



**County Government of Laikipia & another v Wahome & 114 others;
Transitional Authority & another (Interested Parties) (Civil Application
E008 of 2022) [2023] KECA 215 (KLR) (3 March 2023) (Ruling)**

Neutral citation: [2023] KECA 215 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E008 OF 2022
F SICHALE, FA OCHIENG & LA ACHODE, JJA
MARCH 3, 2023**

BETWEEN

COUNTY GOVERNMENT OF LAIKIPIA 1ST APPLICANT

LAIKIPIA COUNTY, PUBLIC SERVICE BOARD 2ND APPLICANT

AND

PATRICK KARIITHI WAHOME & 114 OTHERS RESPONDENT

AND

THE TRANSITIONAL AUTHORITY INTERESTED PARTY

THE PUBLIC SERVICE COMMISSION INTERESTED PARTY

*(An Application for Stay/Conservatory Orders/ Injunctive Orders
pending the hearing and determination of an intended appeal from the
judgment of the Employment and Labour Relations Court at Nakuru
(Wasilwa, J) dated 21st October 2021 in (ELRC Cause No. 382 of 2013))*

RULING

1. The County Government of Laikipia and Laikipia County Public Service Board (the applicants herein), have by a motion dated December 9, 2021, brought pursuant to the provisions of sections 3, 3A and 3B of the Appellate Jurisdiction Act, Cap 9 of the Laws of Kenya and rule 5 (2) (b) of the Court of Appeal Rules, 2010 sought the following orders:

- “1. Spent.
- 2. Spent.



3. Spent.
 4. That an order of stay of execution of the judgment and all consequential orders therefrom of the Employment and Labour Relations Court in [Nakuru ELRC Cause No 382 of 2013](#) dated October 21, 2021 be and is hereby issued pending the lodging, hearing and determination of the intended appeal against the said judgment.
 5. That the costs of this application be provided for.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Alexander Muchemi the County Attorney of the 1st applicant who deponed *inter alia* that being aggrieved with the judgment of the Employment and Labour Relations Court dated October 21, 2021, they had instructed their advocates on record to file an appeal and that they had an arguable appeal with high chances of success and that if the implementation of the impugned judgment was not stayed, then the intended appeal would be rendered nugatory.
 3. He further deponed that if the impugned judgment was fully implemented, there was a likelihood of public funds being used to pay fake and irregularly employed claimants before the appeal is heard and determined.
 4. The motion was opposed vide a replying affidavit sworn by the 1st respondent, Patrick Kariithi Wahome who deponed *inter alia* that the application was incompetent, baseless and ill-timed having been filled approximately 5 months after delivery of the judgment and that since the judgment was delivered, the applicants had not implemented even a single aspect of the judgment. Further, that the present application was a manifestation of the applicants’ unwillingness to abide by the court orders and to further oppress the respondents whose employment was illegally terminated by the applicants.
 5. It was submitted for the applicants that the appeal was arguable with high chances of success since the applicants were challenging the trial court’s decision which found that the respondents’ termination was illegal, null and void and that the impugned findings were causing confusion at the applicants’ work place as rogue individuals were now appearing at the applicants’ premises claiming salary arrears and demanding to be reinstated hence disrupting daily activities.
 6. On the nugatory aspect, it was submitted that if the funds claimed are released to rogue individuals, there was a likelihood of public funds being lost since some respondents may not be able to refund the decretal amount if the appeal succeeds since their means and sources of income was not known.
 7. On the other hand, it was submitted for the respondents that upon a careful consideration of the grounds set out in the motion, it was clear that there were no sufficient grounds therein to demonstrate to this Court that the trial judge was wrong in principle or law while delivering judgment and that as such, this limb had not been met. On the nugatory aspect, it was submitted that the court simply ordered the reinstatement of the respondents to the county work force.
 8. We have carefully considered the motion, the grounds thereof, the supporting affidavit, the respondents’ replying affidavit, the rival submissions by the parties and the cited authorities and the law.
 9. The applicants’ motion is brought *inter alia* under rule (5) (2) (b) of this [Court’s Rules](#)
 10. The principles for our consideration in the exercise of our unfettered discretion under rule 5 (2) (b) to grant an order of stay or injunctions are now well settled. Firstly, an applicant has to satisfy that he/ she has an arguable appeal. However, this is not to say that it must be an appeal that will necessarily succeed, but suffice to state that it is an appeal that is not frivolous and/or idle. Secondly, an applicant



has to demonstrate that unless an order of stay is granted, the appeal or intended appeal would be rendered nugatory. These principles were summarized by this court (differently constituted), in the case of *Stanley Kangethe Kinyanjui v Tony Ketter & others* [2013] eKLR as follows:

- i. In dealing with rule 5(2) (b) the Court exercises original and discretionary jurisdiction and that exercise does not constitute an appeal from the trial Judge's discretion to this Court.
- v. The discretion of this court under rule 5(2) (b) to grant a stay or injunction is wide and unfettered provided it is just to do so.
- vi. The court becomes seized of the matter only after the notice of appeal has been filed under rule 75.
- vii. In considering whether the appeal will be rendered nugatory the court must bear in mind that each case must depend on its own facts and peculiar circumstances.
- viii. An applicant must satisfy the court on both the twin principles.
- ix. On whether the appeal is arguable, it is sufficient if a single bona fide arguable ground of appeal is raised.
- x. An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous.
- xi. In considering an application brought under rule 5(2) (b), the court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal.
- xii. The term "nugatory" has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling.
- xiii. Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen will be reversible, or if it is not reversible whether damages will reasonably compensate the party aggrieved."

11. We have carefully perused the annexed memorandum of appeal and were are indeed satisfied that the applicants have an arguable appeal worthy of consideration by this court and more so whether the respondents were rightful employees of the 1st applicant. We shall however say no more regarding this issue lest we embarrass the bench that will be eventually seized of the appeal.
12. As to whether the appeal will be rendered nugatory if stay orders are not issued, we are satisfied that indeed public funds will have been lost in the event the respondents who are 115 in number are paid the disputed emoluments as salaries and they may not be able to refund the same in the event the appeal is successful as their sources and means of income remain unknown.
13. Ultimately, therefore we are satisfied that the applicants have demonstrated and satisfied the twin principles for consideration by this court for granting of orders of stay of execution pursuant to rule 5 (2) (b) of this Court.
14. The upshot of the foregoing is that the motion dated December 9, 2021 is merited and the same is allowed in terms of prayer 4 thereof.



15. The costs of this motion shall abide the outcome of the intended appeal.

DATED AND DELIVERED AT NAKURU THIS 3RD DAY OF MARCH, 2023.

F. SICHALE

.....

JUDGE OF APPEAL

F. OCHIENG

.....

JUDGE OF APPEAL

L. ACHODE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

signed

DEPUTY REGISTRAR

