



**Kombura v Omollo & 2 others (Petition E018 of 2024)  
[2024] KEELRC 13425 (KLR) (10 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13425 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION E018 OF 2024  
NZIOKI WA MAKAU, J  
DECEMBER 10, 2024**

**BETWEEN**

**GODWIN OTIENO ONUONGA KOMBURA ..... PETITIONER**

**AND**

**EZEKIEL GILBERT OMOLLO ..... 1<sup>ST</sup> RESPONDENT**

**BOARD OF GOVERNORS, RANGWE TECHNICAL & VOCATIONAL  
COLLEGE ..... 2<sup>ND</sup> RESPONDENT**

**THE SECRETARY PUBLIC SERVICE COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Application before the Court is the one dated 3<sup>rd</sup> July 2024. In it, the Respondents seek the stay of judgment delivered on 12<sup>th</sup> June 2024. The Applicants seek stay of the Judgment on grounds, inter alia, that the decision will occasion untold financial hardship upon the 2<sup>nd</sup> Respondent and that the intended appeal has a high chance of success. The motion was to be disposed by way of submissions and the Respondents and the Petitioner were to file written submissions. The Respondents filed submissions dated 24<sup>th</sup> October 2024. As at the time of penning this Ruling, the Petitioner had not filed any submissions.
2. The Respondents submit that the application has met the threshold for grant of stay of the judgment as sought. They submit that under Order 42 Rule 6(2) of the *Civil Procedure Rules*, a stay is to be granted where an applicant demonstrates that substantial loss would occur if the order of stay is not granted. The Respondents submit that the enforcement of the judgment in question will place immense financial burden on public resources. The Respondents submit that they are under the government's budgetary system and an order resulting from the Judgment of the Court directing the commencement of fresh recruitment for the position of Vocational and Technical Trainer –Accounting will lead to diversion of public funds that are earmarked for critical sectors such as healthcare, education and



infrastructure development. The Respondents submit that public interest weighs heavily in favour of granting the Applicants' request and that it is in the public interest that a stay of execution or delay in enforcement is necessary to ensure that no adverse consequences fall on the general public. The Applicants submit that the appeal is neither frivolous nor vexatious and that it is brought on genuine and substantive grounds that warrant consideration by the Court.

3. The factors to consider in an application for grant of stay pending appeal is well set out in various case law. A stay of execution pending appeal is granted at the discretion of the court. The Court has to consider several factors when making its decision. These are whether:-
  - a. The appeal has a good chance of succeeding.
  - b. There is a serious and immediate threat of execution.
  - c. The appeal or application is frivolous.
  - d. Refusing the stay would cause greater hardship.
  - e. The applicant will suffer substantial loss if the stay is not granted.
  - f. There has been an offer of security.
  - g. There are special circumstances and unique requirements of the case.
  - h. The application was made without unreasonable delay.
4. A stay will not be granted if there is no order capable of execution. This includes a negative or dismissal order since there is nothing to stay. The Court herein considers that the requirements for a grant of stay are in broad brushes. Consideration is to be had to the circumstances of the case as well as the number of conditions met, which all intersect to allow a court ascertain whether a grant of stay is available or not. The analysis need not be sequential as the grant of stay does not depend on satisfaction of all the grounds with none being superior to the other.
5. In the case before the Court, the Applicants did not offer any security. They assert that the decision will result in untold financial hardship upon the Respondents. There is no precise indication of the financial hardship that they allegedly will suffer for not dislodging the Petitioner from office and having someone else take his place. To their credit – in regard to the time taken to move court, the application was made without unreasonable delay. The dilemma in relation to the motion is the effect of the grant of the orders sought. The Respondents admit, and there is no dispute on this, that the Petitioner is still in post. The only arguments advanced against his continued occupation of office by the Petitioner is that the Respondents had expended large sums to effectuate the advertisement and preparations for the filing of the position that was subject of the decision of the Court. On the other hand, the Court notes the Petitioner did succeed in his Petition to the extent there was an order to redo the advertisement and eventual filling of the position. The Court did not discern frivolity, in other words, the intended appeal does not appear to be frivolous. The Respondents assert public interest in saving the exchequer from additional expenditure in redoing the advertisement and eventual filling of the position. The public interest is touted as a consideration to return to the position prior to the Petition. However, public interest also requires the Respondents to abide by standards and norms that engender public interest including, but not limited to, conducting fair recruitment exercises. Since the Court faulted the Respondents to that extent would it be in the public interest to sustain the position the Court found to be erroneous? I think not.
6. The Court did not discern any prejudice that would be suffered by the Respondents if the Petitioner continues to occupy the office he has held prior to the institution of the Petition and subsequent



to the determination of the learned Judge in June 2024, pending the hearing and determination of the proposed appeal. In my view, there is no special circumstance that exists for the Court to vacate the decision made herein pending the hearing and determination of the Appeal. At least, no cogent grounds have been raised to dislodge the lingering doubts that the Appellants will not suffer substantial loss at all, or any loss whatsoever.

7. The motion being one that was not properly defended by the Petitioner, results in a dismissal of the unsuccessful motion albeit with no order as to costs since the Petitioner did not even bother to file submissions to the motion. Application dismissed, no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 10<sup>TH</sup> DAY OF DECEMBER 2024**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

