



**Murimi v County Government of Kirinyaga & another; Public Service Commission (Interested Party) (Miscellaneous Application E006 of 2024) [2025] KEELRC 71 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 71 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI**  
**MISCELLANEOUS APPLICATION E006 OF 2024**  
**ON MAKAU, J**  
**JANUARY 23, 2025**

**BETWEEN**

**NAHASHON MURIMI ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KIRINYAGA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD OF KIRINYAGA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY**

**RULING**

1. This ruling relates to the applicant’s Notice of Motion dated 18<sup>th</sup> October 2024, basically brought under Order 42 Rule 6 of the Civil Procedure Rules. The motion seeks the following orders: -
  1. That this Honourable Court be pleased to stay the implementation of its Ruling and order delivered on 12<sup>th</sup> September, 2024 enforcing the decision of the PSC delivered on 14<sup>th</sup> April, 2021 reinstating the Applicant pending the hearing and determination of the intended Appeal.
  2. That this Honourable court be pleased to make any other or further orders as the circumstances and interests of justice herein may require.
  3. That the costs of this application do await the outcome of the Appeal.
2. The motion is supported by the Affidavit of Carolyn Kinyua sworn on 18<sup>th</sup> October 2024 and it is opposed by the Respondent’s Replying Affidavit sworn on 25<sup>th</sup> October 2024. Both sides also filed written submissions.



3. The applicant's case is that it has filed a Notice of Appeal to challenge the whole judgment of this court. They have even annexed a draft of Memorandum of Appeal to the application herein. They argued that the intended appeal is not frivolous and it should not be rendered nugatory.
4. It is the applicant's case that the impugned judgment requires that the respondent be reinstated and unless the stay order sought is granted, substantial loss will be suffered and the appeal rendered nugatory since once reinstatement is done, the state of affairs is irreversible. Consequently, the court was urged to grant stay in order to prevent the status quo pending the hearing of the appeal, otherwise, the appeal will be defeated. Reliance was placed on the case of *Butt v Rent Restriction Tribunal (1979)* eKLR where the court held that the power to grant or refuse stay is discretionary which should be exercised in a manner that does not prevent an appeal.
5. The applicant further submitted that the application for stay was made without undue delay as it was done only six days after the lapse of the informal stay granted on 12<sup>th</sup> September 2024 when the judgment was entered.
6. Finally, it was submitted that the impugned judgment does not relate to money but they indicated the willingness to abide by any directions on security.
7. The Respondent on the other hand, contended that stay order should not be granted because the intended appeal has no chances of success and it is otherwise a waste of judicial time. He contended that the appeal in the draft memorandum will not see the light of the day and it is a delaying tactic on the part of the applicant.
8. It is further the Respondents' case that the application does not meet the legal threshold for granting stay pending appeal including an arguable appeal, substantial loss, and willingness to deposit security. Consequently, he prayed for the application to be dismissed with costs. For emphasis, reliance was placed on the case of *Machira & Machira & Co. Advocates v East African Standard (2002)* eKLR 63 where the court dismissed application for stay because the particulars of substantial loss were not given.

### **Determination**

9. There is no dispute that I entered the impugned judgment on 12<sup>th</sup> September 2024 and granted leave to the applicant to file an appeal in the Court of Appeal. There is also no dispute that the applicant filed a notice of Appeal within the prescribed time. The issue in dispute is whether the application before me meets the legal threshold for granting stay pending appeal.
10. Order 42 Rule 6(2) of the Civil Procedure Rules provides that: -

“No order for stay of execution shall be made under sub-rule (1) unless-

- a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

### **Undue delay**

11. The judgment was entered on 12<sup>th</sup> September 2024 and the application was made on 18<sup>th</sup> October, 2024 which was about one month from the date of the judgment. I find that there was no inordinate delay before making the application.



## **Substantial loss**

12. Substantial loss is anything that renders an appeal nugatory. In this case the impugned judgment directed the respondents to reinstate the applicant to his employment with back pay. It follows that, if the reinstatement takes place, the appeal will be rendered nugatory because the state of affairs would be irreversible.
13. The effect of reinstatement would also compel the respondents to pay the applicant back pay for about five years which would amount to a substantial sum of money should the appeal succeed. The respondent has not discharged his evidentiary burden of proving his capacity to repay the judgment debt should the appeal succeed.
14. In the case of *National Industrial Credit Bank Limited v Aquinas Francis Wasike and Another* [2006] e KLR, the Court of Appeal held that:

“This court has said before and it would bear repeating that while the legal duty is on an applicant to prove the allegation that an appeal would be rendered nugatory because a respondent would be unable to pay back the decretal sum, it is unreasonable to expect such an applicant to know in detail the resources owned by a respondent or lack of them. Once an applicant expresses that a respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the respondent to show what resources he has since that is a matter which is peculiarly, within his knowledge.”
15. Having considered the matters before me, I am satisfied that the applicant has on a balance of probability demonstrated that they will suffer substantial loss if the stay order sought is declined.

## **Security**

16. The amount payable to the respondent is not quantified and therefore, although the applicant is willing to comply with any directions given by the court, I see no basis in ordering the applicant to deposit just, any amount.
17. Be that as it may, I must conclude that the applicants have convinced me that they will suffer substantial loss and their appeal will be rendered nugatory if stay order is withheld. Accordingly, I grant stay of execution of the judgment rendered on 12<sup>th</sup> September 2024 for 120 days pending hearing and determination of the intended appeal. Should the stay lapse before the intended appeal is determined, the applicant will be free to apply before the Court of Appeal.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 23RD DAY OF JANUARY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

