



**PS, Ministry of Education Department of Vocational and Technical Training & another v Oguwi & 2 others (Civil Application E248 of 2022) [2023] KECA 332 (KLR) (17 March 2023) (Ruling)**

Neutral citation: [2023] KECA 332 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E248 OF 2022  
MSA MAKHANDIA, JA  
MARCH 17, 2023**

**BETWEEN**

**THE PS, MINISTRY OF EDUCATION DEPARTMENT OF VOCATIONAL AND  
TECHNICAL TRAINING ..... 1<sup>ST</sup> APPLICANT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> APPLICANT**

**AND**

**KEPHER LANGI OGUWI ..... 1<sup>ST</sup> RESPONDENT**

**KENYA UNION OF POST PRIMARY EDUCATION TEACHERS  
(KUPPET) ..... 2<sup>ND</sup> RESPONDENT**

**TEACHERS SERVICE COMMISSION (TSC) ..... 3<sup>RD</sup> RESPONDENT**

*(An application seeking stay of execution of the judgment and decree of  
the Employment and Labour Relations Court of Kenya at Nairobi (Hon.  
Onvango, J.) dated 10th December, 2021 in Nairobi ELCC No. 521 of 2019)*

**RULING**

1. The application dated July 12, 2022 by the applicants was placed before me as the duty Judge for certification. Having considered the application, I declined to certify it as urgent. Not satisfied by my aforesaid decision, the applicant by a letter dated February 9, 2023 made a request under rule 49(5) of this Court rules for the said application to be placed before me once again for hearing inter partes on the question of urgency.
2. The application is premised on the grounds that on December 10, 2021, the Employment and Labour Relations Court judgment decreed that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents do refund any monies deducted from the salaries of the 1<sup>st</sup> respondent and the persons on whose behalf he filed the suit and same be remitted to the 1<sup>st</sup> respondent's account of union dues or agency fees after the date they ceased being



employees of the 3<sup>rd</sup> respondent. Hence, the 1<sup>st</sup> applicant will be forced to budget for the monies to refund to the 1<sup>st</sup> respondent and all trainers whilst 2<sup>nd</sup> respondent which benefited directly from the union dues or urgency fees deducted from the lectures has been left to enjoy the fruits of what it was not entitled to. That should the order be executed, the tax payer stands to lose a colossal amount of money while refunding the lecturers yet the same ought to be refunded by the 2<sup>nd</sup> respondent. That if the matter is not therefore certified urgent and heard expeditiously, the applicants risks being cited for contempt of court and committed to civil jail.

3. The applicants reiterated the foregoing at the inter partes hearing of the application and maintained that the application was still urgent and ought to be certified as such.
4. Apart from 3<sup>rd</sup> respondent, the other respondents did not react to the application on the issue of urgency. It was the 3<sup>rd</sup> respondent's submission that the 1<sup>st</sup> respondent had computed the amounts deducted from him and the persons he represented totaling to Kshs 58,319,618.30 and consequent to the said order, the 1<sup>st</sup> respondent had attempted to execute for the said monies against the 3<sup>rd</sup> respondent but for the intervention of the court. Given the large sums of monies involved, and the sensitivity of the matter, I was asked to exercise my discretion in favour of the applicants and certify the application urgent.
5. I have duly considered the application and the submissions by learned counsel. In this application, I am only called upon to determine whether there is any basis to certify the application urgent and allow it to get preferential or priority hearing over other applications that were first in time.
6. To certify an application urgent is a matter of discretion, which has to be exercised judiciously. In *Jared Okello v Charles Otieno Opiyo & 3 Others*, CA No 151 of 2017, this Court stated the rationale of certifying applications urgent as follows:

“Certifying a matter urgent means that the same is to be set down for hearing and determination immediately. It gets priority over other matters, even though they were filed earlier in time and the parties have been waiting patiently for their turn. Before a matter can be allowed to jump the queue, it must be shown to deserve priority hearing. That approach is deliberate and dictated by the principles and values of fairness to all litigants and case management considerations, to the end that deserving applications filed first in time, are not relegated to the periphery while later applications of equal or less urgency get fast- tracked and given preferential treatment.”

7. For an application to be certified urgent, the applicant must satisfy the Court that there are circumstances in the application showing that if it is not heard promptly, both the application and the intended appeal may be rendered nugatory. See *Railways & Allied Workers Union v Rift Valley Railways Workers Union*, CA No Nai 29 of 2015 and *New Kenya Co-operative Creameries Ltd v Olga Ouma Adede*, CA No Nai 316 of 2014, and *Kenya Oil Co Ltd v Jayantilal Dharamshi Gosrani*, CA No 117 of 2010.
8. The 3<sup>rd</sup> respondent in his submissions has shade light as to why this application should be certified urgent with reasons among others being that close to 3000 trainers currently stationed at Technical and Vocational Training (TVET) Institutions, are in limbo as to the status of their employment which has caused and continues to cause irreparable damage by derailing the delivery of the teaching services to learners in TVET Institutions. There is also the fact that colossal amounts of money are involved and the public interest element. For all the foregoing reasons, I am now satisfied that the applicants have placed before me material on the basis of which I can certify the application urgent and deserving of preferential treatment. Accordingly, I now certify the application urgent.



9. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF MARCH, 2023.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

*I certify that this is a True copy of the original*

*Signed*

**DEPUTY REGISTRAR**

