



Kenya National Sports Council & 3 others v Njoki & another; Ngugi & 3 others (Interested Parties) (Civil Appeal E929 of 2023) [2024] KEHC 2115 (KLR) (Civ) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 2115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E929 OF 2023

JN MULWA, J

FEBRUARY 29, 2024

BETWEEN

**KENYA NATIONAL SPORTS COUNCIL 1ST APPELLANT
NDERITU GIKARI 2ND APPELLANT
VANRAJ SARVAIYA 3RD APPELLANT
CHARLES NYABERI 4TH APPELLANT**

AND

**PURITY NJOKI 1ST RESPONDENT
MARY MURIUKI 2ND RESPONDENT**

AND

**DAVID NGUGI INTERESTED PARTY
MUDUDA WAWERU INTERESTED PARTY
IEBC INTERESTED PARTY
SPORTS REGISTRAR INTERESTED PARTY**

RULING

1. On 15/8/2023 the Sports Disputes Tribunal in Sports Disputes Cause No E006 of 2023 pronounced its judgment and issued the following orders;
 - a. That the 1st Appellant to supervise the election process from the beginning of the nomination process and the actual election to be conducted by an independent body.



b. That the 2nd, 3rd and 4th Appellants are declared ineligible to vie for re-election in the same positions but can seek other seats within the council.

The Appellants were aggrieved by the Tribunal's judgment upon which they pray that: -

- a. Elections held by the 1st Appellant on 15th December 2022 be declared void.
- b. That a fresh election be held by the 1st Appellant within 60 days of deferred the Appeal herein by a Memorandum of Appeal dated 11/9/2023 upon numerous grounds as appears thereof seeking that the Tribunal's decision be set aside and substituted with an order dismissing the suit against the Appellants.

2. The Application is supported by an affidavit of Nderitu Gikaria the Chairperson of the 1st and 2nd Appellants sworn on even date and submissions dated 18/12/2023.

3. In opposition to the Application, the Respondents filed a Replying Affidavit sworn by Mary Muriuki on 25/10/2023 as well as submissions dated 20/12/2023.

On 12th September, 2023 a temporary stay of execution of the Tribunal's judgment and orders were granted pending hearing and determination of the Application inter partes.

4. By the above the only issue for determination and agreed to by both parties is whether an order for stay of execution of the Tribunal's judgment should be granted pending hearing and determination of the Appeal being minded that an appeal does not automatically operate as a stay of execution of judgment or decree.

Order 42 rule 6 (2) of the [Procedure Rules](#) provides the conditions upon which an order of stay may be granted thus;

- a. The court must be satisfied that substantial loss may result to the applicant unless the order is made and the application has been made without unreasonable delay; and
- b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

5. I have considered the application. It is evident that it was filed without delay.

Substantial loss is the cornerstone in an application of this nature. It is the duty of the applicants to demonstrate what loss they would suffer if stay is denied. The applicants submit that the appeal is arguable with high chances of success, and cites legal grounds appearing at the grounds of the appeal among them that the claim determined by the Tribunal was time barred by dint of Rule 20 (7) of the [Sports Registrar Regulations 2016](#), that the Tribunal applied the [Sports Act 2013](#) to the 1st Appellant when it was not registered under the said Act, and urges that if the orders are denied the appeal will be rendered nugatory. Additionally, it is submitted that the appeal is therefore arguable as it raises trial legal issues.

6. In support of their submissions the Appellants have cited several decisions among them; [Kotut v Rose Jebor Kipngok](#) (2015) eKLR, [Antoine Ndiaye v African Virtual University](#) (2015) eKLR.

7. On their part the Respondents argue that the Appellants have failed to meet the threshold for grant of stay orders pending appeal. In particular, it is urged that no substantial loss has been demonstrated, that the appeal stands no chance of success nor is it arguable, stating that the Tribunal was right in dismissing the case, and cites the following cases; [Global Tours & Travels Limited](#), [Damaris Samuel Mutio v County Government of Bungoma Bungoma County Public Service Board](#), and [Mohamed Salim t/a Choice Butchery v Nasserpuria Memon Jamat](#) (2013) eKLR among others. The Respondents' further



argument is that the public and members of the organization will be greatly prejudiced if the orders sought in the application are granted as the Appellants will continue to occupy positions illegitimately at their expense.

Determination.

8. The purpose for an order of stay pending appeal is to preserve the subject matter of the Appeal so that should the appeal be successful, it would not be rendered nugatory. The appellants have raised pertinent legal issues that the appeal court will need to interrogate at the hearing of the appeal. It is trite that a court of law is not permitted to entertain an illegality, hence raising arguable points of law as ably held in the case *Joseph Gitabi & another v Pioneer Holdings (A) Ltd & 2 others*, it is sufficient if only one arguable ground of appeal is raised, as well as in the case *Damari Samuel Mutio (supra)*.
9. Further the court in *Mohamed Salim t/a Choice Butchery (supra)*, rendered that the right of appeal must be balanced against an equally weighty rigid right of the appellant to enjoy the fruits of its judgment. These tenets must be protected so that those fruits are not lost if the appeal turns successful. The court may grant a stay of execution if convinced that substantial loss might occur as seen in the case of *James Wangalwa & another v Agnes Naliaka Chesoto* (2012).
10. Upon careful consideration of the circumstances and submissions by both parties, the court is persuaded that the Applicants have made a case for grant of orders of stay pending appeal. The matter of security for due performance of the decree does not arise in the special circumstances of this Appeal.

The upshot is that the Application dated 11/9/2023 is allowed in terms of prayer No (c)

Each party shall bear its own costs of the Application.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF FEBRUARY 2024.

J. N. MULWA

JUDGE

