



John v Independent Electoral and Boundaries Commission (Cause 11 of 2019) [2024] KEELRC 632 (KLR) (19 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 632 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE 11 OF 2019
JW KELI, J
MARCH 19, 2024**

BETWEEN

WANYAMA MURABWA JOHN CLAIMANT

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION RESPONDENT**

RULING

1. This Ruling determines the Respondent/Applicant's Notice of Motion dated 7th March 2024 and filed on an even date. The Application was filed under Certificate of urgency of even date relying on the provisions of Section 21(4) of the *Government Proceedings Act*, Order 42 rule 6, Order 22 rule 22 of the Civil Procedure Rules, and Sections 1A, 1B, and 3A of the *Civil Procedure Act*.
2. The Applicant seeks the following orders: -
 - a. Spent
 - b. Spent
 - c. That an injunction do issue staying and/or reviewing and/or setting aside the warrants of Attachment dated the 14th day of February 2024 and the Proclamation Notice dated the 15th day of February 2024.
 - d. That costs of this application be provided for.
3. The Applicant states that on 6th March 2024, it became aware of a purported Proclamation Notice dated 15th February 2024 issued to Messrs Armok Auctioneers obtained on 14th February 2024, in execution of a decree against the Applicant.



4. The Applicant states that the impugned warrants of attachment and Proclamation Notice, violate the provisions of section 21(4) of the *Government Proceedings Act* (Cap 40 of the Laws of Kenya) and the procedure for execution as adopted is untenable in law.
5. The applicant states that it has proffered an appeal against the judgement of the court in Civil Appeal No. E0139 of 2022(Kisumu) *Independent Electoral and Boundaries Commission v Wanyama Murabwa John* and thus the said warrants of attachment and Proclamation Notice are premature.
6. The Applicant prays that the warrant of execution be reviewed or set aside or varied, failing which it will be prejudiced.
7. That in the interest of justice, the orders sought be granted.
8. The application was served upon directions of the court for response. No response was filed and the Respondent/Claimant did not attend.
9. The application was thus unopposed.

Decision

10. The Court of Appeal has settled the principles for stay of execution in the case cited by Justice Ongudi in *MFI Document Solutions Ltd v Paretto Printing Works Limited* (2021) eKLR of *Butt -vs Rent Restriction Tribunal* (1982) KLR 417 where the Court of Appeal gave guidance on how a Court should exercise discretion in an application for stay of execution and held that: -
 - “ 1. the power of the Court to grant or refusal an application for a stay of execution is a discretion of power. The discretion should be exercised in such a way as not to prevent an appeal.
 2. The general principle is granting or reusing a stay is: If there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the judge’s discretion. (sic) (trial Court judgement).
 3. A judge should not refuse a stay if there is a good ground for granting it merely because in his opinion a better remedy may be available to the applicant at the end of the proceedings.
 4. The Court in exercising its powers under order XLI rule 4 (2) (b) of the civil procedure Rules can order security upon application by either party or on its own motion. Failure to put security of costs as ordered with cause the order for stay of execution to lapse”.
11. Applying the foregoing decision, I find that if the stay of execution is not granted pending the hearing and determination of the appeal the same may be rendered nugatory in the event the Applicant is successful. There is a Notice of Appeal filed on 21st December 2021 and the Applicant confirms an appeal Civil Appeal No. E0139 of 2022(Kisumu) *Independent Electoral and Boundaries Commission v Wanyama Murabwa John* is before the Court of Appeal for determination.
12. I grant an Order of stay of execution of this Court’s judgement dated 6th December 2021 and/or any consequential Decree and Orders pending the hearing and determination of the Applicant’s appeal.



13. The Respondent/Applicant is Hereby Ordered to deposit the entire decretal amount in this Court within 30 days of this Order failing which the Order of Stay so granted shall stand vacated.
14. No order as to Costs.
15. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 19TH MARCH 2024.

J.W. KELI

JUDGE

In the presence of:-

Court Assistant: Lucy Macheso

Applicant :- Manyonge holding brief for Juma

Respondent : Absent

