



REPUBLIC OF KENYA



**Njoroge & 3 others v Njuguna t/a Charismata Ministries Network & 2 others (Environment & Land Case 129 of 2019) [2025] KEELC 258 (KLR) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 258 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 129 OF 2019  
MAO ODENY, J  
JANUARY 31, 2025**

**BETWEEN**

**MOSES PN NJOROGE ..... 1<sup>ST</sup> PLAINTIFF  
JIM WOMBLE ..... 2<sup>ND</sup> PLAINTIFF  
DAVID HINGA MUIRURI ..... 3<sup>RD</sup> PLAINTIFF  
THE REGISTERED TRUSTEES, NEW TESTAMENT CHURCH OF GOD  
KENYA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**REV DR MUSA NJUGUNA T/A CHARISMATA MINISTRIES  
NETWORK ..... 1<sup>ST</sup> RESPONDENT  
MUSA NJUGUNA MINISTRIES INC ..... 2<sup>ND</sup> RESPONDENT  
REV DR MUSA NJUGUNA REGISTERED TRUSTEES CHARISMATA  
REVIVAL NETWORK ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of a Notice of Preliminary Objection by the Defendant/Respondents dated 4<sup>th</sup> October, 2024 and a Notice of Motion Application by the Plaintiffs/Applicants dated 3<sup>rd</sup> October, 2024. In the Notice of Motion, the Plaintiff/Applicants seek the following orders:
  - a. Spent
  - b. Spent
  - c. That the Judgement delivered by Honourable Justice Mwangi Njoroge on 23<sup>rd</sup> September 2024 in Nakuru ELC Civil Suit No. 129 of 2019 be and is hereby stayed pending hearing and determination of the intended appeal or lodging of a fresh suit.



- d. That without prejudice to and as alternative to order 3 above, the Judgement delivered by Honourable Justice Mwangi Njoroge on 23<sup>rd</sup> September 2024 in Nakuru ELC Civil Suit No 129 of 2019 be and is hereby stayed for 60 days to enable the Plaintiff properly instruct its advocates.
  - e. That the costs of this application be provided for.
2. The application was supported by the affidavit of Moses P.N Njoroge sworn on 3<sup>rd</sup> October, 2024 who deponed that the trial court's means of delivery of the judgment did not offer the Applicants the opportunity to seek stay orders immediately. It was his deposition that unless an order for stay is issued, the Respondents will proceed to interfere with the suit properties to the detriment of the Applicant church rendering the intended fresh suit/appeal nugatory.
  3. The 3<sup>rd</sup> Defendant, Reverend Musa Njuguna filed a Replying Affidavit sworn on 4<sup>th</sup> October, 2024 and deponed that the application has been presented by parties who have no locus standi to sue and the same should be struck out. He further stated that the application for stay of execution lacks any sound legal basis and it should be dismissed. The respondent also stated that the case before the court is not about the management of a church but ownership of property hence the fact that the applicant is a church is not a reason why it should take over private property.
  4. The Notice of Preliminary Objection raised by the Defendants/Respondents was on the following grounds:
    - a. That the applicant is admittedly a registered society. The applicant ought to file this application through its registered trustees. The applicant admitted on oath that they are not the registered trustees and they lack the locus standi to file the present application.
    - b. That an application for stay of execution can only be considered where a party has evinced his intention to appeal. In the matter at hand the applicant has not evinced such intention. The application lacks any legal basis and the same ought to be struck out.
    - c. That the applicant has sought stay of execution "to enable it to seek further instruction" and/or "pending the filing of another suit". Stay of execution cannot be granted on such grounds and an application based on such grounds has no legal basis.
  5. Moses P.N Njoroge filed a Replying Affidavit dated 14<sup>th</sup> October, 2024 where he deponed that following the judgment dated 23<sup>rd</sup> September, 2024, the Applicant church has resolved to pursue its legal claim by way of filing a new suit and the instant application seeks to maintain the status quo.

### **Plaintiff/applicants' Submissions**

6. Counsel for the Plaintiff/Applicants filed submissions dated 15<sup>th</sup> November, 2024 and identified the following issues for determination:
  - a. Whether the court should grant stay of the judgment delivered on 23<sup>rd</sup> September 2024 issued in Nakuru ELCLC No 129 of 2019?
  - b. Whether the Notice of Preliminary Objection is merited?
  - c. Who should bear costs of this application?
7. On the first issue, counsel relied on Order 42 Rule 6 (2) (a) (b) of the *Civil Procedure Rules* and the case of *RWW vs EKW* [2019] eKLR. On substantial loss, counsel submitted that the Respondent will interfere with the suit properties occasioning acrimonious takeover and skirmishes and likely bodily



harm to the congregants. Counsel submitted that the judgment does not address the other issues listed for determination which are subject of the determination in the fresh suit Nakuru ELCLC No E072 of 2024.

8. On unreasonable delay, counsel submitted that the present application was filed on 3<sup>rd</sup> October, 2024 while he received a copy of the judgment on 30<sup>th</sup> September, 2024 and relied on the cases of *Makau vs Mwanzia* 9Civil Appeal 238 of 2023) [2024] KEHC 9267 (KLR) and *David Ouma Gor vs Molyn Credit Limited & another* [2021] eKLR.
9. On the condition of security for due performance of the decree, counsel submitted that the judgment which is the subject of stay is not a money decree and therefore it is not mandatory for the Plaintiffs to provide security. Counsel relied on the cases of *Manenthi & another vs Africa Merchant Assurance Co Ltd* [2019] eKLR and *MFI Document Solutions Ltd vs Patetto Works Limited* (2021) eKLR.
10. On the second issue, counsel submitted that the Plaintiff ought to be allowed the opportunity to fully present the issue at hand ensuring that the new suit is not rendered meaningless so that substantive issues that were subject of the present suit which have not been addressed can be resolved. Counsel urged the court to dismiss the preliminary objection with costs.

### **Defendant/Respondent's Submissions**

11. Counsel for the Respondent filed submissions dated 19<sup>th</sup> November, 2024, and submitted that an application for orders of stay of execution is an exercise of discretion which proceeds from clearly defined parameters. Counsel further submitted that a party must demonstrate that there is a positive order, which is capable of execution, and if such execution was to proceed, he will suffer substantial loss and that he is prepared to deposit security for the due performance of the decree.
12. Mr. Githui also stated that the court will not exercise discretion in favor of a party who has no locus standi to sue and further that the application for stay is an abuse of court as there is no decree capable of being stayed. Counsel also submitted that this court made a finding that the applicants lack locus standi to file the suit and any appeal on that question lies in the Court of Appeal of which neither a Notice of Appeal nor Appeal has been filed hence the finding of want of locus has not been challenged. That the Applicant has also filed Nakuru ELC No. E072 of 2024 where he has sought orders of injunction which is a clear case of abuse of the court process and relied on the cases of *Satya Bhama Gandhi vs Director of Public Prosecutions & 3 others* [2018] eKLR, *Nancy Musili vs Joyce Mbete Katisi* [2018] eKLR and *Pius Watene D. Maina (Suing for and on behalf of the Baptist Convention of Kenya) versus The Director General Kenya Urban Roads Authority & other* ELC Case No 3 of 2020.
13. Counsel further submitted that a dismissal order or a declaratory order cannot be stayed and that an order striking out a suit means that the suit was not considered on merits and no positive order has been made which is capable of execution. Counsel relied on the cases of *Faith Homes of Kenya vs Robert Cherukwo* [2021] eKLR and *Kenya Commercial Bank Limited vs Tamarind Meadows Limited & 7 others* [2016].
14. According to counsel, no appellate process is underway, therefore the applicant cannot legitimately claim that he will suffer substantial loss as he awaits the conclusion of the appellate process and security for the due performance of the decree and urged the court to dismiss the application with costs.

### **Analysis and Determination**

15. The issues for determination are as to whether the Applicant has met the threshold for grant of stay of execution and whether the preliminary objection raised by the Defendant/Respondents has merit.



16. From the onset it is important to reproduce the excerpt of the judgment dated 23<sup>rd</sup> September, 2024 which stated as follows:

“The conclusion that arises from the foregoing is that the plaintiffs have failed to prove a very preliminary fact, that they are the registered trustees of the New Testament Church of God Kenya on behalf of which they purported to bring this suit. Consequently, they have no locus standi to institute or maintain the suit and this court therefore needs not address the other issues listed herein above for determination, and I therefore strike out the present suit on that ground per se. Each party shall bear its own costs of the suit.”

17. This was struck out on the grounds that the Plaintiffs lacked locus standi to institute or maintain the suit. It follows that the court never issued a positive decree capable of being stayed.

18. The Applicant’s application is not clear on what orders they are seeking from the court. The Applicant seeks a stay of execution for 60 days to enable the Plaintiff to instruct its advocates. With due respect to counsel, by the time of filing this application, counsel must have gotten instructions on the way forward so there is no possible reason why such application should be in court. The Applicant is not clear whether they intend to file an appeal which they want this case to be stayed pending its hearing and determination.

19. Further the Applicant admits that there is no positive order that was granted by this court and that they have file a similar suit being Nakuru ELC No E072 of 2024 which he has sought an injunction. This is a case of blowing hot and cold and using parallel processes of the court, which amounts to abuse of court process. Does the Applicant want to pursue an appeal or the new case?

20. In the case of *Western College of Arts and Applied Sciences v Oranga* [1976] KLR 63 as quoted in the case of *Peter Anyang' Nyong'o & 2 others v Minister for Finance & another* [2007] eKLR the court declined to grant an injunction or a stay of execution and held that: -

“But what is there to be executed under the judgment, the subject of the intended appeal? The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs....in the instant case, the High Court has not ordered any of the parties to do anything or refrain from doing anything or to pay any sum. There is nothing arising out of the High Court judgment for this court in an application for stay, to enforce or to restrain by injunction.”

21. In the current case, the court struck out the suit with each party bearing their own costs. What is there to be executed, as there was no order of payment of costs? Similarly, in the case of *Electro Watts Limited v Alios Finance Kenya Limited* [2018] eKLR the court held that an order for stay cannot be granted where a negative order had been issued.

22. The Court of Appeal in the case of *Kaushik Panchamatia & 3 Other v Prime Bank Limited & Another* [2020] eKLR stated that:

“...that a negative order is incapable of being stayed because there is nothing to stay. It therefore, follows that in light of the above threshold we have no mandate to grant a stay order in the manner prayed for by applicants.”

23. I find that the application lacks merit and is therefore dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 31<sup>ST</sup> DAY OF JANUARY 2025.**



**M. A. ODENY**  
**JUDGE**

