



**Attorney General v Kunga & another (Civil Application
E170 of 2024) [2025] KECA 1092 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1092 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E170 OF 2024
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
JUNE 5, 2025**

BETWEEN

THE ATTORNEY GENERAL APPLICANT

AND

ISABELLA KURIA KUNGA 1ST RESPONDENT

PHINEAS KAIMENYI RINGERA 2ND RESPONDENT

(An application for stay pending appeal against the Judgment and Decree of the Employment and Labour Relations Court of Kenya at Meru (O. Makau, J.) delivered on 31st July, 2024 in E.L.R.C Cause No. E008 of 2023 Consolidated with E.L.R.C. Cause No. E012 of 2023.)

RULING

1. The applicant in the Motion is the Hon. Attorney General who moves the court under sections 1A, 1B and 3A of the [Appellate Jurisdiction Act](#) and Rules 5 (2)(b) and 49 (4) of the Court of Appeal Rules, 2022 praying in the main that we be pleased to grant an order of stay of execution of the judgment delivered on 31st July, 2024 (Makau, J.) in Meru Employment and Labour Relations Court (ELRC) Cause No. E008 of 2023 consolidated with **Meru Cause No. E012 of 2023** and all other enabling consequential orders and proceedings pending the hearing and determination of the application and the intended appeal. In grounds in support of the Motion and in a supporting affidavit of Pamela Marangu, the Principal of Munitu Girls Secondary School it is said, inter alia that on 4th August, 2024 the applicant being dissatisfied with the said judgment lodged a Notice of Appeal; that the applicant has an arguable appeal with high chances of success as shown in draft Memorandum of Appeal. The applicant says that the Judge erred in law and fact by finding that the dismissal of the 1st respondent (Phineas Kaimenyi Ringera) and the 2nd respondent (Isabella Kuria Kunga) from employment was unlawful and that the appellants did not adhere to the procedure set out under the [Employment Act](#) despite the fact that the 1st and 2nd respondents received several warning letters from their employer,



notices to appear for disciplinary hearing and attended disciplinary hearings before the Executive Board of Management of Munithu Girls Secondary School (the school); that the Judge erred in law by setting the bar for dismissal from employment very high contrary to what the law provides at section 34 of the *Employment Act* (the Act); that the Judge erred in law and fact in finding that the 2nd respondent was entitled to one month's pay in lieu of notice despite the court finding that the 2nd respondent admitted to having received Kshs.24,905 as one month's salary in lieu of notice upon dismissal. Further, that the Judge erred in law by finding that the 1st respondent was entitled to one month's salary in lieu of notice for unfair termination where the court had found that the 1st respondent had contributed to his dismissal through misconduct; it is said that an award for compensation for unfair termination was inordinately high; that the Judge should have found that a Collective Bargaining Agreement did not apply to the 1st and 2nd respondents and further that they were not members of KUDHEIHA. The applicant says that execution of the said judgment will render the intended appeal nugatory as it would occasion the applicant an upheld task of receiving the sum of Kshs.229,698 and Kshs.1,120,724 awarded to the respondents; that:

“Litigating over a dispute which is whether the 1st and 2nd respondents' contract of employment was lawfully terminated, yet the decretal sum is already enjoyed by the respondents before the final determination of the matter by the Court of Appeal.”

2. The applicant says that the public interest tilts towards granting a stay of execution as public funds will be used to settle the decretal sum and there would be undue loss should the appeal succeed. Attached to the supporting affidavit is a copy of the judgment to be appealed, Notice of Appeal and draft Memorandum of Appeal.
3. There is a replying affidavit by Phineas Kamenyi Ringera (the 1st respondent) who says that he was a claimant in ELRC represented by his union called KUDHEIHA WORKERS; that judgment of ELRC was served upon the school; that the Principal of the school denied union officials access to the school; that he and the union were surprised when instead of making payment the school filed an appeal; he and the union were served with record of appeal by the school; that:

“9. That my union has informed me upon checking the judiciary portal the appeal has been pending on the portal and not active thus dragging everything behind especially executing the judgment through the auctioneer.”

4. The rest of the affidavit gives the facts of the case before ELRC and the employment history of the 1st respondent and it is not necessary to set it out here as it is not useful in the determination of an application for stay of execution of a judgment pending appeal.
5. We have seen and considered written submissions filed in favour of or in opposition to the application.
6. The principles that apply in an application of this nature are well known. For an applicant to succeed it must firstly demonstrate that the appeal or intended appeal, as the case may be, is arguable, which is the same as saying that it is not frivolous. Such an applicant must show in addition, that the appeal will be rendered nugatory absent stay. See for a summary of those principles the case of Stanley Kangethe Kinyanjui vs. Tony Ketter & Others [2013] eKLR
7. The applicant here says that the respondents refused to render services to the school and yet the Judge awarded them compensation which is said to be inordinately high. It is also said that they were awarded salaries in lieu of notice when such salary had already been paid to them as acknowledged. It is proposed to be argued on appeal that the respondents' contracts of employment were lawfully terminated because all procedural steps for terminating a contract under the Act had been followed



and adhered to. We find those not to be idle points, they are arguable points on appeal. This Court has held that an arguable point on appeal is not one which will succeed, it is a point worthy of consideration and determination by the Court – See *Damji Pragji Mandavia vs. Sara Lee Household & Body Care (K) Ltd* Civil Application No. Nai 345 of 2004.

8. It is stated on the nugatory aspect that public funds would be utilized to satisfy the judgment but that the respondents would not be in a position to pay back in the event of success of the appeal. The respondents have not responded to this, they have instead complained that the 1st respondent, union officials and an auctioneer have been prevented from accessing the school to execute the decree. Once the applicant stated that the respondents would be unable to pay back, the burden shifted to them to show that once the decretal sum was paid to them in satisfaction of the decree they would be in a position to refund in the event of the appeal succeeding. They have not done that.
9. The applicant has satisfied the principles that apply in an application for stay of execution pending appeal.
10. We find the Motion to have merit and we allow it. There shall be a stay of execution of the judgment in Meru ELRC No. E008 of 2003 consolidated with Cause No. E012 of 2023 pending hearing and determination of the appeal. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NYERI THIS 5TH DAY OF JUNE, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL ALI – ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

