



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CIVIL APPEAL NO. 40 OF 2013**  
**SPECIAL MINISTRIES.....APPELLANT/APPLICANT**

**VERSUS**

- 1. JOSEPHAT MWOLOLO KYALO**
- 2. CAROLINE MATHU**
- 3. BENJAMIN MWANIA**
- 4. MAGDALINE MUTISO**
- 5. JOSEPHAT MBONDO**
- 6. DANIEL LEKAMARIO**
- 7. EMMANUEL OTUNI**
- 8. GEORGE ORIMBO**
- 9. JACKSON KISUMO**
- 10. WILLIAM KOTUT**
- 11. ESAU KOMEN**
- 12. SAMSON NGIYO**
- 13. ERASTUS KITONYI**
- 14. JOSHUA MBITHI**
- 15. DORCAS MBULA**
- 16. FAITH NDUKU NGUI**
- 17. ANGELINE NDUNGWA.....RESPONDENTS**

*(Being an appeal from the ruling of the Chief Magistrate's Court at Machakos of*

*dated 19<sup>th</sup> February 2013)*

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*(Before B. Thurania Jaden J)*

### **RULING**

1. The application dated 13/3/2013 seeks orders that there be a stay of execution of the ruling of the lower court in **Machakos CMCC No. 1150 of 2011** and all other subsequent orders issued herein pending the hearing and determination of this appeal.

2. According to the affidavit in support and the supplementary affidavit, the Applicants are aggrieved by the lower court ruling delivered on 19/2/2013 which dismissed the Applicant's application for injunction and allowed the Respondents application.

3. The Applicant's fear is that the Respondents are likely to continue interfering with the Applicant's administration of the **Hope Centres** thereby causing confusion in the management of the same, thereby causing irreparable loss to the communities where the **Hope Centres** are established. It is contended that the interests of justice denied that the *status quo* in the management of the **Hope Centres** be maintained. The Applicant's argue that their appeal is arguable with high chances of success and have expressed their fear that if there is no stay of execution, the appeal will be rendered nugatory. The Applicant has offered security for the due performance of the decree.

4. The application is opposed. The replying affidavit sworn in opposition to the application accuses the Applicants of failure to disclose all the facts that are material to the application. It is asserted that the Magistrate's Court on 2/5/12 dismissed an earlier application for injunction and held that the Applicant had no *locus standi* and the application by the Respondents dated 13/11/2012 and struck out the Applicant's application dated 29/10/2012 and therefore that no useful purpose would be served by the grant of the orders sought.

5. The application was argued before me on 7/10/13. I have perused the pleadings herein and considered the submissions by the counsels for the respective parties and the authorities cited.

6. Under **Order 42 rule 6 (2)** are as follows:

**“No order for stay of execution shall be made under subrule (1) unless –**

**a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that 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.”**

7. No issues of delay have arisen. The ruling complained of was delivered on 19/2/2013 and the appeal herein was filed on 1/3/2013.

8. What I can discern from the ruling delivered by the Magistrate's Court on 19/2/2013 is that an earlier application by the Applicant seeking injunctive orders against the Respondent was dismissed. The Magistrate's Court found no merit in the application by the Applicant dated 29/10/12 which sought mandatory injunction and allowed the Respondents' application dated 13/11/12 which sought the setting aside of the (*ex parte*) mandatory injunction issued.

9. I am in agreement with the submissions by the Respondent's counsel that the ruling dated 19/2/2013 which is the subject of this appeal granted no orders nor directed the doing of anything except for payment of costs. If this court issues an order of stay of the ruling dated 19/2/2013, the *status quo* to obtain on the ground would be the same that obtained prior to the filing of the two applications that are the subject of the ruling dated 19/2/13 which leaves the *status quo* as that obtaining following the delivery of the ruling dated 2/5/2012. As stated by the Court of Appeal in **Venture Capital & Credit Ltd. –vs- Consolidated Bank of Kenya Civil Appeal Nairobi 349 of 2003 (unreported)**, the prayer for order of stay of execution is misconceived as there is no positive finding made in the ruling appealed from which is capable of execution. Consequently, I find no merit to the application and dismiss the same with costs.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Machakos this 22<sup>nd</sup> day of May 2014.

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**B. THURANIRA JADEN**

**JUDGE**