



**Ngaji v Lukiri & 4 others (Civil Application E040 of 2024)  
[2024] KECA 1763 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1763 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E040 OF 2024**

**JW LESSIT, JA**

**DECEMBER 6, 2024**

**BETWEEN**

**LUCY AKOTH NGAJI ..... APPLICANT**

**AND**

**JAMES LUKIRI ..... 1<sup>ST</sup> RESPONDENT**

**VINCENT KIKUMI ..... 2<sup>ND</sup> RESPONDENT**

**BENJAMIN SAMUEL ADIENGE MWAI ..... 3<sup>RD</sup> RESPONDENT**

**STEPHEN NGOTHO KAMAU ..... 4<sup>TH</sup> RESPONDENT**

**VICTOR ONDUONGI ..... 5<sup>TH</sup> RESPONDENT**

*(Appeal from the Ruling of the Environment and Land Court of Kenya at Mombasa  
(N. A. Matheka, J.) dated 24th October 2023 in H.C. Petition No. 006 of 2022)*

**RULING**

1. The applicant Lucy Akoth Ngaji, by an application dated 17<sup>th</sup> April 2024 seeks orders as follows:
  2. That this Honourable Court be pleased to issue an interim order of stay of executions of the Judgment of dated 26<sup>th</sup> October, 2022 and all its consequential orders pending the hearing of the Application;
  3. That this Honourable Court be pleased to issue an order of stay of executions of the Judgment of Justice N. A Matheka dated 26<sup>th</sup> October, 2022 and all its consequential orders pending the hearing of the Appeal
  4. That the honorable court be pleased to issue leave to the Applicant to appeal the Ruling on the review of Justice N. A Matheka dated 24<sup>th</sup> October, 2023 out of time.



5. That the Respondent to bear bill of cost.
2. The notice of motion application has not invoked the rule(s) under which it has been brought. I observe that the orders sought in the application are one, an order of stay of execution of the judgment of N. Matheka dated 26<sup>th</sup> October, 2022 and all its consequential orders pending the hearing of the appeal and two, an order for leave to appeal from the ruling on the review of N. Matheka, J. dated 24<sup>th</sup> October 2023 in Mombasa H.C. Petition No. 006 of 2022 out of time. The prayer for interim stay is moot.
3. The two prayers are omnibus in nature. For the order of stay of execution, the same can only be heard by a full bench. In this Court's decision in *Geothermal Development Company vs. Lantech Africa Limited (Civil Application No. E029 of 2021)* [2024] KECA 269 (KLR) (8 March 2024) (Ruling) the Court held that:
  - “ 22. We have understood that the reference is on the basis that, since the applicant's application was “omnibus” in nature in that it sought diverse orders, some of which ought to be determined by a single judge and others which can only be determined by a full bench, it would have been prudent for the learned judge to refer the whole application to a full bench or, in the alternative, strike out the whole application altogether.”
4. I find that as not all the orders sought in the application could be heard by a single of this Court, I find it prudent to refer the application for consideration by a full bench. In the premises, I direct that the applicant's notice of motion dated 17<sup>th</sup> April 2024 be listed for hearing by a full bench of this Court on a priority basis.

**DATED AND DELIVERED AT MOMBASA THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024.**

**J. LESIIT**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

