



Mukoto v Board of Governors ACK St. Peter’s Ndumberi Academy (Civil Application E568 of 2024) [2025] KECA 530 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KECA 530 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E568 OF 2024
AO MUCHELULE, SG KAIRU & FA OCHIENG, JJA
MARCH 21, 2025**

BETWEEN

VINCENT SAKWA MUKOTO APPLICANT

AND

**THE BOARD OF GOVERNORS ACK ST. PETER’S NDUMBERI
ACADEMY RESPONDENT**

*(Being an appeal from the Ruling and Order of the High Court of Kenya at
Kiambu (Mshila, J.) dated 4th October 2024 in HCCA No. E318 of 2023)*

RULING

1. This ruling relates to an application dated 23rd October 2024 by which the applicant, Vincent Sakwa Mukoto, seeks an order under Rule 5(2)(b) of the *Court of Appeal Rules* of Kenya for stay of further proceedings in HCCA No. E318 of 2023 before the High Court at Kiambu pending the hearing and determination of his intended appeal against the ruling and order given by that court on 4th October 2024.
2. In its ruling delivered on 4th October 2024, the subject of the intended appeal, the High Court allowed an application dated 24th January 2024 in which the respondent applied for the applicant to be held in contempt of court for disregarding orders of that court issued on 18th January 2024 compelling the applicant to release Motor Vehicle KBQ 095U to the respondent. Also sought in that application was an order to cite the applicant for contempt of court and be committed to civil jail for a term of six (6) months until such a time the applicant purges the contempt and complies with the court’s orders issued on 18th August 2024. In its said ruling, the High Court pronounced as follows:

“...this court finds that the [applicant] had notice and knowledge of the court order; and finds the [applicant] to be in gross violation of this courts orders, and the acts are found to be illegal in conduct and amount to contempt of the orders of 18th January 2024.



The [applicant] is hereby held to be personally liable for disobeying court orders;”

3. The High Court then directed that the matter be mentioned on 14th November 2024 “for mitigation before sentencing.” It transpired during the hearing of this application that the date for mitigation was subsequently deferred to 13th March 2025.
4. Being dissatisfied with that ruling, the applicant has filed a Notice of Appeal dated 8th October 2024 and subsequently this application which was canvassed before us on 10th February 2025. Learned counsel Mr. Njagi appeared for the applicant and orally highlighted the applicant’s written submissions dated 22nd November 2024 in support of the application. Mr. Mulaku, learned counsel, appeared for the respondent and orally highlighted the respondent’s written submissions dated 14th January 2025 in opposition.
5. We have considered the application; the applicant’s supporting affidavit; the replying affidavit of Edinah Masanya, and the rival submissions. Under Rule 5(2)(b) of the Court of Appeal Rules, the Court has the discretion to grant the orders sought pending appeal if the applicant demonstrates that the appeal or intended appeal is arguable; and that unless the orders sought are granted, the appeal, if successful, would be rendered nugatory. In that regard, the decision of this Court in the case of Multimedia University & Another vs. Professor Gitile N. Naituli [2014] eKLR which Mr. Njagi cited is on point.
6. As to whether the intended appeal is arguable, Mr. Njagi referred us to the draft memorandum of appeal urging that during the hearing of the appeal, it will be demonstrated that learned Judge did not consider the principles relating to contempt; that the judge failed to appreciate that the respondent had not complied with its obligations under the orders issued on 18th August 2024 in that it did not deposit the entire decretal amount it was supposed to have deposited. Whereas Mr. Mulaku maintained that the intended appeal is frivolous, upon a preliminary assessment, and bearing in mind that an arguable appeal is not one that will necessarily succeed, we extend the benefit of doubt to the applicant and find that intended appeal might warrant further judicial scrutiny.
7. On the nugatory aspect, the applicant should demonstrate that in the absence of the orders of stay of proceedings being granted, the consequence will be irreversible. In that regard, Mr. Njagi called to his aid the decision of the Court in Governor, County Government of Laikipia & Another vs. Laikipia [2021] KECA 196(KLR). In the present case however, there is merit in the submission by Mr. Mulaku that the applicant is calling upon the court to intervene prematurely based on a presumption or speculation of what might transpire during the scheduled mitigation. Moreover, the Court should be slow to stay proceedings before the High Court before it concludes the case.
8. Consequently, the application fails. It is accordingly dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF MARCH, 2025.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

F. OCHIENG

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JUDGE OF APPEAL

A. O. MUCHELULE



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JUDGE OF APPEAL

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

Signed

Deputy Registrar

