



Head Teacher, Madaraka Primary School & another v Seventh Day Adventist Church (East Africa Ltd) (Land Case Appeal E024 of 2024) [2025] KEELC 505 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEELC 505 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
LAND CASE APPEAL E024 OF 2024
LN MBUGUA, J
FEBRUARY 6, 2025**

BETWEEN

**HEAD TEACHER, MADARAKA PRIMARY SCHOOL 1ST APPELLANT
THE CHAIRMAN, BOARD OF GOVERNORS, MADARAKA PRIMARY
SCHOOL 2ND APPELLANT**

AND

SEVENTH DAY ADVENTIST CHURCH (EAST AFRICA LTD) .. RESPONDENT

RULING

1. Before me is the application dated 4.12.2024 in which the appellants are seeking orders of stay of execution of the judgment delivered on 6.11.2024 in CMELC NO 205 OF 2018 at Nyahururu CMS Court. The applicants contend that they were aggrieved by the aforementioned judgment, hence they filed the appeal vide the memorandum of appeal dated 4.12.2024. They contend that they stand to suffer substantial loss if the orders are not granted as some of the facilities such as the primary school classes are situated on the suit property.
2. In opposition thereof, the respondents filed grounds of oppositions dated 14.1.2025 contending that the grounds set out in the application are merely speculative and hollow, adding that the rights of the owners of the suit property must take precedence
3. The application was listed for interpartes hearing on 3.2.2025 but it was a no show for the appellants. The court hence gave directions to deliver a ruling based on the documents filed.
4. I have considered the rival arguments as set out in the application and the grounds of opposition. To grant or not to grant a stay of the judgment is the issue falling for determination.
5. The court has discretion to grant or to refuse an application for stay of execution pending appeal in that the court when granting such an order has to balance the interests of the applicant with those of



the respondent. In determining this balance, the court gives due consideration to the criteria set out under Order 42, Rule 6. See Halai & another v Thornton & Turpin (1963) Ltd [1990] Eklr, Feisal Amin Jan Mohammed T/A Dunyia Forwarders vs Shami Trading Co. Ltd (2014) eKLR.

6. I have keenly perused the judgment delivered on 6.11.2024 where the respondent was found to be the lawful owner of the suit property. One of the orders given in the said judgment reads as follows;

“A perpetual injunction be and is hereby issued to restrain the defendant (read the appellants) by themselves, their agents and or servants from interfering with parcel of land No NYANDARUA/LESIRKO/1057 or interfering with the church property and premises”.

7. The import of the aforementioned order is that the appellants have been barred from interfering with the suit property. But again, it is apparent that there is a school thereon. The said school, has been there for ages. That being the case. It is only fair and just that the appellants be given an opportunity to ventilate their grievances to a superior court.
8. In the circumstances, the court gives a conditional stay of execution of the judgment in that; the stay of execution shall run for a period of 4 months ONLY. The costs of the application shall abide the out come of the suit.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 6TH DAY OF FEBRUARY, 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

C/A - Nancy Mwangi

Appellants - Absent

Respondent - Absent

