



Ministry of Interior & Co-ordination of National Government & 2 others v Obara & another (Civil Application E378 of 2021) [2023] KECA 455 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KECA 455 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E378 OF 2021
DK MUSINGA, KI LAIBUTA & A ALI-ARONI, JJA
APRIL 20, 2023**

BETWEEN

**MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL
GOVERNMENT 1ST APPLICANT
PUBLIC SERVICE COMMISSION 2ND APPLICANT
ATTORNEY GENERAL 3RD APPLICANT**

AND

**MARGARET ADHIAMBO OBARA 1ST RESPONDENT
JACINTA WANJIKU KERU 2ND RESPONDENT**

(Being an application for stay of execution pending appeal from the Judgment and Decree of the Employment & Labour Relations Court of Kenya at Nairobi (M. Onyango, J.) delivered on 24th July 2020 in E.L.R.C Cause Nos. 575 & 577 of 2017 (Consolidated))

RULING

1. On July 24, 2020, the Employment and Labour Relations Court (Maureen Onyango, J) delivered its judgment in ELRC Cause Numbers 575 and 577 of 2017 (Consolidated) in which it dismissed the respondents' claim for reinstatement, but awarded the 1st respondent the sum of Kshs 1,149,800 and the 2nd respondent Kshs 1,278,540 (as compensation for summary dismissal, salary withheld during interdiction, and pay in lieu of notice); pension in accordance with the *Pensions Act*; costs; and interest at court rates from the date of judgment.
2. Dissatisfied with the judgment of M Onyango, J, the applicants moved to this court and filed a notice of appeal dated August 6, 2020. On October 17, 2021, they moved this court under rule 5(2) (b) seeking stay of execution of the impugned judgment pending determination of the intended appeal.



3. The applicants' motion for stay of execution appears to have been prompted by the respondents' notice of motion dated October 6, 2021 in Civil Application No 353 of 2021 in which they prayed that the applicants' notice of appeal be struck out on the following grounds, namely: that the period of lodging of an appeal has expired and that no action has been taken by the applicants in pursuance of the trial court proceedings; that the notice of appeal was filed merely to delay and deny the respondents the fruits of their judgment; that the applicants had lost interest in filing any appeal; and that no appeal lies on the basis of the said notice in view of the fact that more than sixty (60) days had lapsed since they filed the notice of appeal.
4. Having heard the two applications together on February 27, 2023, this court allowed the respondents' notice of motion dated October 6, 2021 with orders that the applicants' notice of appeal dated August 6, 2020 be deemed as having been withdrawn pursuant to rule 85(1) of the *Court of Appeal Rules, 2022*. Consequently, the applicants' notice of motion dated October 17, 2021 is incompetent and is hereby struck out with costs to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2023.

D. K. MUSINGA, (P)

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

ALI-ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

