



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO. 755 OF 2002

(From the original Civil Suit No. 4 of 2001 of SRMC at Limuru)

MANASSEH NGANGA AND 7 OTHERSAPPELLANTS

VERSUS

PAUL K. NJOROGE AND 5 OTHERSRESPONDENTS

R U L I N G

The application herein arises from a ruling of the Senior Resident Magistrate at Limuru delivered on 14th November, 2002.

That ruling rejected an application for stay of execution of the order of that court dated 17th September, 2002. There is no order to be executed from that ruling and the appeal filed herein on 11th December, 2002 is really not against that ruling.

However, in the same prayer (No. 2) the applicant seek an order for stay of execution of the decree of the court dated 17th September 2002. The reasons given for the application on the body thereof are that:-

- (a) The intended appeal has high chances of success and should the orders sought fail to be granted then the same will render the intended appeal nugatory.
- (b) That the application has been made without inordinate delay.
- (c) That the applicant will suffer irreparable/substantial loss unless the orders sought are granted.

The supporting affidavit states that the plaintiff herein have already set in motion the process of executing the decree obtained in the exparte judgment delivered on 17th September, 2002. And that should this process of execution proceed as scheduled the defendants will suffer irreparable/substantial loss. There is a replying affidavit deponed to by the first respondent and filed herein on 7th March 2003, which opposes the application for stay of execution.

In this court on 18th March 003 counsel for the parties appeared and submitted on the application relying on the grounds on the body thereof, the supporting and replying affidavits. Counsel for the applicant said that the lower court case was heard exparte due to negligence on the part of former counsel who did not appear in court. That non-attendance of the advocate should not be visited on his client. Counsel submitted that his clients had been denied the right to sit as officials of the fellowship. She prayed that the application be allowed. Counsel for the respondent submitted that the application had no merit as it was

devoid of facts. He said there are no execution process taking place in this matter and that the applicants have not been denied to worship except they were declared not to be officials of the fellowships. That no evidence of substantial loss has been given.

He prayed that the application be refused. These are submissions made herein by counsel for the parties for consideration and decision. The case subject to the appeal which has given rise to this application is one of those notorious cases of church wrangles where different groups in the church jostle for positions. In this application, it is apparent that the applicant group has been denied such position as a result of their failure to appear in the lower court to put their case.

As far as I am aware church duties by presiding officials are gratis. It is volunteer sort of work and one cannot say there is so much loss the applicants will suffer if the order of stay of execution is not granted. Counsel for the applicant simply says in the submissions that his client will suffer substantial loss if the order of stay is not granted but does not demonstrate what this loss is. The main issue in dispute so far as I can gather from the lower court proceedings is that the applicants are celebrating (conducting Christian marriages for the church though they are not authorized to do so.

This is a voluntary assignment. The lower court legally stopped them from doing so. This does not mean the appellants have been stopped from worshipping as any other member of the church.

If this be so, what is there to be stayed? Replace the respondent with the appellants under the pretext of stay of execution? That would be unlawful.

Even then given that the appellants did not offer any defence when the dispute was deliberated upon and judgment delivered and that apparently no application was made to set the judgment aside, I am not sure of the alleged high chances of success of the appeal.

To grant or not an application for stay of execution is at the discretion of the court if sufficient grounds as known by law are satisfied.

In this application, I have mentioned 2 which are most applicable and in my view these conditions have not been satisfied warranting that I do not allow the same.

I dismiss the application with costs.

Delivered this 2nd day of April, 2003.

D.K.S. AGANYANYA

PRINCIPAL JUDGE