



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

ELRC PETITION NO. E006 OF 2021

IN THE MATTER OF SECTION 34 LABOUR RELATIONS

AND

IN THE MATTER OF SECTION 12 EMPLOYMENT AND LABOUR RELATIONS COURT ACT

AND

IN THE MATTER OF RULE 17 EMPLOYMENT AND LABOUR RELATIONS COURT PROCEDURES RULE 2016

AND

IN THE MATTER OF NAKURU KUPPET BRANCH ELECTION HELD ON 13TH FEBRUARY 2021.

ELIUD WANJOHI GWANDARU.....PETITIONER/APPLICANT

-VERSUS-

SAMUEL WAITA K.....1ST RESPONDENT

DANCAN GITAU MACHARIA.....2ND RESPONDENT

KIPTOO NG'ETICH.....3RD RESPONDENT

CAROLINE RONO.....4TH RESPONDENT

SAMUEL KIRUBI WANJOHI.....5TH RESPONDENT

EVALYNE CHEPCHUMBA.....6TH RESPONDENT

JOSEPH CHEBUKAKA.....7TH RESPONDENT

ANNE LANGAT.....8TH RESPONDENT

NANCY CHELANGAT.....9TH RESPONDENT

CATHERINE CHEMELI SANG.....10TH RESPONDENT

REGISTRAR OF TRADE UNIONS..... 11TH RESPONDENT

KENYA UNION OF POST PRIMARY EDUCATION TEACHERS

(KUPPET).....12TH RESPONDENT

R U L I N G

1. Before me for determination is the applicant's/12th Respondent's Application dated 28th June, 2021, filed under certificate of urgency on the 5th July, 2021 and brought pursuant to Rule 8 of the Employment and Labour Relations(Procedure) Rules, 2016 and Order 42 Rule 6 of the Civil Procedure Rules, 2010 and all other enabling provisions of law. The application seeks the following Orders:-

1) This Honourable Court be pleased to certify this matter as urgent and hear it ex-parte in the first instance.

2) That pending inter partes hearing and determination of this Application, the Court be pleased to issue an interim order staying the proceedings pending the hearing and determination of the Intended Appeal.

3) That this Honourable Court do grant any other Order that it may deem just and expedient in the circumstances of this case.

4) That the costs of this Application be provided for.

5) Costs of the Application be met by the Applicant to the Bill.

2. The application is based on the following grounds:-

a) That the Ruling to the 12th Respondent's application was delivered on the 27th may, 2021 in which this Court dismissed the preliminary objection for lacking merit and ordered the main petition proceed on merit.

b) That the 12th Respondent who is the applicant herein is aggrieved by the decision of the court has filed a Notice of Appeal 9th June, 2021 and has already requested for typed proceedings together with a copy of the said ruling.

c) That the application has been filed timeously.

3. The Application is also supported by an affidavit deposed upon on 28th June, 2021 by **Akello T. Misori**, the secretary general of the 12th Respondent, which affidavit basically reiterates the ground in the Application.

4. The application is opposed by the petitioner/Respondent, **Eliud Wanjohi Gwandaru**, vide a replying affidavit sworn on 4th October, 2021 and filed on 6th October, 2021.

5. The Respondent avers that the application herein is inept, misconceived, incompetent, malafides and an abuse of Court process as the application only intends to delay the expedition in determination of this Petition.

6. It was stated that the applicant has not demonstrated any prima facie case which would warrant this Court invoking its discretional power of staying proceedings.

7. The Respondent avers that the petition herein was filed pursuant to the concluded KUPPET Nakuru Branch elections that were held on 13th February, 2021 and that this matter will be delayed further defeating the ends of justice.

8. The Respondent urged this Court to disallow the application with costs.

9. The application was disposed of by way of written submissions with the applicant filing on the 27th October, 2021 while the Respondent filed on the 18th November, 2021.

Applicant's submissions.

10. The Applicant submitted that they have already filed an appeal being Nakuru COACA/E086 OF 2021 and are only awaiting to be invited for hearing as in practice by the Court of appeal as such stay Orders ought to be issue to preserve the substratum of the suit herein and to avoid conflict of Order by this Court and the Court of Appeal.

11. It was argued that as much as judicial system is the only resource the court have at the disposal which ought to be used sparingly as was held in **Muchanga Investment Limited V Safaris Unlimited (Africa) Ltd & 2 others Civil Appeal No. 25 of 2002[2009] eKlr**, the Appeal is on a preliminary objection which if allowed disposes the entire suit .

12. The Applicant submitted that they have satisfied all the condition prerequisite of granting of stay Orders. It was argued that the appeal is to whether the petitioner should have filed an appeal under section 30 of the Labour Relations Act or a petition under section 34 as done by the petitioner which according to the petitioner is a prima facie case with overwhelming chances of success.

13. It was then submitted that the application has been brought in a timeous manner. It was contended that the Notice of Appeal was filed on 8th June, 2021 however that the proceedings and the ruling was delayed and the same was issued on 14th October, 2021 therefore that the delay was occasioned by the Registry. The Applicant then cited the case of **Leah Alasa Omollo V Lydia Nkatha Mbaya & Purity Kananu**

(suing on behalf of the Estate of Richard Mwachari Mwakulomba)[2021] eKLR.

14. On costs the claimant submitted that costs follow the event and cited the case of **Super marine Handling services Limited V Kenya Revenue Authority [2010] eKLR.**

Respondent's Submissions.

15. It was submitted for the Respondent on the other hand that the conditions that needs to be considered by the court before it exercises its discretion in granting stay of proceedings order were illustrated in the case of Christopher **Ndolo Mutuku & Another v CFC Stanbic Bank Limited[2015] eKLR** which held as follows:-

“The legal considerations in an application for stay of proceedings have been enunciated in a host of judicial decisions which I need not multiply. Except I can cite some few, say, Daniel Walter Rasugu Nbi Hccc No 15 of 2006 ; Global Tours & Travel Limited; Nairobi HC Winding Up Cause No.43 of 2000; and Kenya Power & Lighting Company Limited vs. Esther Wanjiru Wokabi [2014] eKLR. The guiding legal principles gathered from these cases may be summarized as follows:-

- i. The decision whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice.
- ii. The sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted.
- iii. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order.
- iv. In considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.

16. Accordingly, it was submitted that the circumstances in this case does not warrant the exercise of this Court' discretionary powers for the reason that the Petition herein arose out of KUPPET Nakuru Branch election which were concluded on 13th February, 2021 for elective post which have timelines and to allow the case herein to drag for long would defeat the ends of justice. It was argued that as much as the Applicant has a right of appeal the same ought to be balance with Right of the respondent to equal treatment of the law.

17. It was further submitted that the application before Court is premised on Order 42 Rule 6 of the Civil Procedure Rules which deals with stay of execution pending appeal and not stay of proceedings which application should be dismissed on that premise. In this they cited the case of **Estate of Leah nyaura Njege(Deceased) [2021] eKLR** and the case of **Kenya Power and Lighting Company Limited Vs Esther Wokabi [2014] eKLR.**

18. Accordingly, the Respondent urged this Court to disallow the application and instead direct the petition be heard on priority basis.

19. I have examined the averments of the parties herein. The applicant herein has sought an order seeking stay of proceedings pending hearing and determination of the intended appeal. The cause herein was filed on 25/2/21.

20. The court gave status quo orders. The application herein was disposed off interpartes vide a ruling dated 27/5/2021.

21. The court ruled that the petition was properly before court. It is in respect of this ruling that the applicant seeks stay of proceedings as he pursues his appeal.

22. Since the applicant has a right of appeal as the case may be, I allow the application and stay any further proceedings in this case pending the hearing and determination of the application.

23. Costs in the petition.

RULING DELIVERED VIRTUALLY THIS 14TH DAY OF DECEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Nyamagwa holding brief for Okello for 12th respondent –Present

No appearance for other parties

