



Case Number:	Civil Application E. 207 of 2020
Date Delivered:	04 Dec 2020
Case Class:	Civil
Court:	Court of Appeal at Mombasa
Case Action:	Ruling
Judge:	Daniel Kiio Musinga, Fatuma sichale, Patrick Omwenga Kiage
Citation:	Kenya Ports Authority Pension Scheme & 8 others v Kinyua Muyaa & Co. Advocates [2020] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Mombasa
Docket Number:	-
History Docket Number:	ELRC Misc. Civil Application No. 13 of 2015
Case Outcome:	Notice of motion allowed
History County:	Mombasa
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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IN THE COURT OF APPEAL

AT MOMBASA

[CORAM: MUSINGA, KIAGE & SICHALE, J.J.A.]

CIVIL APPLICATION NO. E. 207 OF 2020

BETWEEN

KENYA PORTS AUTHORITY PENSION SCHEME.....1ST APPLICANT

ALBERT CHAUREMBO MUMBA.....2ND APPLICANT

ABDALLAH H. MWARUWA.....3RD APPLICANT

M.K. MURE.....4TH APPLICANT

MARY WAIRIMU NG'ANG'A..... 5TH APPLICANT

ALEX OLE-TEIPAN.....6TH APPLICANT

MARY OTIENDE.....7TH APPLICANT

MARGARET NYAGA.....8TH APPLICANT

MAJENGO KATANA (sued on their own behalf and on behalf of the

Predecessors and/or successors in title in their capacities as the Registered

Trustees of Kenya Ports Authority Pension Scheme.....9TH APPLICANT

AND

KINYUA MUYAA & CO. ADVOCATES.....RESPONDENT

(Being an application for stay of execution pending the hearing and determination of an appeal

from the Ruling and order of the Employment & Labour Relations Court of Kenya

at Mombasa (James Rika, J) dated 17th July, 2020

IN

ELRC Misc. Civil Application No. 13 of 2015)

RULING OF THE COURT

1. **UPON** perusing the Notice of Motion dated **20th July, 2020** by the applicant, **Kenya Ports Authority Pension Scheme**, brought under **Rule 5(2)(b) of the Court of Appeal Rules**, where the applicant seeks an order of stay of execution of the ruling and orders made on **17th July, 2020** in Misc. Civil application No. 13 of 2015; **Kinyua Muyaa & Company Advocates, Kenya Ports Authority Pension Scheme & 8 others** pending the hearing and determination of the intended appeal against the ruling of **17th July, 2020**; and

2. **UPON** perusing the supporting affidavit of **Stephen Kyandih** sworn on **20th July, 2020** and the supplementary affidavit sworn on **21st September, 2020** by **Peter Mbuthia Gachuhi**; and

3. **UPON** perusing the replying affidavit sworn on **10th August, 2020** and the

“further replying affidavit in reply” sworn on **22nd September, 2020** both by **F. Kinyua Kamundi**, a partner in the firm of **Kinyua Muyaa & Co. Advocates** on behalf of the respondents; and

4. **UPON** perusing the applicant’s submissions where the applicant contends that it has an arguable appeal as it intends to challenge on appeal whether a judgment that has been set aside for being a nullity for want of jurisdiction can be a basis for assessing instruction fees between an advocate and a client; further that the applicant is apprehensive that, absent stay, the respondent will move to execute the impugned ruling of **17th July, 2020**; and

5. **UPON** perusing the respondent’s submissions in which it is submitted, *inter alia*, that the intended appeal is frivolous; and

6. **HAVING** considered the principles that guide this Court in the determination of Rule 5(2)(b) applications as set out in **Stanley Kang’ethe Kinyanjui vs. Tony Keter & 5 others [2013] eKLR** and noting that the applicant has demonstrated that it has an arguable appeal, that will be rendered nugatory, absent stay, we make the following orders:

(i) The Notice of Motion dated **20th July, 2020** is allowed.

(ii) Costs of the motion shall be in the intended appeal.

Dated and Delivered at Nairobi this 4th Day of December, 2020.

D. K. MUSINGA

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JUDGE OF APPEAL

P.O. KIAGE

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JUDGE OF APPEAL

F. SICHALE

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR



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