



**Nthiga v County Government of Embu & another (Constitutional
Petition 15 of 2017) [2023] KEELRC 1434 (KLR) (9 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1434 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CONSTITUTIONAL PETITION 15 OF 2017**

ON MAKAU, J

JUNE 9, 2023

BETWEEN

THOMAS MUGAMBI NTHIGA PETITIONER

AND

COUNTY GOVERNMENT OF EMBU 1ST APPLICANT

COUNTY PUBLIC SERVICE BOARD EMBU 2ND APPLICANT

RULING

1. This ruling relates to Respondent's Notice of Motion dated February 10, 2023 seeking for:-
 - a. Setting aside of order made on February 1, 2023 by which notice of motion dated December 9, 2023 was dismissed.
 - b. Reinstatement of the Notice of Motion dated December 9, 2022 for hearing.
 - c. Costs.
2. The motion is supported by an Affidavit sworn by Johnson Ngao Nyaga County Secretary Embu County Government. The main reason for the application is that the delay in paying the Kshs 1,000,000.00 as a condition for stay is because the respondent's Advocate delayed availing bank details and the IFM's Number. It is therefore the applicants' case that the delay was not deliberate. It was further contended that the application has been made without undue delay.
3. The petitioner has not challenged the facts but has filed grounds of opposition contending that the application is incompetent bad in law and an abuse of the process of court. Further that the application lacks merits.
4. The applicant filed submissions but the petitioner relied on his grounds of opposition.
5. The issues for determination are:-



- a. Whether the motion is incompetent, and bad in law.
 - b. Whether the application has merits.
6. As regards the alleged incompetence or defect in the motion, I regret to say that I saw no such defect or incompetence. The motion is drawn to the correct form and it is supported by an affidavit. Consequently, I find and hold that the application is proper in law.
7. As regards its merits, the facts presented by the applicant have not been rebutted. There is evidence that despite delays the Kshs 1,000,000.00 was paid to the petition as a condition for stay of execution. The delay has been explained to the satisfaction of the court and therefore I allow the application herein in the following terms:-
- i. The order made on February 1, 2023 dismissing the notice of motion dated December 9, 2022 is hereby set aside.
 - ii. The Notice of Motion dated December 9, 2022 is hereby reinstated for hearing on merits.
 - iii. Each party to bear own costs of the application.

DATED, SIGNED AND DELIVERED AT NYERI THIS 9TH DAY OF JUNE, 2023.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties 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

