



African Independent Pentecostal Church and (Eastern Kenya Arch Diocese & another v Mugwika (Civil Appeal E131 of 2024) [2025] KEHC 10882 (KLR) (22 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E131 OF 2024
SM GITHINJI, J
JULY 22, 2025**

BETWEEN

AFRICAN INDEPENDENT PENTECOSTAL CHURCH AND (EASTERN KENYA ARCH DIOCESE 1ST APPELLANT

ARCH BISHOP SAMSON MUTHURI (AIPCA CHURCH MERU 2ND APPELLANT

AND

EZRA MWENDA MUGWIKI RESPONDENT

RULING

1. For determination is the Notice of Motion dated 20/8/2024 pursuant to Sections 3, 3A, 63(2) of the [Civil Procedure Act](#) and Order 42 Rule 6 of the [Civil Procedure Rules](#), seeking that:
 1. Spent
 2. Spent
 3. The Honorable Court be pleased to stay execution of the judgment – decree and all the consequential orders thereof made on 14/8/2024 in Meru Civil No. E341 of 2022 pending the hearing and determination of the appeal herein.
 4. Spent
 5. This Honorable Court be pleased to issue an order of temporary injunction restraining the respondent and his agents, or any other person working under his instructions, supervision, be barred by an order of injunction from obstructing smooth running of masses, holding any meeting, presiding over the church activities, roles or in any other way and from any act of hooliganism likely to cause chaos and violence or engaging or participating in the affairs of the appellants'/applicants' church namely: Ngiine AIPCA Church situated at Ngiine village



in Imenti north sub-county within Meru county pending hearing and determination of this appeal.

6. This Honorable court be pleased to issue further orders as it deems fit and just in the circumstances.
7. Costs for this application be provided for.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of the 2nd Appellant sworn on even date. Aggrieved by the judgment of the trial court, he has appealed against it, and avers that unless the execution is stayed, the church members will have no other place of worship and their constitutional right and freedom of worship will be infringed. On 25/8/2024, the Respondent accompanied by goons and a group of hooligans invaded the Appellants' church namely Ngiine AIPCA and forcefully and violently chased away the pastor in charge. The Respondent is a splinter group from the Appellants' church registered as A.I.P.C.K church who is trying to take over the Appellants' church through the back door and wrong interpretation of the impugning judgment. The impugning judgment did not grant any orders of reinstatement, and the appeal has high chances of success. The Respondent's intention and actions amount to fraud and the same are tailored to disturb the smooth running of mass so as to draw along with the Appellants' flock and finally grab the land. If execution proceeds, he will suffer irreparable loss and damages which cannot be compensated by way of damages.
3. The Respondent swore a replying affidavit on 27/5/2025 in opposition to the application. He asserted that the firm of M/S Kiogora Mugambi & Co. Advocates is not properly on record and thus it lacks audience to address the court, having come on record post judgment, without leave of the court, as mandated by Order 9 Rule 9 of the *Civil Procedure Rules*. He denied invading the church with hired goons on 25/8/2024 as alluded to by the 2nd Appellant, and affirmed that the stay orders granted by the court have since lapsed because the Appellants flouted the conditions set thereunder. In his view, the intended appeal is not arguable and it is only aimed at delaying the enjoyment of the fruits of his judgment. The Appellants have also not indicated any willingness to provide security, but if the court is inclined to indulge them, they should be ordered to deposit a substantial amount of the decretal sum in a joint interest earning account in the names of both advocates. He believed that the Appellants would not be prejudiced if execution proceeded as the judgment was regular.
4. The application was canvassed by way of written submissions which were only filed by counsel for the Respondent.

Determination

5. The singular issue for determination is whether the orders sought should be granted.
6. Order 42 Rule 6 (2) of the *Civil Procedure Rules* provides 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. The application herein was timeously filed on 30/8/2024 since the impugning judgment was delivered on 14/8/2024.



8. On 30/10/2024, this court (Linus P. Kassan J) granted the Appellants conditional stay of execution upon deposit of half the decretal amount within 14 days from the date thereof. Come 26th June, 2025, the conditional orders of stay had not been complied with and the court ordered that;

“1. If the granted condition for stay was not met the stay orders vacated.”

9. Having deliberately failed to abide by the earlier orders of this court, I find that the Appellants have come to court with unclean hands and are therefore undeserving of the stay orders sought.

10. Pursuant to Order 42 Rule 6 (6) of the *Civil Procedure Rules*, the High Court is vested with jurisdiction to entertain an application for temporary injunction pending appeal from a subordinate court as follows;

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

11. The principles for grant of temporary injunction pending appeal were settled by the Court of Appeal in *Venture Capital & Credit Limited v Consolidated Bank of Kenya Ltd* Civil Application No Nairobi 349 of 2003 (174 of 2003 UR) quoted by the court (Alnashir Visram J, as he then was) in *Patricia Njeri & 3 Others v National Museum of Kenya* [2004] eKLR, as follows;

“a. an order of injunction pending appeal is a discretion which will be exercised against an applicant whose appeal is frivolous.

b. the discretion should be refused where it would inflict greater hardship than it would avoid.

c. the applicant must show that to refuse the injunction would render the appeal nugatory.

d. the court should also be guided by the principles in *Giella v Cassman Brown* [1973] EA 358.”

12. It is apparent from the grounds of appeal that the Appellants’ grievance inter alia, encompasses the question whether the Respondent was indeed their employee and whether the award of Ksh. 1,260,000 was excessively high and in contravention of *the constitution* of the church. I find that the appeal cannot be said to be frivolous.

13. However, a money decree is not, by itself sufficient ground for stay of execution. The applicant must demonstrate that:-

1. Substantial loss may result if stay is not granted, such as the inability to recover the money if the appeal succeeds.

2. The Respondent may be unable to refund the decretal sum; commonly referred to as the Respondent being a “man of straw.”

3. Security for the due performance of the decree is provided.

14. In the case of *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] KLR 410: The court held that substantial loss is the cornerstone of granting stay and the burden of proof lies on the Applicant.



15. The Applicant herein has failed to establish that he stands to suffer substantial loss if the sought stay of execution is not granted.
16. It is difficult to ascertain whether the Appellants' counsel is properly on record, because the pleadings in the court file are exclusively confined to the appeal.
17. Accordingly, the application lacks merit is hereby dismissed with costs to the Respondent.

DATED AND DELIVERED AT MERU THIS 22ND JULY, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Miss Otieno for the Respondent.

Mr. Kiogora Mugambi for the Applicant (absent).

