



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyongesa v Masinde Muliro University of Science & Technology &  
2 others; Kasilly & 5 others (Interested Parties) (Civil Application  
E125 of 2023) [2024] KECA 1453 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1453 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E125 OF 2023  
HM OKWENGU, JA  
OCTOBER 18, 2024**

**BETWEEN**

**DR FERDINAND CHIRURE NYONGESA ..... APPLICANT**

**AND**

**MASINDE MULIRO UNIVERSITY OF SCIENCE & TECHNOLOGY .... 1<sup>ST</sup>  
RESPONDENT**

**THE CHAIR OF MASINDE MULIRO UNIVERSITY OF SCIENCE &  
TECHNOLOGY ..... 2<sup>ND</sup> RESPONDENT**

**VICE CHANCELLOR MASIND MULIRO UNIVERSITY OF SCIENCE &  
TECHNOLOGY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**DR JANETT N KASILLY ..... INTERESTED PARTY**

**DR BERNADETTE SABUNI ..... INTERESTED PARTY**

**JOHN MUHEHE ..... INTERESTED PARTY**

**DR ALEXANDER KHAEMBA ..... INTERESTED PARTY**

**DR JOSEPH NASONGO WAMOCHÉ ..... INTERESTED PARTY**

**DR JUDAH NDIKU ..... INTERESTED PARTY**

*(Being an application under Section 3 and 3A of the Civil Procedure Act Cap  
21; Rule 3, 4, 5(2)(b), 43 and 47 of the Court of Appeal Page 2 of 4 Rules, 2022)*



## RULING

1. This matter was listed before me as a single Judge, for hearing of a Notice of Motion dated 17<sup>th</sup> May, 2023, seeking in the first instance, extension of time for the applicant to file a memorandum of appeal, and secondly, an order for stay of execution of the judgment of the Employment and Labour Relations Court (ELRC), delivered on 26<sup>th</sup> January, 2023, pending the hearing and determination of the intended appeal.
2. The applicant who is dissatisfied with the judgment of the ELRC dismissing his petition against the respondents, in which he challenged the decision of Masinde Muliro University of Science & Technology (1<sup>st</sup> respondent), Vice Chancellor Masinde Muliro University of Science & Technology (2<sup>nd</sup> respondent) and the Chair of Council Masinde Muliro University of Science & Technology (3<sup>rd</sup> respondent), appointing and or promoting the 1<sup>st</sup> to 6<sup>th</sup> interested parties. The applicant was directed by the Executive Officer of the Court through an email dated 8<sup>th</sup> October, 2024 to serve the respondents with a hearing notice and to file an affidavit of service. The applicant has availed an affidavit of service in which he deposes that he served his notice of motion and the accompanying documents through email dated 10<sup>th</sup> July, 2023, on the email of the 2<sup>nd</sup> respondent, Vice Chancellor Masinde Muliro and also on the email of a Counsel representing Attorney General.
3. The applicant has also filed another affidavit of service duly sworn by one George Ongaro, a licensed Court Process Server on 11<sup>th</sup> April, 2024. The process server swears that he served the applicant's motion and the supporting documents on 8<sup>th</sup> April, 2024, on the respondents, through the legal department of the 1<sup>st</sup> respondent, Masinde Muliro University of Science & Technology; the documents were received on behalf of all the respondents and the interested parties. The process server also swears that he also personally served Mr. John Muhehe, the 1<sup>st</sup> interested party in person on the 9<sup>th</sup> April, 2024.
4. There is no affidavit of service that has been placed before me for service of the hearing notice as directed by the Deputy Registrar of the Court on 8<sup>th</sup> October, 2024. Be that as it may, I have perused the notice of motion filed by the applicant, and find that it is an omnibus application, as it seeks extension of time which under Rule 55(1) of the Court of Appeal Rules, should be heard by a single Judge, and also seeks an order for stay of execution pending appeal which under Rule 55(2)(a), should be heard by a full bench of the Court.
5. In the circumstances, the application is defective and the same is struck out. The applicant is at liberty to file an appropriate application in accordance with the rules of the Court.

**DATED AND DELIVERED AT KISUMU THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HANNAH OKWENGU**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

