



REPUBLIC OF KENYA



Nyamira County Public Service Board & 2 others v Mageto (Appeal E001 of 2025) [2025] KEELRC 965 (KLR) (25 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 965 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E001 OF 2025
NZIOKI WA MAKAU, J
MARCH 25, 2025**

BETWEEN

**NYAMIRA COUNTY PUBLIC SERVICE BOARD 1ST APPELLANT
DIRECTOR HUMAN RESOURCE MANAGEMENT 2ND APPELLANT
PAYROLL MANAGER 3RD APPELLANT**

AND

BOLYCUP KENGOCHA MAGETO RESPONDENT

RULING

1. Via a notice of motion dated 31st October 2024 the Appellants seek a stay of proceedings in Nyamira CMEELRC No. E005 of 2022, pending hearing and determination of the appeal lodged herein on 29th January 2025. The appeal arises from a ruling delivered on 29th October 2024, in which the magistrate dismissed their preliminary objection dated 19th December 2023, challenging the court’s jurisdiction. In support of their application for stay, the Appellants argued that, in the absence of jurisdiction, the proceedings before the magistrate’s court are a nullity. They contended that granting the stay would facilitate an orderly, efficient, and just resolution of the issues in both the appeal and the lower court case. Additionally, they maintained that their appeal has high chances of success and emphasized that the Respondent would not suffer any prejudice if the stay is granted. They further underscored the fundamental importance of the right to appeal in the administration of justice, and asserted that they should be allowed to exercise it fully.
2. In Response the Respondent filed a replying affidavit dated 17th January 2025, arguing that the Appellants had failed to demonstrate that their appeal was arguable. He contended that they had not shown how the appeal would be rendered nugatory if the stay was not granted and maintained that no prejudice would be suffered.



3. The Appellants, in a rejoinder through a supplementary affidavit dated 21st January 2025, reiterated that jurisdiction had to be determined before any further adjudication could take place. They emphasized that the issue of jurisdiction was not a matter of judicial discretion but was clearly established by law. Furthermore, they argued that jurisdiction was a fundamental issue that outweighed any potential prejudice to the parties, as it directly impacted the validity and competence of the court to proceed with the matter. They stressed that the key consideration was not whether the appeal would be rendered nugatory, but rather whether staying the proceedings served the interests of justice.
4. The matter was canvassed by way of written submissions.

Appellants' Submissions.

5. While acknowledging that the power to grant stay is discretionary the Appellants submit that allowing Nyamira MCELRC No. E005 of 2022 to proceed while its validity is under challenge would be inefficient, undesirable, and imprudent. They assert that when the jurisdiction of a subordinate court is in question, it is unwise to expend judicial time, effort, and resources, only to later discover that the court lacked jurisdiction. To support this position, the Appellants cite the decision in the case of *Base Titanium v Mohamed Yusuf Iqbal Jin* [2022] eKLR, which, while referencing *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, emphasized the importance of raising jurisdictional issues at the earliest opportunity, reiterating that a court must cease proceedings immediately upon realizing it lacks jurisdiction. Additionally, the court underscored the importance of clarifying jurisdictional matters early for the benefit of all parties involved. Furthermore, the Appellants submit that their appeal is well-founded, particularly under section 87(2) of the *Public Service Commission Act*. They maintain that the magistrate had no discretion to issue the orders, as the Respondent suggests, since jurisdiction is expressly governed by statute and *the Constitution*. They stress that jurisdiction must be determined before any substantive adjudication can proceed, making concerns about potential delays in resolving the matter irrelevant. Moreover, they assert that jurisdiction is fundamental to the legitimacy of legal proceedings and that resolving it does not prejudice any litigant. On the contrary, they assert that allowing the subordinate court to proceed despite jurisdictional concerns would only serve to prejudice this appeal. In light of these arguments, the Appellants urge the court to grant their application, thereby preventing the risk of continuing proceedings that may ultimately be declared a nullity.

Respondent's Submissions

6. The Respondent submits that the Appellants have not met the threshold for grant of stay of proceedings. He asserts that they have not demonstrated how allowing Nyamira MCELRC No. E005 of 2022 to proceed would render their appeal nugatory. In support of this argument, the Respondent cites the Court of Appeal decision in *William Odhiambo Ramogi & 2 others v AG & 3 others* [2019] eKLR, which outlines the prerequisites for the grant of a stay of proceedings as follows:
 - a. There is an appeal pending before a higher court;
 - b.
 - c. The appeal raises substantial questions to be determined or is otherwise arguable;
 - d. The appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. There are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and



- f. The application for stay was filed expeditiously and without delay.
7. Additionally, the Respondent relies on the case of Turbo Highway Eldoret v Muniu (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) (30 June 2022) (Ruling), where the court emphasized that stay of proceedings is a significant disruption of a party's right to litigation and should only be granted in cases where the proceedings are frivolous, vexatious, or baseless. Further, the Respondent relies on the case of Wildlife Service v James Mutembei [2019] eKLR, where the court distinguished between a stay of proceedings and a stay of execution pending appeal by stating:
- “Stay of proceedings should not be confused with stay of execution pending appeal. Stay is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.”
8. Consequently, the Respondent urges the Court to dismiss the application, asserting that the present case mirrors the circumstances in Turbo Highway Eldoret v Muniu (supra) in which the court stated:
- “I am not persuaded, however, that the appeal will be rendered nugatory by the mere fact that the trial may proceed and a judgment on merits given. A judgment given is capable of being stayed. Whether the fact that a party had preferred an interlocutory appeal is entitled to a stay of proceedings cannot, therefore, merely be based on the fact that the trial court might consider what the appellant considers to be erroneous conclusions in its judgment. If the rule were otherwise, it would seriously impede proceedings in the trial courts. This is because a party who is keen on obstructing a case from proceeding would simply prefer multiple appeals against interlocutory rulings by the trial court and then seek stay of proceedings in the trial court.”
9. In light of these principles, the Respondent maintains that the Appellants have not established sufficient grounds to justify a stay of proceedings and, therefore, urges the Court to dismiss the application.
10. The issue for determination for the Court is whether a stay should be granted. The Court having considered the law, submissions of parties and authorities cited determines as follows. The case before the subordinate Court is challenged on grounds of jurisdiction. A preliminary objection was raised and dismissed before the Magistrates Court and to allow the matter to proceed without the Appellant ventilating the question of jurisdiction would in my view result in the misuse of scarce judicial resources by permitting the Learned Magistrate to proceed while a question of jurisdiction lies pending before this Court.
11. In the premises the Court accedes to the stay sought and grants stay of Nyamira CMELRC No. E005 of 2022 – Bolycup Kengocha Mageto v Nyamira County Government & another. Costs will abide the outcome in the Appeal.

It is so ordered.

DATED AND DELIVERED AT KISII THIS 25TH DAY OF MARCH 2025

NZIOKI WA MAKAU, MCIArb.

JUDGE

