



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL APPEAL NO. 39 OF 2011**

**ARCH BISHOP GIDEON CHARLES OWALO & 3 OTHERS.....APPELLANTS**

**VERSUS**

**ELISHA OLANDO NYAMWAYA & 2 OTHERS.....RESPONDENTS**

**RULING**

Pursuant to the ruling of this court dated 5-2-2014 the applicants filed this application dated 10-2-2014. Substantially they are seeking orders of stay of execution of the ruling dated 5-2-2014 pending the outcome of the intended appeal.

Suffice to say that the genesis of the ruling of 5-2-2014 is the outcome of the election conducted by the parties on 16-6-2012 pursuant to the consent entered by the parties on 14-3-2012.

The court pursuant to an application by the respondent arrived at a finding that indeed an election had been done in regard to the leadership and management of the Nomiya Church. The applicants are dissatisfied and have filed the appeal.

I have perused the supporting affidavit of Moses Anyona Okech sworn on 10-2-2014 in support of the application. He depones that one Eliazaro Ochieng Obado the archbishop and who was elected on 16-6-2012 had died and therefore by that virtue there was a vacuum in the church. He further contended that they shall suffer substantial loss should the order proceed to be effected by the respondents and that the appeal shall be rendered nugatory.

The application has been opposed by the respondents through the affidavit of one Elisha Olando Nyamwaya. He contends that the death of Eliazaro does not create any vacuum in the church administration as there are other capable leaders and that such a situation was anticipated by the drafters of the churches constitution.

I have perused the able submissions by both counsels of the applicant and the respondent. The principles of stay pending appeal are enshrined under the provision of Order 42 (6(i)-14). Essentially, this court shall grant the orders sought if:

- a. **Substantial loss shall be suffered if the order is not granted.**
- b. **Provisions of such security by the party applying.**
- c. **Any other cause that this court may impose.**

Having perused the entire application and being seized of this matter I do not respectfully find loss that the applicant stand to suffer. Both are members of the Nomiya church and the only issue they are fighting for is the control of the church. The elections done on 16-6-2012 have not been challenged. None of the

parties or any other church members nor the applicants have challenged its validity. Infact they have acknowledged the election of Eliazaro as the archbishop.

If they were dissatisfied they ought to have mounted a challenge. The fact that Eliazaro has died in my considered finding does not render any vacuum within the church administration.

There is clear mandate given to each office on how the church is to be administered. If it involves calling of an election then they, the applicants, shall be at liberty to participate.

I do not therefore find any basis for them to stop the duly elected officials from taking over the office.

Neither do I find any need to order that they deposit any security. All that is required is for them to vacate the office and for the registrar of societies to change the records in the register.

Again if the church leader has died then the applicant should take “advantage” of this by seeking that post in the manner, style and procedure provided by the church constitution.

The upshot of this court's finding is that the applicants are free to seek further directions from the court of appeal. They stand to suffer no loss in the event that the order is extended.

I further note that by virtue of the history here it is the church membership that has suffered immensely from the leadership wrangles and not the respective office proponents and holders. The application is other wise dismissed with costs to the respondents.

**Dated, signed and delivered at Kisumu this 5<sup>th</sup> day of February 2014.**

**H.K. CHEMITEI**

**JUDGE**