



**Muthomi v County Secretary, County Government of Meru & 2 others
(Petition E003 of 2022) [2024] KEELRC 67 (KLR) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEELRC 67 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
PETITION E003 OF 2022
ON MAKAU, J
JANUARY 26, 2024**

BETWEEN

KELVIN KIMATHI MUTHOMI PETITIONER

AND

**COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU 1ST
RESPONDENT**

MERU COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

THE COUNTY GOVERNMENT OF MERU 3RD RESPONDENT

RULING

1. This ruling relates to the petitioner’s Notice of Motion dated 8th March 2023 seeking:-
 - a. That pending hearing and determination of the intended appeal, this Honourable court be pleased to order stay of execution of the aforesaid judgment, decree and all consequential orders thereto.
 - b. That the costs of this Application be provided for.
2. The motion is supported by Petitioner’s own affidavit sworn on the said date. It was opposed by the respondents through the Replying Affidavit sworn on 14th April 2023 by one James Mutia, 3rd respondent’s Chief Officer-Legal Affairs, Public Service and Administration.

Factual Background

3. The petitioner filed a petition dated 23rd November 2022 seeking the following reliefs:-
 - a. A declaration that the 1st Respondent’s Notice dated 10th November, 2022 dismissing the Petitioner from employment infringed the petitioner’s fundamental rights and the same is



illegal, null and void ab initio for being in contravention of Articles 25(c), 28, 31, 41, 47, 48, 50, 10, 73, 23 and 236 of the Constitution of Kenya, 2020.

- b. An order for Judicial Review quashing and/or setting aside the decision of the 1st, 2nd and 3rd Respondents to dismiss the petitioner from employment as contained in the letter dated 10th November, 2022 and any other consequential subsequent actions emanating there from.
 - c. An order of prohibition and injunction to issue restraining the Respondents by themselves their servants, employees, agents or anyone acting on their behalf from terminating the Petitioner from employment based on the same allegations contained in the letter dated 10th November, 2022.
 - d. An order directing the Respondents to unconditionally reinstate the petitioner back to his employment as a County Solicitor.
 - e. General damages, punitive and exemplary damages for dismissal for breach of the petitioner's rights guaranteed under Articles 25(c), 28, 31, 41, 47, 48 and 50 of the Constitution of Kenya, 2010.
 - f. Costs of the petition and any other relief that the Honourable court may deem fit and just to meet the ends of justice.
4. After hearing the matter, I rendered my judgment on 20th January 2023 in which I dismissed the suit with costs. The petitioner was aggrieved and has since preferred an appeal. By the instant motion he seeks to protect his right to be heard in the appeal. The applicant prosecuted the motion by filing written submission but the respondents relied on the Replying Affidavit filed.
 5. The petitioner's case is that if the stay sought is declined, he stands to suffer irreparable harm since his job will be lost automatically. He relied on the principles guiding the grant of stay pending appeal set out under Order 42 Rule 6(2) of the Civil Procedure Rules.
 6. The respondents, on the other hand, contended that the motion is misconceived because it seeks to stay a negative order, which in essence has no effect. Further, this court is now functus officio and cannot grant the order since the petitioner has filed the record of Appeal before the Court of Appeal. Further no prejudice will be suffered if the stay order is declined since the petitioner still has the right to apply for the position of solicitor once the position is advertised.

Issues for Determination

7. The principles guiding the granting of stay are well established in our rules of procedure and court decisions. Order 42 Rule 6 (2) of the Civil Procedure Rules provides that:-
 - “(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.”
8. Emerging from the above Rule, the principles for granting stay pending appeal by the trial court, the applicant must show: -



- a. That substantial loss may result to him unless the order is made.
 - b. The application has been made without undue delay.
 - c. He is willing to offer such security for the due performance of the decree as the court may order.
9. In the instant case, the order to be stayed is a negative order since it concerns dismissal of a suit. Whereas the motion was made without undue delay, there is no substantial loss that may result if the court declines to grant stay of execution.
10. The applicant contends that he will automatically lose his job if the stay order is withheld. However, that allegation lacks merits because the loss of job is not a consequence of the impugned judgment. He lost the job even before approaching the court and then failed to convince the court that he is entitled to the same.
11. In the circumstances, I find that the application by the petitioner is misconceived and devoid of merits. Consequently, it is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 26TH DAY OF JANUARY, 2024.

ONESMUS N MAKAU

JUDGE

Order

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

