



**Board of Management, Yinthungu Mixed Day & Boarding Secondary School v
Mutie (Appeal E008 of 2024) [2025] KEELRC 1174 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1174 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
APPEAL E008 OF 2024**

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

BETWEEN

**THE BOARD OF MANAGEMENT, YINTHUNGU MIXED DAY & BOARDING
SECONDARY SCHOOL APPELLANT**

AND

JENNIFER KALUNDE MUTIE RESPONDENT

*(Being an appeal from the Judgement and decree delivered on 14th
February, 2024 by Honourable P.N.Gesora Chief Magistrate in the
Chief Magistrate's Court at Makueni ELRC Cause No.E06 of 2022)*

RULING

1. The appellant (applicant) filed the application by the Notice of motion dated 05.04.2024 through the office of the Attorney General. The application was brought under Sections 1A, 1B, 3A, 63(e) of the [Civil Procedure Act](#), Cap 21 Laws of Kenya, Order 22 Rule 25,51,52 Order 42 Rule 8 and Order 51 Rules 1 and 3 of the Civil Procedure Rules,2010.
2. The applicant prayed for the following orders:
 - a. That the application be certified urgent and be heard ex-parte in the first instance.
 - b. That the Honourable Court be pleased to grant a temporary stay of execution of the Judgment of the Hon. P.N. Gesora Chief Magistrate in the Chief Magistrate's Court at Makueni Employment and Labour Relations Cause No. E06 of 2022 delivered on 14.02.2024 pending the hearing and determination of the application inter parties.
 - c. That the Honourable Court be pleased to grant a stay of execution of the judgment of the Hon. P.N. Gesora Chief Magistrate in the Chief Magistrate's court at Makueni Employment



and Labour Relations Cause No. E06 of 2022 delivered on 14.02.2024 pending the hearing and determination of the appeal.

- d. Costs of this application be in the cause.
3. The application was based on the affidavit of Paul Kavivya and made upon the following grounds:
- a. That the respondent filed a suit against the appellant on 26.04.2022.
 - b. That the matter was heard and judgment delivered on 14.02.2024 in favour of the respondent as against the appellant for the sum of Kshs 544,048.00
 - c. That the applicant contends that the said judgment was undeserved hence need to appeal.
 - d. That the appellant proceeded to file a memorandum of appeal on 08.03.2024.
 - e. That the appellant (applicant) is apprehensive that the respondent will proceed with the execution process.
 - f. That the appeal is meritorious and raises serious issues of law which require adjudication and determination by this Honourable Court especially on the grounds of entitlement to service pay despite the fact that the appellant would remit NSSF contributions for the respondent, the respondent failure to prove entitlement to the August 2018 salary, the respondent's entitlement to leave days despite working in an academic institution where employees proceed on leave upon closure of schools, damages for unfair termination despite the fact that the termination process was followed and the entitlement to underpayment despite the agreement between the parties on the terms and conditions of service.
 - g. That the appellant stands to suffer irreparable damage and prejudice if the orders sought are not granted.
 - h. That it is in the interest of justice that this application be allowed.
4. On record, there is no reply filed by the respondent, to the appellant's Notice of Motion application.
5. The applicant filed final submissions on the application. The respondent appears to have filed submissions on the main appeal and through D.M Kyalo & Associates and dated 27.02.2025. The Court has considered all the material on record. The Court returns as follows:
- a. The application appears not opposed.
 - b. In the circumstances the Court would allow it with orders that the trial Court file be availed forthwith and the appellant to file and serve the record of appeal together with submissions on the appeal in 14 days from today and thereafter the respondent may file and serve further submissions on appeal within 14 days.

In conclusion the application is hereby determined with orders as follows:

- a. There be stay of execution of the trial Court's judgment and decree herein pending the hearing and determination of the instant appeal.
- b. The trial Court's case file be availed forthwith and the appellant to file and serve the record of appeal together with submissions on the appeal in 21 days from today and thereafter the respondent may file and serve further submissions on appeal within 14 days.
- c. The costs of the application in the appeal.



- d. Parties to agree on a convenient date for mention on directions on judgment.
- e. The Deputy Registrar to forthwith return the case file to Machakos Court SubRegistry.

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

BYRAM ONGAYA

PRINCIPAL JUDGE

