



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL APPEAL NUMBER 510 OF 2011**

**BISHOP ALLAN NJERU**

**PASTOR CYRUS NJOGOO AYUB**  
**APPELLANTS**

**PASTOR ANDREW**

**MURAGE**

**KENYA REDEEMED CHURCH EXECUTIVE BOARD**

**VERSUS**

**SAMUEL M'OBUYA**

**FLORENCE WANJIRU TIRUS**  
**MARY WWAMBUI MWANGI**  
**DAVIS M MALOMBE**  
**SOLOMON BUNDI RUKARIA**  
**WILLIAM NYAMU**

**RESPONDENTS**

*(From the Ruling and Orders of Okato Principal Magistrate in Milimani CMCC No. 3129 of 2011)*

**R U L I N G**

The application before this court is the Notice of Motion dated 7<sup>th</sup> November, 2011 and brought by the Appellants. They seek stay of proceedings in Milimani CMCC No 3129 of 2011 pending the final determination of this appeal. The applicant/Appellant states that if the stay is not granted, the Respondent who is the Plaintiff in the above mentioned suit, will fix a hearing date which will lead into the eventual result of rendering this appeal nugatory.

The facts of the suit are as follows, to the extent this occur understands them. The Respondents as individuals, sued the officials of the Appellant Church together with the church itself in CMCC No 881 2011 and also in CMCC No 1565 of 2011, consecutively. Appellants/Defendants in respect of each case, filed Preliminary Objections, the main one of which was that the lower court should strike out the suit as incompetent on the ground that since the Defendants were a registered society under Registered Society Act, it can only sue and be sued through its officials. The defendant had gone further to aver that no person, human or legal could sue the defendant Church – the Kenya Redeemed Church, except through the Church's officers. For that reason, they averred, the suit(s) filed by Plaintiffs who are individual members of the church or even non-members, were null and void and accordingly incompetent. The

defendant then sought that the cases should be struck out.

In the third lower court case, i.e. CMCC No. 3129 of 2011, the Appellant raised a second issue and ground of appeal in this appeal, that the suit, was *Res judicata* or *Res Subjudice* the earlier suit No. 881 of 2011 and ought to have been struck out or stayed under Section 6 and 7 of the Civil Procedure Act, Cap 21.

To understand the origin of the above contention an explanation is necessary. It would appear that when the earlier two appeals were filed, the Appellants sought orders of stay of proceedings, as they have done herein, pending the hearings of Appeals No. 219 of 2011 and 441 of 2011. In Civil Appeal No. 219 of 2011 Waweru, J granted such order of stay of proceedings until the Appeal would be heard. Also in Appeal No. 441 of 2011 Ang'awa, J made a similar order.

It was the applicant's case however, that notwithstanding the existence of those two orders of stay of proceedings, and despite the same having been brought to his attention in open court, the trial magistrate, Mr. Okato, ignored them and went ahead to make further orders in the relevant file or files. That he ordered CMCC No. 881 of 2011 to be withdrawn despite the High Court order of stay of proceedings. The applicants submitted that the learned magistrate's act was an act of impunity and open disrespect to the principle of *stare decisis*.

The Appellants also submitted that the pending appeals are arguable and have high chances of success.

On the other hand, the Respondent argued that notwithstanding the provisions of the Registered Societies Act, it would be illogical to conclude that no person can sue a registered society except through the officials of the defendant society. They averred that while a registered society cannot sue except through its officials, it can on the other hand, be sued by other persons, whether members or outsiders. That the society's officials need not be asked to sue their own society on behalf of those other persons. I have considered the arguments. It is my view that, that point is clearly contentious. It needs to be widely ventilated in this appeal.

On the point as to whether or not the learned magistrate, had power to allow a withdrawal of a suit whose withdrawn status might adversely affect a party to the appeal, this court cannot state much at this point except to say that the act of withdrawal was and is controversial. On the face of things, without making a conclusion in law, the act of the learned magistrate would appear impetuous, impudent and imprudent. It certainly raises an issue to be argued in the pending appeal.

On the other hand, the issues raised in the grounds of appeal, *prima facie*, could have been better argued on an eventual appeal if the Appellant eventually would lose the grounds of objection, after evidence was recorded in a full hearing. For example a final comprehensive appeal would easily raise the principles of *res* and/or *locus standi*. If the Appellant would fully demonstrate them at the end of the lower court trial, the lower court or this court in an appeal, would on satisfaction, be able to reverse the trial court's findings. Taking into account all the circumstances of this case, however, a stay of proceedings will be granted.

## **ORDERS**

- 1. Stay of proceedings of the lower court is hereby granted for 90 days unless lawfully extended by the court.***
- 2. Appeal Record shall be filed and served within 30 days.***
- 3. Lower court's file record to be urgently called for to reach this court within 45 days.***
- 4. Directions on 9<sup>th</sup> May 2012.***

Dated and delivered at Nairobi this 6<sup>th</sup> day of March, 2012.

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**D A ONYANCHA**  
**JUDGE**