



**County Government of Kirinyaga & another v Kenya Medical Practitioners,
Pharmacists and Dentists Union & 23 others (Civil Application
E002 of 2023) [2024] KECA 1248 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1248 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E002 OF 2023
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
SEPTEMBER 20, 2024**

BETWEEN

COUNTY GOVERNMENT OF KIRINYAGA 1ST APPLICANT

CHAIRMAN COUNTY PUBLIC SERVICE BOARD 2ND APPLICANT

AND

**KENYA MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS
UNION & 23 OTHERS & 23 OTHERS & 23 OTHERS & 23 OTHERS & 23
OTHERS & 23 OTHERS & 23 OTHERS RESPONDENT**

*(Being an appeal against the ruling issued at Nyeri (D.K. Marete,
J.) on 16th September 2022 in ELRC Misc No. E004 OF 2021)*

RULING

1. Before us is a mongrel application by the County Government of Kirinyaga and the Chairman County Public Service Board (the applicants) pronounced to be brought under Article 159 of *the Constitution*, Section 3, 3A & 3B of the *Appellate Jurisdiction Act* as amended in 2016; Rules 4, 5(2) (b), 43, 44 49, 51, 55 and 56 of the *Court of Appeal Rules* (2022). We call it a mongrel application because it has mixed up prayers which should be filed before a single Judge with others which can only be heard by a full bench.
2. During the plenary hearing, however, Ms. Small learned counsel for the applicants heeded our counsel and withdrew the other prayers leaving only prayer No. 3 which implores the Court to stay execution of the Ruling of Justice D. K. Marete issued on 16th September, 2022 pending the hearing and determination of the appeal.
3. The impugned decision adopted the Public Service Commission’s decision reinstating the members of the Kenya Medical Practitioners, Pharmacists and Dentists Union to their respective positions as



employees of the applicant following a successful suit they had filed before the Employment and Labour Relations Court (ELRC) after their services had been terminated. After their termination, the respondents appealed to the Public Service Commission (the 2nd applicant), which ordered their reinstatement. The court adopted those orders, despite a pending application to review the 2nd applicant's decision.

4. The applicants sought stay orders from the ELRC, and they were granted 60 days conditional stay pending the filing of the intended Appeal. The applicants failed to comply with the set conditions and the order lapsed; prompting the application now before us.
5. The grounds on the face of the application, are that the appeal has overwhelming chances of success, as the applicants had followed the right procedure in replacing the respondents, and that their budget is not sufficient to accommodate members of the respondent. The rest of the grounds along with the depositions contained in the supporting affidavit sworn by Salome Beacco are in respect of the prayers for extension of time, which as we stated earlier lies within the jurisdiction of a single Judge.
6. When the matter came up for plenary hearing learned counsel for the applicants, confirmed to the Court that they had not been served with a replying affidavit in response to the application despite service of the application on the respondents. We note that no replying affidavit was filed and there were no submissions filed in the matter by either party. It would appear to us that the application is not opposed.
7. The discretion of this Court to grant stay orders is wide and unfettered. However, in order for the application to succeed, an applicant needs to demonstrate that he/she has an arguable appeal and that if the orders sought are not granted, the intended appeal will be rendered nugatory. These requirements were elucidated in *Trust Bank Ltd & Another -v- Investech Bank Ltd & 3 others* [2000] eKLR, where the Court held thus:

“The jurisdiction of the Court under Rule 5(2)(b) aforesaid is original and discretionary and it is trite law that to succeed applicant has to show firstly that his appeal or intended appeal is arguable or put another way, it is not frivolous and secondly that unless he is granted a stay, the appeal or intended appeal, if successful will be rendered nugatory”

8. Be that as it may, for the application to succeed the applicants must demonstrate that they have an appeal which is not frivolous and which deserves to be canvassed fully before the Court. As reiterated by this Court many times, an applicant needs only to demonstrate that he/she has one arguable ground of appeal and not a litany of grounds. We also remind ourselves that an arguable appeal need not be one that will succeed. See *Stanley Kangethe -v- Tony Keter & 5 others* [2015]eKLR.
9. From the grounds on the face of the application and the supporting affidavit sworn by Ms. Beacco, and the brief oral submissions by Ms. Small the main point raised by the applicants on arguability is that the learned Judge adopted the decision of the 2nd applicant reinstating the respondents back to work before their application for review of that decision was heard and a determination made on it.
The applicants maintain that they were denied their constitutional right to be heard and they were, therefore, condemned unheard.
10. On the nugatory aspect, the applicants state that they will not be able to reinstate the respondents as their positions have already been filled by other qualified persons, and they do not have funds to pay them.
11. We have considered the application along with the oral submissions and the applicable law. We are persuaded that the appeal is not frivolous given the fact that the application for review was pending



before the court when the decision in question was adopted, thus rendering the applicants' application moot.

12. On the nugatory aspect, we are satisfied that if the orders sought are not granted, and the appeal eventually succeeds, the applicants will have been forced to reinstate people who had been lawfully terminated.
13. We find that the applicants have demonstrated both principles as required. We find the application with merit and allow it on the following conditions:-
 - i. That the applicant deposits in Court Ksh.500,000. as security within 30 days from the date hereof.
 - ii. If the appeal has not been filed, the same be filed and served within 30 days from the date hereof;
 - iii. In the event on non-compliance with any of the above conditions, the stay orders to automatically lapse and the respondents be at liberty to execute the judgment;
 - iv. Costs be in the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2024.

W. KARANJA

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JUDGE OF APPEAL

L. KIMARU

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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

