



**Attorney General v Law Society of Kenya & 3 others (Civil Application
33 of 2019) [2021] KECA 221 (KLR) (5 November 2021) (Ruling)**

Neutral citation: [2021] KECA 221 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 33 OF 2019
RN NAMBUYE, W KARANJA & HM OKWENGU, JJA
NOVEMBER 5, 2021**

BETWEEN

ATTORNEY GENERAL APPLICANT

AND

LAW SOCIETY OF KENYA 1ST RESPONDENT

CHIEF JUSTICE OF THE REPUBLIC OF KENYA 2ND RESPONDENT

MOHAMED WARSAME 3RD RESPONDENT

JUDICIAL SERVICE COMMISSION 4TH RESPONDENT

(An Application for stay of execution of the Judgment and Orders of the High Court of Kenya at Nairobi (E. C. Mwita, J.) delivered and dated 18th January, 2019 in Petition No. 307 of 2018)

RULING

1. This application was filed before this Court on 1st February, 2019 under Certificate of Urgency. The applicant was seeking in the main an order of stay of execution of the judgment and orders of the High Court of Kenya in Nairobi Constitutional Petition No. 307 of 2018 dated 18th January, 2019 pending the hearing and determination of the intended appeal against the said judgment.
2. In the alternative the applicant prayed for an order of injunction preventing the Honourable Justice Mohamed Abdullahi Warsame from either acting as or performing any duty as a Commissioner of the Judicial Service Commission arising from the judgment, decision and the orders of the High Court of Kenya in Nairobi Constitutional Petition No. 307 of 2018 pending the hearing and determination of the application and intended appeal.
3. The application is premised on nine (9) grounds on its face and supported by an affidavit sworn by Njeri Wachira, Deputy Solicitor General in the office of the Attorney General.



4. According to the applicant, the intended appeal raises serious arguable constitutional issues deserving of interpretation and determination by this Court. It was the applicant's apprehension then that if the orders sought were not granted, the 3rd respondent (Hon. Justice Warsame) would proceed to perform functions of a commissioner of the Judicial Service Commission, and in the event the intended appeal succeeded, such functions would be irreversible. The application was opposed by 1st, 2nd and 4th but there was no response from the 3rd respondent.
5. When the motion came up for hearing before this Court on 3rd April, 2019 the court directed that the application be served on the 3rd respondent as it was evident that he had not been served with the application and the hearing notice for that day. The application was therefore adjourned.
6. It is not clear what happened thereafter, but it is common knowledge that the 3rd respondent took up his position as Commissioner of the Judicial Service Commission, a position he still holds to date. Essentially therefore, this application has been overtaken by events and is, therefore, moot.
7. Accordingly, we dismiss the same with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF NOVEMBER, 2021.

R. N. NAMBUYE

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JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

HANNAH OKWENGU

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

