



REPUBLIC OF KENYA



**KENYA LAW**  
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**Teachers Service Commission v Limo (Employment and Labour Relations  
Appeal E039 of 2024) [2025] KEELRC 1415 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1415 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E039 OF 2024**

**MA ONYANGO, J**

**MAY 15, 2025**

**BETWEEN**

**TEACHERS SERVICE COMMISSION ..... APPLICANT**

**AND**

**DOMINIC MOROGO LIMO ..... RESPONDENT**

**RULING**

1. Before the court for determination is an application dated 4<sup>th</sup> December 2024 brought under Sections 3A of the *Civil Procedure Act*, Order 42 rule 6(1) and Order 50 rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, sections 21(1) and (3) of the *Government Proceedings Act* and all enabling provisions of the law. It seeks for orders that:
  - i. Spent
  - ii. That the Honorable Court be pleased to order stay of execution of the judgment of Hon. Kimani Mukabi delivered on 26<sup>th</sup> November 2024 in Eldoret CMEL No. E038 of 2021, Dominic Morogo Limo v Teachers Service Commission and all consequential orders pending the hearing and determination of this Application;
  - iii. That the Honorable Court be pleased to order stay of execution of the judgment of Hon. Kimani Mukabi delivered on 26<sup>th</sup> November 2024 in Eldoret CMEL No. E038 of 2021, and all consequential orders pending the hearing and determination of the Applicant's Appeal.
  - iv. That the costs of this Application be provided for
2. The application is premised on the grounds set out on the face thereof to wit; that the trial court delivered judgement in Eldoret CMEL No. E038 of 2021 on 26<sup>th</sup> November 2024 in favour of the Respondent; that the Applicant promptly made a request to be supplied with typed copies of proceedings and a certified copy of the judgement; that the Applicant is dissatisfied with the entire



judgment and has in exercise of its right of appeal, filed an appeal against the said judgment at the Employment and Labour Relations Court; that the said appeal raises substantial and weighty issues of law with high probability of success as demonstrated in the Memorandum of Appeal dated 3<sup>rd</sup> December 2024; that if the judgment is enforced in its present form, the Applicant is likely to suffer irreparable loss and damage in that the Respondent may not be able to refund the awarded sum of Kshs. 339,843 as the same amounts to a huge sum in the event the Appellant's Appeal is successful; that by virtue of section 12 of the Teachers Service Commission Act and Article 260 of the Constitution, the Applicant is exempted from depositing security for costs under Order 42 rule 8 of the Civil Procedure Rules 2010 as it is capable of satisfying the decree should the appeal be unsuccessful; unless this Application is heard and determined urgently, the intended appeal shall be rendered nugatory; that the decretal sum constitutes exclusively public funds that ought to be preserved by all means due to public interests considerations and lastly, that the Respondent will not suffer any prejudice in the event that the orders sought herein are granted as the Applicant is capable of satisfying the court's decree should the appeal be unsuccessful.

3. The application is supported by the annexed affidavit sworn on 4<sup>th</sup> December 2024 by the Applicant's counsel, Mary Njau. That affidavit reiterates the contents in the grounds set out in the application.
4. The application is opposed. The Respondent filed a replying affidavit dated 15<sup>th</sup> January 2025 in which he contends that the application before the court is a ploy by the Applicant to deny him the fruits of a lawfully obtained judgment at his expense. The Respondent deposes that the Applicant has not met the required threshold for issuance of the orders he seeks as stipulated by Order 42 Rule 6 of the Civil Procedure Rules, 2010.
5. It is the Respondent's case that allowing the application as prayed will amount to this court sanitizing the Applicant's illegality of terminating his employment unlawfully. Further, the Respondent asserts that the instant application is a gimmick by the Applicant to validate an illegality through the court hence amounting to an abuse of the due process of the court.
6. The application was canvassed by way of written submissions. The Applicant's submissions are dated 10<sup>th</sup> February 2025 whereas the Respondent's submissions are dated 17<sup>th</sup> February 2025.

### **Determination**

7. I have carefully considered the Application, Supporting Affidavit, Respondent's Replying Affidavit as well as the rival submissions of the parties herein. The only issue which arises for determination is whether this court should grant stay of execution of the Judgment delivered on 26<sup>th</sup> November 2024 in Eldoret CMEL No E038 OF 2021.
8. Stay of Execution is provided under Order 42 Rule 6 of the Civil Procedure Rules 2010 as follows;
  - “(1) No appeal or second appeal shall operate as a stay of execution or proceeding under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.



- (2) No order for stay of execution shall be made under subrule (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.”

9. In summary, under that rule the Applicant must meet the following conditions:-

- a. that substantial loss may result to the applicant unless the order is made
- b. application has been made without unreasonable delay
- c. security as the court orders for the due performance

10. In this case, there is a judgment in favour of the Respondent. There is likelihood that should the orders of stay not issue, the Respondent may execute against the Applicant and thereby occasion the Applicant substantial loss. I am therefore persuaded that substantial loss has been established.

11. As to whether the Application has been filed without undue delay, judgment was entered on 26<sup>th</sup> November 2024. The memorandum of appeal was filed on 9<sup>th</sup> December 2024 which timeframe is within one month. This court thus finds that the appeal and this application for stay of execution has been filed without undue delay.

12. With regard to the issue of security for due performance, the Applicant in its submissions asserted that there is an exemption to the rule as government is not required to provide security by virtue of Order 42 Rule 8 of the Civil procedure Rules and section 21 of the *Teachers Service Commission Act* which provides:

13. Order 42 Rule 8 of the Civil Procedure Rules stipulates:-

“No such security as is mentioned in rules 6 and 7 shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him in his official capacity.”

14. Section 21 of the *Teachers Service Commission Act* provides that:-

“Proceedings against the Commission shall be deemed to be proceedings against the Government and shall be subject to the *Government Proceedings Act*.”

15. Section 21(4) of the *Government Proceedings Act* provides:-

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

16. Flowing from the above analysis and the finding that the Applicant has satisfied the two conditions for grant of orders of stay of execution pending appeal, I find that the Applicant has satisfied this court



on the requirements for grant of stay of execution pending appeal as stipulated under Order 42 Rule 6 of the Civil Procedure Rules.

17. Consequently, I allow the Application dated December 4, 2024. The costs shall abide the outcome of the Appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 15<sup>TH</sup> DAY OF MAY 2025**

**MAUREEN ONYANGO**

**JUDGE**

