



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT MACHAKOS
ELC APPEAL E001 OF 2021

REV. GATERU NJOROGE.....APPELLANT/APPLICANT

VERSUS

BISHOP STEPHEN M. KANYIA (suing as a trustee and on

behalf of the Redeemed Gospel Church).....RESPONDENT

RULING

1. In the Notice of Motion dated 26th February, 2021, the Appellant has prayed for the following orders:

a. That pending the hearing and determination of the intended Appeal the court do grant a stay of execution of the Judgment and Decree of the Honourable court delivered on the 17th of November, 2020.

b. That the cost of this Application be in the cause.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that Judgment was issued in favour of the Respondent by the lower court on 17th November, 2020; that immediately after the Respondent extracted the Decree, he obtained an eviction notice and that unless an order of stay of execution of the Judgment is issued, he will be evicted from the suit property during the pendency of his Appeal.

3. It was the deposition of the Appellant that he has filed an Appeal against the decision of the lower court; that he has requested for certified copies of the proceedings and that the Appeal will be rendered nugatory unless the Application is allowed.

4. In response to the Application, the Respondent deponed that the Redeemed Gospel Church has always been the owner of land known as **Kikambuani/Kanzalu/1000** (the suit property) together with all the developments thereon; that the Appellant was at one time a minister of Redeemed Gospel Church and that the Appellant was admitted as a minister of the church on 31st March, 2008, way after the church had purchased the suit property.

5. According to the Respondent, after the Appellant was defrocked, and in a bid to retain control of the suit property, the Appellant changed the name of the church to Jesus Celebration Center (JCC); that it was the change of the name of the church that led them to file the suit in the lower court and that it is not true that it is JCC that is in possession of the suit property.

6. According to the Respondent, the Appellant never participated in the proceedings in the lower court despite having been served with court processes; that the current Application is an afterthought and that the Application should be dismissed with costs.

7. The Appellant's advocate submitted that the dispute herein involves land which is an emotive matter; that it is the Appellant who has been in possession of the suit property; that the Appellant will suffer substantial loss if he is evicted before his Appeal is heard and determined and that if he is evicted, the Appeal will be rendered nugatory. Counsel relied on several authorities which I have considered.

8. On his part, the Respondent submitted that the Respondent is the beneficial owner of the suit land having acquired it vide a purchase from the owner who testified in the lower court; that the Appellant has always been a minister of the Respondent and licensed to celebrate marriages under Redeemed Gospel Church and that the Appellant became wayward and was defrocked.

9. It was submitted by counsel that the Applicant did not place any material evidence before the subordinate court or this court to show on what basis he is making a claim on the bank account and/or property of the Redeemed Gospel Church; and that the Applicant has no legitimate claim to the land or bank accounts.

10. Counsel for the Respondent submitted that the Applicant has not demonstrated how he will suffer any substantial loss; that in any event, if the appeal is successful, the Applicant can be compensated by way of damages which can be quantified and that the Respondent, being a representative of a reputable organization, will be able to pay any damages.

11. Counsel submitted that the *status quo ante* has always been that the Redeemed Gospel Church is the owner and in occupation of the suit property and that if stay is granted, the same will amount to perpetuating an illegality whereby the Applicant will unilaterally and without consent of the owners of the suit property change the name of the church having been its pastor. Counsel relied on numerous authorities which I have considered.

12. The record shows that the Respondent sued the Appellant in Kangundo SPMCC No. 204 of 2018. In the Complaint, the Respondent averred that at all material times, he was the Trustee of Redeemed Gospel Church; that the Appellant was a pastor in the Redeemed Gospel Church and that the Redeemed Gospel Church purchased the suit property and set up the church on the land in the year 2004.

13. The Respondent's case in the lower court was that in the year 2017, the Appellant, without any colour of right wiped out the name of the Redeemed Gospel Church and replaced it with the name JCC. The Respondent prayed for an order of eviction of the Appellant and any other member of JCC from the Church and for the release of the money held in Equity Bank.

14. The Defendant did not file a Defence. Indeed, one of the issues raised in the current Application is that he was never notified about the hearing of the suit. In her Judgment, the learned Magistrate found in favour of the Respondent as follows:

“It is evident from the pleadings filed, testimony of witnesses and documents produced as exhibits that Redeemed Gospel Church is the owner of land known as Kikambuani/Kanzalu/1000 where the church in issue stands. The Plaintiff produced a copy of the land sale agreement to show that the church purchased the said parcel of land from PW4 who confirmed the same in his testimony in chief. The purchase was done in 2004 and payment made in instalments until February 2005. The said defendant was posted to pastor and minister at Redeemed Gospel Church where he served until the year 2017... Being a pastor serving under the Plaintiff, the defendant had no authority to change the name of Redeemed Gospel Church Kikambuani to JCC and convert all the property of Redeemed Gospel Church to JCC.”

15. The record shows that the Appellant did file an Application for stay of execution in the trial court. While dismissing his Application, the learned magistrate found that the Appellant had not demonstrated that he will suffer irreparable loss unless an order of stay is granted.

16. The Appellant is seeking to stay the Judgment of the lower court pending the hearing of the Appeal. **Order 42 Rule 6(2) of the Civil Procedure Rules** states that;

“No order for stay of execution shall be made under sub rule (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.”

17. I have gone through the Memorandum of Appeal and the Appellant's Affidavit. In the said pleadings, the Appellant has not challenged the learned Magistrate's findings that it is the Redeemed Gospel Church that purchased the suit property in the year 2004 vide an agreement dated 17th August, 2004 and that he was ordained as a pastor of Redeemed Gospel Church where he served as such until the year 2017 when he was defrocked.

18. The Appellant has also not rebutted the finding by the trial court that it was only after he was defrocked by the Redeemed Gospel Church in the year 2017 that he changed the name of the Church from Redeemed Gospel Church to JCC.

19. In the case of *Mukuma vs Abuoga (1988) KLR 645*, the Court of Appeal stated that the issue of substantial loss is the cornerstone of the jurisdiction of the High Court and the Court of Appeal to grant an order of stay. The court went further to state as follows:

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

20. In *Kenya Shell Limited vs Benjamin Karuga Kigibu & Ruth Wairimu Karuga (1982-1988) 1 KAR 1018* the Court of Appeal stated as follows:

“It is usually a good rule to see if Order 41 Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would be a rare case when an Appeal would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”

21. In the case of *Andrew Nzeki (Being sued as Chairman of All in Christ Church Tala Region & 6 others vs Paul Muema Mwangangi (Suing as Trustee and Chairman on behalf of Gospel Community Church & Ministries [2020] eKLR)*, this court held as follows:

“The status quo that has always subsisted is the usage of the suit property by the Respondent and not the Appellants.

Consequently, the Appellants will not suffer any substantial loss if they continue using the premises that they have been using to worship pending the hearing and determination of the Appeal”

22. Just as in the above case, it is my finding that the suit property herein has always been used by the Respondent and not the church the Applicant represents, JCC. That being so, the Applicant will not suffer any substantial loss if the Redeemed Gospel Church which has been using the church since its inception continues to do so.

23. The Appellant having not substantiated the substantial loss that he will suffer unless an order of stay is granted, and in view of the evidence that was adduced in the lower court showing that it is the Respondent’s Church that purchased the suit property in the year 2004, which property they were using until the year 2017 when the Appellant changed the name to “JCC,” it is my finding that the Appellant’s Application dated 26th February, 2021 is not meritorious.

24. The Application dated 26th February, 2021 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF OCTOBER, 2021

O. A. ANGOTE

JUDGE

In the presence of:

No appearance for the Appellant/Applicant

No appearance for the Respondent

Court Assistant – John Okumu