



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 166 OF 2016

PAUL KARANJA MBUGUA

(Suing as the Bishop and one of the trustees of

Pentecostal Church One Faith, Nairobi Branch.....APPLICANT

- V E R S U S -

JOSEPH MUNGAI MUCHIRI..... 1ST RESPONDENT

JAMES NDUNGU GACHAU..... 2ND RESPONDENT

JOSEPH NENE..... 3RD RESPONDENT

SIMON KARISA and other Executive members

Pentecostal Church One Faith Headquarters..... 4TH RESPONDENT

JOSEPH WAINAINA MWAHUKI.....5TH RESPONDENT

JOHN MWANGI KARIUKI 6TH RESPONDENT

CHARLES NGURE KAMAU7TH RESPONDENT

RULING

1) Paul Karanja Mbugua the applicant herein took out the motion dated 6th April 2016, in which it sought for the following orders:

1. THAT this miscellaneous application be certified urgent and be heard ex parte in the first instance.

2. THAT the proposed appellant be granted leave to file his appeal out of time against the whole ruling of the Hon. Mr. B. N. Ileri Principle Magistrate delivered on 4th February 2016 at Thika and the Notice of Appeal and memorandum of Appeal annexed hereto be deemed as duly filed Ex-parte.

3. THAT an order do issue staying the ruling delivered in the lower court herein pending the hearing and determination of the application exparte.

4. THAT an order do issue staying the proceedings in the lower court pending the outcome of the appeal.

5. THAT the costs of this application be in the cause.

2) The parties have filed their respective submissions which I have considered. I have also considered the grounds set out on the face of the motion plus the facts deponed in the affidavits filed for and against the application. The applicant avers that he wishes to appeal against the decision of the trial court as set out in the ruling dated 4th February 2016. He is however out of the time limit prescribed by law within which he can lodge an appeal. He also wishes to be granted orders of stay of proceedings. He argues that he has an arguable appeal that raises serious points of law and facts that warrants this court's intervention on appeal. He asserted that there are good and sufficient reason to admit this appeal out of time and pleaded Article 159 of the constitution of Kenya. The applicant further submitted that he will suffer substantial loss since the respondents have been given full discretion over the affairs and decisions on the management of the church without consulting the applicant. He added that the appeal will be rendered nugatory. On the question as to whether the application was brought without undue delay, the applicant averred that he became aware of the ruling on 4th February 2016 and only obtained certified copies of the ruling on 9th May 2016. He therefore stated that there was excusable delay.

3) The respondents on the other hand submitted that the applicant has not shown any good grounds as to why time should be extended, since he failed to apply for a certificate of delay. They argued that the applicant received the certified copies of typed proceedings and ruling on 15th March 2015 while the current application was filed on 7th April 2016, hence a show of laxity. They argued that the delay has not been satisfactorily explained. They further claimed that the applicant does not have an arguable appeal with any chance of success since the applicant is not an official of the church as he was excommunicated from the church and the trial magistrate found as much. The respondents further submitted that the applicant has not fulfilled the conditions laid out in Order 42 Rule 6(1) of the Civil Procedure Rules for granting orders for stay they claimed that the loss envisaged to be suffered has not been shown and on the issue of delay, 2 months have since lapsed from the delivery of the ruling. The delay has not been explained and that the applicant has not offered security for costs.

4) I have considered the reasons that have been advance by the applicant for failing to file his appeal within the stipulated 30 days. The applicant has given his explanation. On the delay in filing his appeal, he claims that he only became aware of the delivery of the ruling on 4th February 2016 and managed to obtain certified copies of the ruling on 15th March 2016. The current application was filed on 8th April 2016 which was 3 weeks later. It is likely that the delay was occasioned by the process of obtaining certified typed proceedings and the ruling. I find the delay of 2 months not inordinate in the circumstances.

5) On the issue of stay of proceedings, the conditions to be fulfilled Before an order for stay of execution can be issued are well settled. Under Order 42 Rule 6 of the Civil procedure Rules the principles are spelt out. First, there must be a threat of substantial loss on the part of the applicant if the order for stay of execution fail to issue. Secondly, the application must have been filed without unreasonable delay and thirdly, the provision for security has to be considered.

6) On the first principle, the applicant is required to show that he will suffer substantial loss. On this principle, the applicant merely claims that he will suffer substantial loss since the appellants have been given full discretion over the affairs and decisions on the management of the church without consulting him. He has not demonstrated what loss he would suffer and how substantial it is. It is not enough to merely state that one will suffer substantial loss, the loss should be demonstrated and explained for the court to consider staying the execution.

7) The principle of unreasonable delay has been explained. The third principle of the applicant offering security was not addressed by the applicant.

8) In the end, I find that the prayer for stay of execution should fail due to the fact that the aspect of substantial loss was not demonstrated to the satisfaction of this court. In the end, the applicant is allowed to file the appeal out of time. Costs to await the outcome of the appeal.

Dated, Signed and Delivered in open court this 3rd day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent