injunctory orders obtained by the respondent.
 5. The High Court, after plenary hearing, granted all the orders sought by the respondent. He emphasized that implementation of these orders will have far-reaching and irreversible consequences on governance and membership structures involving over 8,000 members of the Association. He confirmed that a Notice of Appeal had been duly lodged, certified proceedings requested for, and that the appeal raises substantial issues of law and fact. Similarly, that it was in the public interest that the orders sought be granted. He concluded by stating that unless conservatory orders were granted, the appeal will be rendered nugatory and the Association will suffer irreparable prejudice.
 6. The respondent opposed the application through his grounds of opposition dated 17th March 2026. He took the view that that the intended appeal was grossly incompetent and did not disclose any arguable grounds capable of sustaining appellate consideration. He contended that the orders sought by the applicants were illegal, irrational, and contrary to public interest. On that basis, the respondent prayed that the application be dismissed with costs.
 7. When the application came up for plenary hearing, Mr. Omondi T, learned counsel appeared holding brief for Mr. Mwamu, SC, for the applicant while Mr. Ibrahim Oduor, learned counsel, appeared for the respondent. Both parties indicated that they wished to fully rely on their written submissions in prosecuting the application.
 8. Counsel for the applicants submitted that the applicants were the duly elected officials of the Association. He emphasized that the applicants had filed a Notice of Appeal and applied for certified proceedings promptly, underscoring their diligence and good faith.
 9. On the legal test for the grant of an order of stay of execution, counsel relied on *Butt v Rent Restriction Tribunal* [1982] KLR 417 and *Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR, in submitting that the Court must be satisfied that the intended appeal was arguable, that absent stay, the appeal will be rendered nugatory, and that the balance of convenience favours the grant of the reliefs sought. He stressed that an arguable appeal need only raise one bona fide issue deserving judicial



consideration, and contended that the applicants' intended appeal was arguable on several grounds. First, the trial court erred in finding that the respondent had locus standi to institute the suit despite clear constitutional provisions of the Association providing for automatic cessation of membership upon prolonged arrears in the payment of subscriptions which the respondent was guilty of. Second, the trial Court misapprehended section 6(h) of the Association's Constitution and ignored evidence of a valid resolution passed at a Special General Meeting authorizing elections as the sole agenda. Third, the dismissal of their counterclaim applied an impermissibly high standard of proof, contrary to established precedent. Lastly, they challenged the blanket award of costs, arguing that it ignored the Partial Mediation Settlement Agreement and the mixed outcome of the dispute.

10. On the nugatory aspect, counsel submitted that the impugned decree compels actions that are irreversible, that is, convening an AGM, conducting elections, altering governance structures, and disclosing sensitive financial records. He cited *Equity Bank Ltd v West Link Mbo Ltd* [2013] eKLR and *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, stressing that once elections are held and governance structure altered, restoration of the status quo ante practically impossible, rendering any successful appeal academic.
11. Counsel argued that the balance of convenience favours the applicants since they face immediate and irreversible prejudice affecting over 8,000 members, while the respondent suffers no comparable harm by waiting for the outcome of the intended appeal. Counsel relied on *Githunguri v Rushomo* [1988] KLR 172 to posit that where prejudice to the applicant outweighs inconvenience to the respondent, a stay of execution of the decree should ordinarily be granted. He further submitted that public interest requires stability in the governance of such a large informal-sector association pending final appellate determination. In the ultimate, counsel asked the Court to grant the prayers sought with costs being in the cause.
12. In opposing the application, counsel for the respondent submitted that the application and the intended appeal are grossly incompetent and fail to disclose any arguable grounds. He argued that no proper grounds of appeal have been set out either on the face of the application or in the supporting affidavit, and that the applicants improperly attempted to introduce new matters through submissions, which are not pleadings and cannot be relied upon to establish grounds of appeal.
13. He further contended that the applicants had not furnished the Court with the decree or orders they seek to stay, and that the reliefs outlined in their motion are creations of their own fertile imaginations, not emanating from the High Court's judgment and decree. He maintained that the orders sought are manifestly irrational, illegal, and prejudicial to public interest. He emphasized that under the *Societies Act* and the Association's Constitution, the applicants are under a mandatory duty to convene Annual General Meetings, conduct elections, and furnish members with audited accounts and registers which the applicants have failed or ignored to do. He submitted that granting the orders sought would amount to suspending statutory obligations, thereby producing absurd, unworkable, and illogical results contrary to public interest.
14. In support thereof, he cited *Independent Electoral and Boundaries Commission v Kiai & 5 Others* [2017] eKLR and *Center for Rights Education and Awareness & Another v John Harun Mwau & 6 Others* [2012] eKLR, where the Court underscored the principle that statutory and constitutional interpretation must avoid absurdity and uphold public interest.
15. On the nugatory aspect, counsel submitted that the applicants had failed to demonstrate how the intended appeal would be rendered nugatory absent stay. He submitted that compliance with statutory obligations cannot prejudice the applicants, but rather ensures accountability to members. He noted that the High Court's judgment and decree were merely declaratory, requiring the applicants to comply



- with the *Societies Act* and the Association’s Constitution, obligations they had previously attempted to circumvent. In conclusion, counsel urged the Court to find that no arguable appeal exists, and that the orders sought were illegal and against public interest.
16. The jurisdiction of this Court in an application such as this is original, discretionary, and unfettered, though it must be exercised judicially and in the interests of justice. In *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others* (supra), this Court stated:

“The applicant must satisfy both limbs: first, that the appeal is arguable, and second, that the appeal will be rendered nugatory if stay is not granted. An arguable appeal is not one that must necessarily succeed, but one that raises a bona fide point worthy of consideration. The nugatory aspect considers whether, if stay is not granted, the appeal will be rendered worthless, futile, or incapable of being reversed, or whether damages would reasonably compensate the aggrieved party.”
 17. The twin principles therefore that will guide our determination of this application are whether the intended appeal is arguable and whether it will be rendered nugatory absent stay.
 18. On the first issue, the applicants contend that their intended appeal raises substantial grounds, including, misinterpretation of the Association’s Constitution on cessation of membership, the trial Court’s misapprehension of section 6(h) of the Association’s Constitution, and the dismissal of their counterclaim on the basis of an impermissibly high standard of proof, contrary to established precedent. Lastly, they challenged the blanket award of costs despite partial success by the applicants in the suit.
 19. The respondent, however, submits that the intended appeal is not arguable as the alleged grounds are not properly set out in the application or supporting affidavit, but only introduced by the applicants in their written submissions. He emphasizes that parties are bound by their pleadings, and written submissions are no substitute for pleadings.
 20. We agree with the respondent. The applicants’ intended appeal is directed not against compliance with statutory obligations, but against the High Court’s orders requiring adherence to the *Societies Act* and the Association’s Constitution. The law is settled that registered societies are bound to convene Annual General Meetings, furnish audited accounts to members, and maintain membership registers. These are mandatory obligations and statutory imperatives that cannot be suspended or wished away by an order of stay of execution. See *Independent Electoral and Boundaries Commission v Kiai & 5 Others* [2017] eKLR and *Center for Rights Education and Awareness v John Harun Mwau & 6 Others* [2012] eKLR, where the Court emphasized that statutory interpretation must avoid absurdity and uphold public interest. An order of stay of execution of the judgment and decree in the circumstances of this case will be tantamount to sanitizing the applicants’ continued violations and breach of statutory imperatives. Obviously, this cannot be within the jurisdiction of a court of law and equity. In any event, the impugned decree was merely declaratory in nature and therefore incapable of being stayed. In the end, we are not persuaded that the intended appeal raises any bona fide issue worthy of consideration by the appellate court.
 21. On the nugatory aspect, the orders of the High Court merely required compliance with statutory obligations under the *Societies Act* and the Association’s Constitution. These are mandatory duties of office bearers of a registered society. Compliance with such obligations cannot render an appeal nugatory. On the contrary, granting stay would suspend statutory requirements, thereby undermining accountability and transparency within the Association. In *Equity Bank Ltd v West Link Mbo Ltd* [2013] eKLR, the Court emphasized that the nugatory principle must be assessed in light of whether



compliance with lawful obligations would truly defeat the appeal. Here, compliance simply enforces statutory duties.

22. Further, on public interest we are satisfied that the prejudice alleged by the applicants is speculative. The respondent and the members of the Association stand to suffer greater prejudice if governance structures are frozen contrary to law. Public interest demands that societies comply with their constitutions and statutory obligations, and this Court cannot sanction orders that would suspend such compliance. In *Reliance Bank Ltd v Norlake Investments Ltd* [2002] 1 EA 227, the Court stressed that the right of a successful litigant to enjoy the fruits of judgment must be balanced against the right of appeal. In this case, the balance tilts in favour of the respondent, as the High Court's orders simply ensure compliance with statutory governance requirements.
23. In the result, we are satisfied that the applicants have failed to meet the twin limbs under Rule 5(2) (b). The intended appeal is not arguable, and the applicants have not demonstrated that it would be rendered nugatory absent stay. The Notice of Motion dated 7th January 2026 is accordingly dismissed with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026

ASIKE-MAKHANDIA

JUDGE OF APPEAL

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MUMBI NGUGI

JUDGE OF APPEAL

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L. KIMARU

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

