



Board of Management, Nzeveni Secondary School v Makumbi (Appeal E001 of 2025) [2025] KEELRC 1159 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1159 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
APPEAL E001 OF 2025**

**B ONGAYA, J
APRIL 24, 2025**

BETWEEN

BOARD OF MANAGEMENT, NZEVENI SECONDARY SCHOOL .. APPELLANT

AND

MICHAEL MUSYIMI MAKUMBI RESPONDENT

(Being an appeal from the Ruling delivered on 31st January, 2025 by Honourable P.N.Gesora Chief Magistrate in the Chief Magistrate's Court at Makueni ELRC Cause No. E001 of 2023)

RULING

1. The appellant (applicant) filed the application by the Notice of Motion dated 12.02.2025 through the office of the Attorney General. The application was brought under Sections 1A, 1B, 3A of the [Civil Procedure Act](#), Cap 21 Laws of Kenya, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, 2010.
2. The applicant prayed for the following orders:
 - a. That this application be certified urgent and be heard ex-parte in the first instance.
 - b. That the Honourable court be pleased to order a stay of further proceedings in Makueni MCELRC E001 of 2023, Michael Musyimi Makumbi v. The Board of Management, Nzeveni Secondary School pending the hearing and determination of the application.
 - c. That the Honourable Court be pleased to order a stay of further proceedings in Makueni MCELRC E001 of 2023 Michael Musyimi Makumbi Vs. The Board of Management, Nzeveni Secondary School pending the hearing and determination of the appeal.
 - d. That the Honourable Court be pleased to issue any other order as it may deem just, appropriate and expedient in the interest of justice.



- e. That costs of the application be in the cause.
3. The application was based on the affidavit of Agnes Mwangangi and made upon the following grounds:
 - a. That a ruling was delivered on 31.01.2025 dismissing the applicant's preliminary objection dated 02.08.2023.
 - b. That the applicant being dissatisfied with the ruling has lodged an appeal through a memorandum of appeal dated 05.02.2025.
 - c. That the trial court has set down the claim for a pre-trial conference on 03.04.2025 and the applicant is apprehensive that the trial court will issue directions on the said date if stay of further proceedings is not granted.
 - d. That the applicant's appeal is merited, arguable and raises pertinent points of law thus it has overwhelming chances of success.
 - e. That the appeal will be rendered nugatory and the applicant stands to suffer irreparable damage if the orders sought are not granted.
 - f. That this application will not occasion any prejudice to the respondent.
 - g. That it is in the interest of justice that the application be allowed.
 4. The Respondent opposed the application by filing the replying affidavit of Michael Musyimi Makumbi sworn on 08.03.2025 and drawn by Nyaata & Nyaata Advocates. It was urged as follows:
 - a. That the applicant's preliminary objection before the lower court was lawfully dismissed for lacking in merit and the appeal herein does not raise any triable issues and therefore it has no chances of success.
 - b. If the orders sought are granted, the respondent will suffer prejudice since his right to access to justice, right to be heard without delay and the overall right to fair trial will be violated.
 - c. That the applicants have not satisfied the test for grant of stay orders sought, since they have not discharged the burden of proving beyond all reasonable doubt that the proceedings in Makueni ELRC E001 of 2023 ought not be allowed to continue.
 - d. That despite alleging that the appeal herein will be rendered nugatory if the orders sought are not granted, the appellant has not demonstrated how the same will be occasioned.
 - e. That the applicant will not suffer any prejudice if the orders are denied and the lower court matter proceeds to hearing.
 - f. That the balance of convenience tilts in favour of allowing the proceedings in the lower court to continue, since whereas the appellant could be compensated with an order as to costs, justice delayed on the respondents part, equates to the same being denied.
 5. Parties filed final submissions on the application. The Court has considered all the material on record. The Court returns that the application to stay proceedings in the trial Court, albeit, for a short time, in the circumstances of the application, should be allowed upon the following findings:
 - a. The applicant has already filed the record of appeal and it should be possible to hear and determine the otherwise interlocutory appeal without a further delay.



- b. The trial Court's ruling being appealed against is about whether the suit is time barred. Should the judgment on appeal return the issue in the affirmative, it should be in the interest of both parties and the trial Court to cut on the time and costs associated with the hearing of the suit but which may then be set aside consequential to such affirmative answer to the issue in the appeal.
6. In conclusion the application is allowed with orders as follows:
- a. There be stay of further proceedings in Makueni MCELRC E001 of 2023 Michael Musyimi Makumbi Vs. The Board of Management, Nzeveni Secondary School pending the hearing and determination of the appeal herein.
 - b. The appellant to file submissions on the appeal in 14 days and thereafter the respondent to file and serve submissions on the appeal in 14 days.
 - c. Parties to agree on mention date for directions on judgment on appeal and, parties may compromise the appeal.
 - d. Costs of the application to abide outcome of the pending appeal.
 - e. The Deputy Registrar to forthwith return the case file to Machakos Court Subregistrary.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
WEDNESDAY 24TH APRIL, 2025**

BYRAM ONGAYA

PRINCIPAL JUDGE

