

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. 99 OF 2013

REV. ISAAC MURWON.....APPLICANT

VERSUS

REV. SIMON ALOVI.....RESPONDENT

RULING

1). By an application dated 25-7-2013 the applicant/respondent prays for staying of this court's orders issued on 17-7-2013 and it further prays for leave to appeal. The same is supported by an affidavit of Rev. Dr. Wycliffe Kedogo Ganira sworn on the same date.

2). The respondent on the other hand has opposed the same vide a preliminary objection dated 8-8-2013.

This court dismissed the applicant's application dated 3-5-2013 in which he had sought to review and stay the orders of this court dated 29-4-2013.

3). When parties appeared before me the counsel for the respondent easily conceded on the applicant's prayer for leave to appeal, but on the other limb the same was strenuously opposed.

4). The gist of the applicant's application is that should the orders of 17-7-2013 not be allowed then the applicant stands to suffer irreparable harm and loss and that the intended appeal shall be rendered nugatory.

5). I have perused the application and heard the counsel for the applicant. Being seized with the history of this matter I do not see the damage which the applicant stands to suffer by paying the dues due to its employee. They have not demonstrated that the respondent shall be incapable of paying back whatever he would have received from the applicant.

6). The applicant's affidavit equally contains an allegation that when the ruling was delivered he had not received any notice. This is not true as there was a counsel on record on the material day.

7). At this juncture this court cannot determine whether the intended appeal is plausible. That is the province of the court of appeal. For now I do make the following orders:-

- 0. **Leave is granted to the appellant to appeal.**
- 0. **Stay of execution is hereby denied.**
- 0. **Costs of this application to the respondent.**

Orders accordingly.

Dated, delivered and signed at Kisumu this 9th day of September, 2013.

H.K. CHEMITEI

JUDGE
HKC/va