



**Wa Mutinda v Municipal Council of Bomet & 3 others (Cause
214 of 2016) [2023] KEELRC 1709 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1709 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 214 OF 2016
MN NDUMA, J
JULY 6, 2023**

BETWEEN

NGEI WA MUTINDA CLAIMANT

AND

MUNICIPAL COUNCIL OF BOMET 1ST RESPONDENT

TOWN COUNCIL OF KANGUNDO 2ND RESPONDENT

PUBLIC SERVICE COMMISSION 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The respondent/applicant filed a notice of motion application dated 14/2/2023 seeking an order in the following terms:-
 1. Spent
 2. Spent
 3. That pending the hearing and determination of the Appeal No E855 of 2022, County Government of Bomet –vs- Ngei was Mutinda & 4 others, this hounourable court be pleased to order stay of execution of the judgment delivered by Honourable Justice Nduma Nderi issued on September 22, 2022.
 4. That the costs of this application be provided for.
2. The application is premised on grounds 1-12 set out on the face of the application and buttressed in the supporting affidavit of John Mark Langat, the butt of which is that the court entered judgment in favour of the claimant in the sum of Kshs 3,480,187 on 22/9/2022.



3. That notice of appeal was filed on 29/9/2022 timeously and a memorandum of appeal subsequently filed dated 9/12/2022.
4. That the claimant has commenced the process of execution and that it is in the interest of justice that the court grants stay of execution pending the hearing and determination of the Appeal which has high probability of success.
5. That the decretal sum is large and the claimant may not be able to refund the same if paid and this would render the appeal nugatory. That the applicant is ready and willing to abide by the terms imposed by the court as to provision of security. That applicant stands to suffer substantial loss if stay of execution is not granted and the appeal is successful in due course.
6. The application is opposed vide a replying affidavit of the claimant in which the claimant acknowledges that the applicant has filed an appeal. The claimant states that the appeal is frivolous and has no chances of success.
7. The claimant states that he is an employee of the Public Service Commission (PSC) and so it is not true that he is a person of unknown means. That the claimant works as a Senior Deputy Secretary at the Ministry of Education. That he has served the public service for a period of 30 years and is therefore not a man of straw.
8. That he has been denied use of his salary since the year 2007 to-date, a period of sixteen (16) years. That any further delay is prejudicial to the claimant.
9. That if stay is granted, the decretal sum be deposited in a joint interest earning account.
10. That the application be dismissed with costs.

Determination

11. The court has considered the deposition and submissions by the parties and is of the considered finding that it is in the interest of justice that stay of execution pending the hearing and determination of the appeal be granted provided the respondent deposits the entire decretal sum in an interest earning account held jointly in the names of the advocates for the claimant and the advocates for the respondent within 45 days of this ruling.
12. In the event the respondent/applicant fails to deposit the decretal sum within 45 days as directed by the court, the order for stay of execution shall lapse and execution to follow.
13. It is so ordered.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 6TH DAY OF JULY, 2023.

MATHEWS N. NDUMA

JUDGE

Appearances

Brian Otieno for the applicant

E.K. Mutua & Co Advocates for claimant/respondent

Ekale: Court Assistant

