



**Kenya County Government Workers Union v Bungoma County Public Service Board & another; Muyundi (Applicant); Nyukuri (Interested Party) (Petition 1 of 2019) [2025] KEELRC 997 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 997 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA**  
**PETITION 1 OF 2019**  
**DN NDERITU, J**  
**MARCH 27, 2025**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... PETITIONER**

**AND**

**BUNGOMA COUNTY PUBLIC SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF BUNGOMA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MOSES MAELO MUYUNDI ..... APPLICANT**

**AND**

**BARASA KUNDU NYUKURI ..... INTERESTED PARTY**

**RULING**

**I. Introduction**

1. There are two applications pending determination in this matter. Firstly, there is an application by the petitioner dated 11th November, 2024 wherein the following orders are sought –
  1. Spent.
  2. That the respondent herein, their agents, and/or any persons acting under their authority cease threatening, profiling, discriminating and/or harassing the concerned members of the petitioner/applicant by virtue of them being members of the petitioner.
  3. That the petitioner’s members’ salaries and emoluments that are due and owing to be paid to them by the respondents forthwith.



4. That the following officers of the respondents:
    - a. Governor Bungoma County – Kenneth Lusaka
    - b. County Secretary Bungoma – William Nasongo;
    - c. Head of County Public Service Board Bungoma County – Jonathan Makata;
    - d. Chairman of the County Public Service Board – Namlala;
  5. That on failing to show necessary cause, the said officers be committed to civil jail for a maximum period of 6 (6) months for contempt of this Honourable Court’s orders given on 13<sup>th</sup> May 2020 and 25<sup>th</sup> September 2024.
  6. That officer commanding Bungoma police station do execute Order 4 herein.
  7. Any other or further orders as this Honourable Court deems fit and appropriate.
  8. That costs of this application be borne by the respondents.
2. Secondly, there is an application by the respondents dated 6th November, 2024 wherein the following orders are sought –
- a. Spent.
  - b. That this Honourable court be pleased to grant temporary stay of execution of the court’s ruling and order in Bungoma Employment and Labour Relations Court Petition No. 1 of 2019 pending the hearing and determination of this application inter parties.
  - c. That this Honourable court be pleased to grant temporary stay of execution of the court’s ruling and order in Bungoma Employment and Labour Relations Court Petition No. 1 of 2019 pending the hearing and determination of the Appeal in the court of Appeal.
  - d. That costs of this application be provided for.
3. Although the court ordered and directed that the two applications be heard concurrently and canvassed by way of written submissions, and even set the rulings on the two applications for the same date, it is now my considered view that the application by the respondents dated 6th November, 2024 should take precedent in the order of the rulings for obvious reasons. The reason for this is that, if the court agrees with the respondents that there is need for a stay of execution of the impugned ruling pending the hearing and determination of the intended appeal, then the application for contempt shall be rendered futile and otiose. However, if the court denies the stay of execution the application for contempt by the petitioner shall crystallize and a ruling thereon shall be subsequently rendered.
4. Therefore, and in view of the foregoing, this first ruling is in regard to the application by the respondents dated 6th November, 2024 (the application) that is seeking for the orders set out above.
5. The application is expressed to be brought under the provisions of Sections 3A & 63(e) of the Civil Procedure Act and Order 42 Rule 6 of the Civil Procedure Rules. It is based on the grounds stated on the face of it and supported with the affidavit of Amos Simiyu Makokha, Advocate, sworn on 6th November, 2024 with two annexures thereto. The two annexures are a notice of appeal dated 27th September, 2024 and a letter of even date by counsel for the respondents addressed to the Deputy Registrar of this court requesting for a certified copy of the ruling of this court (Keli J) delivered on 25th September, 2024.



6. In response to the application, the petitioner filed a replying affidavit by Moses Maelo Muyundi, a shop-steward, sworn on 22nd November, 2024 with several annexures thereto.
7. Counsel for both sides canvassed the application by way of written submissions. Mr. Simiyu for the respondents filed submissions dated 25th January, 2025 while Mr. Oketch for the petitioner filed submissions dated 11th January, 2025 which combined and contains arguments by the counsel on the two applications.

## II. The Evidence

8. In the supporting affidavit it is deposed that judgment in this petition was delivered on 13th May, 2020 in the following terms –
  - a. The court declares that the continued employment of the listed 463 grievants/members of the petitioner by the respondents on casual basis is in violation of Section 5, 35 & 37 of the Employment Act, No. 11 of 2007 and violates Article 27, 28, 41 & 232 of the constitution of Kenya 2010.
  - b. The Court directs the respondents to place all the affected employees, referred to above on payroll and apply to each one of them the minimum terms and conditions of service provided under parts II, III, 1I, V & VI of the Employment Act 2007.
  - c. The respondents to compute, file and pay arrear salary due and owing to all the grievants, named in this petition under their employment within 60 days.
  - d. Costs follow the events.
9. It is further deposed that the respondents were dissatisfied with the above judgment and applied for review of the same and consequently the court issued the following orders on 28th July, 2023 –
  - a. The 1<sup>st</sup> respondent Board has the mandate to employ and create offices within the county public service hence has the statutory mandate to comply with the judgment.
  - b. That the 1<sup>st</sup> respondent to within 14 days from 28<sup>th</sup> July 2023 to issue notice of date and venue where the said 463 workers will present themselves to the 1<sup>st</sup> respondent with original ID cards as per list filed in the petition and their last letter of employment as a casual worker.
  - c. The employee will disclose to the 1<sup>st</sup> respondent in writing the last station of work with the county and the immediate supervisor for verification purpose.
  - d. The 1<sup>st</sup> respondent was to issue the notice in writing to the petitioner and Moses Maelo Muyundi and as well as post the said notice stating these requirements at prominent places within its premises within 14 days of 28<sup>th</sup> July 2023.
  - e. That any worker of the 463 who fail to avail themselves as per the notice without sufficient reason will be considered as not having been a worker.
  - f. The 1<sup>st</sup> respondent to file in court the register of attendance of the said persons.
  - g. The 1<sup>st</sup> respondent to file in court a report on compliance with the court directions and of the judgment.
10. It is deposed that following the above orders the respondents invited the concerned members of the petitioner (grievants) for verification on 14th August, 2023 but out of 463 only 286 turned up for the exercise and a report by the respondent was filed in court on 27th October, 2023 about and concerning



the exercise. However, the report on the exercise was set aside and expunged from the record by the court in a ruling of 25th September, 2024.

11. The respondents filed a notice of appeal on 27th September, 2024 that is annexed to the application which was received in court on 30th September, 2024. They also applied for a certified copy of the proceedings and the ruling vide a letter dated 27th September, 2024.
12. It is the respondents' deposition that none of the grievants is entitled to be employed as ordered by the court and that the intended appeal has a high chance of success. It is deposed that none of the said grievants is a member of the petitioner and as such the petitioner had no locus in representing them in court.
13. It is further deposed that if the grievants were to be absorbed into the workforce of the 2nd respondent it shall not be sustainable as currently salaries and emoluments consume over 48% of the available budget leaving no money for development and other projects.
14. It is deposed that any loss or damage that may be occasioned by an order for stay is compensable by way of a monetary award as the same is quantifiable. It is deposed that the application has been filed in utmost good-faith and without undue delay and the court is urged to allow the same.
15. In the replying affidavit by the coordinator and shop-steward of the petitioner, the application is termed as frivolous, vexatious, and scandalous.
16. It is deposed that following the failure and or refusal by the respondents to comply with the judgment delivered on 13th May, 2020 the petitioner commenced judicial review proceedings in Bungoma ELRC JR No. E001 of 2022 to compel the respondents to comply with the said judgment and the said request was allowed by the court. A copy of the ruling is attached.
17. It is deposed that even after that ruling the respondents refused to comply as a result whereof the petitioner filed contempt proceedings and several officers of the respondents, including the governor, were found to be in contempt of court. A copy of the ruling is annexed.
18. It is deposed that all subsequent efforts to have the respondents comply with the judgment of the court of 13th May, 2020 have borne no fruit as the respondents have applied all manner of delaying tactics prompting the petitioner to file the application dated 11th November, 2024 for contempt against the officers and officials of the respondents.
19. It is deposed that the instant application by the respondents has been filed to counter and forestall the application for contempt by the petitioner. It is deposed that the application by the respondents is made in bad-faith with the sole intention of further delaying the settlement of this prolonged litigation.
20. It is deposed that the report expunged by the court from the record is incapable of being stayed as sought by the respondents and there is no reason(s) for staying the judgment delivered on 13th May, 2020. It is further deposed that the respondents and their officers and or officials were found in contempt of court already and they should purge the contempt before seeking further audience with the court.
21. It is further deposed that the respondents have failed, refused, and or neglected to comply with the impugned judgment and in any event the application lacks the ingredients necessary for the court to grant the orders sought for stay of execution.



### III. Submissions

22. In his submissions, counsel for the respondents identified the only issue for determination to be whether the stay of execution sought should be granted against the judgment of 13th May, 2020 and the subsequent decree.
23. Citing several decisions from the High Court it is submitted that the respondents have satisfied the conditions in Order 42 Rule 6(2) of the Civil Procedure Rules for granting stay of execution as sought by the respondents in the application.
24. Counsel for the petitioner submitted on the application from page 10 of his filed submissions as the other pages are dedicated to the petitioner's application dated 11th November, 2024 whose ruling shall be authored after the determination of the instant application.
25. Citing various decisions from the High Court and Order 42 Rule 6(2) of the Civil Procedure Rules, it is submitted that the application by the respondents does not meet the threshold for granting orders for stay of execution as sought.
26. Further, it is submitted that the application is made in bad-faith in that the application is seeking to stay a judgment that was passed over five years ago, on 13th May, 2020, and the application is manifestly intended to occasion and cause further delay in the conclusion of this protracted litigation. The court is vehemently and profusely urged to refuse the application and dismiss the same with costs.

### IV. Issues for Determination

27. The court has carefully and dutifully gone through the application, the supporting affidavit and the annexures thereto by the respondent, on the one hand, and the replying affidavit for the petitioner and the annexures thereto, on the other. The contents of the foregoing pleadings and evidence have been summarized above. The court has also gone through and summarized the submissions by counsel in the foregoing part of this ruling.
28. In my considered view, there is only one issue for determination in this application – Based on the materials placed before the court have the respondents demonstrated and proved that they deserve of the orders for stay of execution sought in the application?
29. The procedure of proceedings before this court (ELRC) is governed by the Employment and Labour Relations Court (Procedure) Rules, 2024. Before the 2024 rules came to force in August, 2024 the 2016 Rules applied. Rule 73(2) provides that – Rules on execution or stay of execution of an order or decree of the court shall be in accordance with the Civil Procedure Rules.
30. It is therefore correct that the law applicable in applications for stay of execution is Order 42 Rule 6(2) of the Civil Procedure Rules which 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 untimely be binding on him has been given by the applicant.



31. The above law is clear and devoid of ambiguity. An applicant shall demonstrate to the court that substantial loss may result if the stay is not granted; that the application has been made without unreasonable delay; and, that such security as the court may order for the due performance of the decree is provided. The court may allow an application in the interest of justice or for any other just and or reasonable cause, which in essence takes the court back to the consideration of the three elements stated above.
32. The court has looked into the notice of appeal filed by the respondents dated 27th September, 2024 and noted that the intended appeal is to challenge the ruling delivered by Keli J on 25th September, 2024. From the record, the said ruling expunged from the record a report that had been filed by the respondents after a purported verification of the 463 grievants. In other words, even if the intended appeal was to succeed the same would only reinstate the said report. That would not in any way set aside or reverse the judgment of Nduma J delivered on 13th May, 2020.
33. Inasmuch as the application was filed on 27th September, 2024, hot on the heels of the ruling of 25th September, 2024, the court finds no grounds for staying the said orders that simply expunged the report from the record. As stated above, the intended appeal is not challenging the judgment that was delivered over five years ago.
34. The respondents have neither settled nor attempted to settle the judgment and the decree herein even after being issued with an order of mandamus. No security has been suggested or offered in satisfaction of the judgment and the decree herein. This is a matter that has been in circulation of the system of this court for the last five years and counting. The grievants, through the petitioner, have been waiting for the respondents to do the right thing and comply with the judgment for the last five years to no avail.
35. Although dated 6th November, 2024 the court notes that the application was not filed in court until after the petitioner filed the application for contempt dated 11th November, 2024 that is pending ruling as noted elsewhere in this ruling. It is therefore not farfetched for the court to note that the application was filed in bad-faith with the intention of further delaying the conclusion of this prolonged litigation.
36. The respondents have neither demonstrated nor proved which substantial or irreparable loss they stand to suffer by complying with the judgment and settling the decree of the court delivered way back on 13th May, 2020. As noted above, the said judgment has not been challenged and is not subject of the intended appeal.
37. The court has said enough to demonstrate that the application by the respondents for stay of execution of the orders of 25th September, 2024 is without merits. The said order is not capable of being stayed as it simply expunged from record a report that had been filed by the respondents following what the court considered to have been un-procedural, irregular, and unlawful verification carried out by the respondents.

## V. Orders

38. The court makes the following orders –
  - a. The notice of motion by the respondents dated 6th November, 2024 is devoid of merits and the same is hereby dismissed.
  - b. Costs to the petitioner.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT BUNGOMA THIS 27TH DAY OF MARCH, 2025.**



.....  
**DAVID NDERITU**  
**JUDGE**

