



Nandi County Public Service Board & another v Ketter & 461 others (Civil Application E065 of 2024) [2025] KECA 71 (KLR) (24 January 2025) (Reasons)

Neutral citation: [2025] KECA 71 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E065 OF 2024
MA WARSAME, JM MATIVO & PM GACHOKA, JJA
JANUARY 24, 2025**

BETWEEN

THE NANDI COUNTY PUBLIC SERVICE BOARD & ANOTHER APPLICANT

AND

ZEDDY JEPTANUI KETTER & 461 OTHERS RESPONDENT

(An application for stay of execution from the ruling and order of the Employment and Labour Relations Court at Eldoret (M. Onyango, J.) delivered on 21st November, 2024 in ELRC Case No. E012 of 2024)

REASONS

1. The Notice of Motion dated 2nd December 2024 was heard before this bench on 18th December 2024. Upon hearing the parties, the Court made the following orders:
 1. The ruling dated 21st November 2024 (M. Onyango, J.) is hereby stayed pending the hearing of Civil Appeal No. 107 of 2024;
 2. No party shall take any further action pending the hearing and determination of the appeal;
 3. The appellants will file and serve their submissions within the next 15 days and upon service the respondents will file their submissions within 15 days;
 4. The appeal will be heard on a priority basis in the next term, 2025;
 5. The cost of the application to abide the outcome of the appeal.
2. The reasons for the issuance of those orders were discretionarily reserved pursuant to the dictates of rule 34 (7) of the *Court of Appeal Rules*. Before we give the reasons, we find it necessary to give an abridged background of the facts giving rise to the application before us.



3. The 1st – 459th respondents were employees of the County Government of Nandi. On 27th August 2024, the 1st applicant issued revocation letters to these employees that had the effect of terminating their employment services from the said County. Dissatisfied with that decision, the 1st – 459th respondents approached the Employment and Labour Relations Court in Eldoret ELRC Pet. No. E012 of 2024; *Zeddy Jeptanui Ketter & 459 others v. the Nandi County Public Service Board* citing unfair and unlawful termination and sought a raft of reliefs.
4. Contemporaneously, the said respondents filed a Notice of Motion dated 2nd September 2024 seeking inter alia, injunctive orders restraining the applicants from terminating the services of the respondents. That application was opposed by the applicants herein. They filed a notice of Preliminary Objection dated 23rd September 2024 challenging the jurisdiction of the trial court by dint of the doctrine of exhaustion.
5. Upon hearing the parties, the learned judge (M. Onyango, J.) found merit in the application and allowed it in the following terms:
 - i. The orders of status quo made on 25th September 2024 are hereby confirmed;
 - ii. Any employee who had not received a letter of revocation of employment as at 25th September 2024 shall be deemed to be in employment as if such letter had not been issued;
 - iii. For employees who had already received the letters, the said letters are suspended pending the hearing and determination of the petition herein;
 - iv. The Preliminary Objection by the 1st and 2nd respondents is dismissed;
 - v. Costs shall be in the cause.
6. The applicants, aggrieved with those findings, filed their Notice of Appeal dated 21st November 2024. They also filed their draft memorandum of appeal dated 2nd December 2024 that raised 10 grounds disputing the findings of the trial court.
7. That application was vehemently opposed. The 1st – 459th respondents filed a replying affidavit sworn by the 1st respondent on their behalf on 9th December 2024. They urged this Court to find that the application lacked merit and was for dismissal.
8. The application was heard on the basis of the parties' rival written submissions that were orally highlighted. Learned counsel Prof. Tom Ojienda (SC) appeared for the applicants, learned counsel Mr. Kipkorir was present for the 1st – 460th respondents and learned counsel Mr. Kogo appeared for the 461st respondent.
9. The applicants filed their written submissions dated 11th December 2024 together with a list and bundle of authorities of the same date. They argued that the appeal was arguable and would be rendered an academic exercise if stay was not granted. On their part, the 1st – 459th respondents filed their joint written submissions together with a list and bundle of authorities both dated 9th December 2024. They submitted that the application failed to meet the threshold set out in rule 5 (2) (b) of this [Court's rules](#) and was therefore unmerited.
10. The parties extensively elaborated on their submissions and this Court has carefully considered those submissions alongside the diametrically opposed pleadings. The principles enunciated in applications under rule 5 (2) (b) of this [Court's Rules](#) for stay of execution pending appeal or intended appeal, are well settled. To be successful, an applicant must demonstrate that the intended appeal or appeal (if any)



is arguable and not merely frivolous. Secondly, an applicant must establish that the appeal, or intended appeal, if successful, would be rendered nugatory if stay is denied.

11. On the first limb of the conjunctive principles set out above herein, this Court in *Stanley Kang'ethe Kinyanjui v. Tony Ketter & 5 others* [2013] eKLR held that on arguability, an arguable appeal must not necessarily succeed, but one which ought to be argued fully before the court; one that is not frivolous. In addition, one ground of appeal can sufficiently fulfill this condition.
12. In this case, the applicant has filed a draft memorandum of appeal that raised 10 grounds impugning the findings of the learned judge. We have examined the grounds raised by the applicants and note that among them is whether the court had jurisdiction to hear the case and whether persons who are not parties to a suit can enjoy orders. In our view, those are arguable grounds, but as to whether they will succeed, we leave that to the bench that will hear the appeal.
13. On the second limb, this court in *Stanley Kang'ethe Kinyanjui v. Tony Ketter & others (supra)* held that the nugatory aspect of the appeal depends on what is sought to be stayed, if allowed to happen, is reversible and if the answer is in the negative, whether damages will reasonably compensate the party aggrieved.
14. In this regard, we find that if the orders sought are not granted, there is a likelihood of loss of public funds as the respondents have not demonstrated that if they continue to receive their salaries, they will reimburse the applicants if the applicants succeed in the appeal. On the other hand, if the appeal fails, the respondents will receive their salaries.
15. On a question by the Court, the applicants indicated that they are proceeding with the process of evaluation to determine who the genuine employees are; such an exercise is likely to affect some of the applicants. This is the reason we ordered that no party should take further action.
16. It is premised on the above reasons that we allowed the application dated 2nd December 2024 in the manner set out in paragraph one herein.

DATED AND DELIVERED AT NAKURU THIS 24TH DAY OF JANUARY 2025.

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

signed

DEPUTY REGISTRAR

