

**IN THE COURT OF
APPEAL AT
ELDORET**

**(CORAM WARSAME, MATIVO, & GACHOKA,
JJ.A.) CIVIL APPLICATION NO. E044 OF
2025**

BETWEEN

MICHAEL PEIKAI EKWEE.....APPLICANT

AND

ISAAC KABERIA.....1ST

RESPONDENT WILLIAM EKAI.....

**.....2ND RESPONDENT LORE LOKITAUNG' LOKORITA
ADARA.....3RD RESPONDENT**

MEHADEG.....4TH

**RESPONDENT DRILL FOR LIFE,
NEHEMIAH CONSTRUCTION LIMITED.....5TH**

**RESPONDENT MICHAEL KIPELE KISORIO, JOHNSTONE
UTALY LIVECHI.**

**CHRISTOPHER LOKENO SIOKAN (sued on behalf of Christ is
the Way Ministries)6TH**

**RESPONDENT WILLIAM EMASE
EKOUMWA.....7TH RESPONDENT**

*(An application for stay of execution from the judgment
and decree of the High Court at Lodwar (P.J. Otieno, J.)
delivered on 7th July 2025*

in

HCCC No. E008 of

RULING OF THE COURT

1. In his Notice of Motion dated 7th July 2025, the applicant has

invoked rules 5 (2) (b), 43 and 49 of this Court's Rules 2022 seeking orders of stay of execution in respect of the judgment delivered on 7th July 2025 in Lodwar **HCCC No. E008 of 2023** pending the

hearing and determination of an intended appeal. The application is hinged upon the grounds on its face together with the supporting affidavit and supplementary affidavit, both of the applicant, dated 7th July 2025 and 27th July 2025 respectively.

2. The applicant is aggrieved by the judgment of the trial court delivered by *Otieno, J.* According to the applicant, the effect of the judgment rendered him ousted from the leadership of Turkana Mission Fellowship Outreach Ministries (The Church) which according to the applicant, he single handedly founded. Resulting from his ouster, he has now been unfairly discharged from the administration of its affairs and assets. Challenging the decision, the applicant annexed his draft memorandum of appeal to demonstrate that he had an arguable appeal.
3. On the nugatory aspect, the appellant was apprehensive that, unless the stay of execution is granted, the respondents were at liberty to execute the judgement thereby rendering this appeal nugatory if it were to succeed. He stated that as a matter of fact, the 2nd and 4th respondents had already commenced the process of changing the name of the Church. He lamented that if the same were to succeed, Turkana Mission

Fellowship Outreach Ministries

would cease to exist and its assets transferred to the 1st respondent, 4th respondent and 5th respondent that include land and movable assets. Lastly, he complained that the decree extracted was not in conformity with the judgment of the trial court.

4. The 4th respondent opposed the application. It relied on the replying affidavit of Rudolf Fast sworn on 21st July 2025 in making its case. The 4th respondent reiterated the decision of the learned judge to argue that the averments set out in the application were not supported by documentary evidence. It further denied that it was out to take any assets belonging to and in the name of the applicant. It argued that the averments were speculative and as a result, the nugatory aspect had not been established.

5. The respondent continued that in so seeking for stay of execution of the judgment, in essence, the applicant was asking this Court to allow him to hold the property by himself for his sole use, and not for ministry; yet he never purchased it. In its view, the applicant was intent on misusing the property at this interim stage of the intended appellate process. It was emphatic that actually, the property was purchased by

Germans through it. In any event,

the applicant was introducing novel issues not canvassed at the trial court. It prayed that the application be dismissed with costs.

6. When the application was heard on 25th November 2025, learned counsel Mr. Muyesu was present and represented the applicant while learned counsel Mr. Waweru appeared for the 1st, 2nd, 3rd, 4th and 5th respondents. Both counsel elaborately highlighted their respective stances. In addition, the applicant filed written submissions, case digest and a list of authorities all dated 27th July 2025. On their part, the 1st – 5th respondents filed authorities and a case digest dated 5th August 2025.

7. We have considered the application, the affidavits as well as the annexures thereto. We have also considered the oral and written submissions of the parties and analyzed the law. To succeed in an application for stay of execution, an applicant must satisfy the following twin conjunctive principles under rule 5 (2) (b) of this Court's Rules: the appeal is arguable; and would be rendered nugatory if stay is not granted.

8. On the arguability of the appeal, it is trite law that an arguable appeal does not necessarily mean one which will succeed [See

Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet

[2018] KECA 701 (KLR)]. Furthermore, the applicant needs to only demonstrate that only one ground is arguable. The applicant annexed his draft memorandum of appeal dated 7th July 2025 that raised 21 grounds disputing the findings of the trial court. Without delving into the merits of the grounds we are satisfied that the grounds are arguable but as to whether they will succeed, we leave that to the bench that will hear and determine the appeal.

9. Turning to the nugatory aspect, this Court in **Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others** [2013] KECA 378 (KLR)

held

that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.

10. From the impugned judgment annexed to the application before us, we note that the trial court issued the following prayers:

i. A declaration that the elections conducted on 05.02.2022 were lawful and legally held and thus Rev. William Ekai is the chairperson/team leader of ministry as per the NEC resolution made on 30.03.2023 to which the defendant is a stranger.

ii. A declaration that all that property purchased,

procured and constructed by the 4th plaintiff belongs to the plaintiffs and any other person so holding the said property indeed holds them in trust for the 4th plaintiffs.

- iii. A declaration that the cover by the 1st plaintiff to the Turkana Mission Fellowship is binding and in force pending registration of the Turkana Mission Fellowship as a religious society.**
- iv. A mandatory injunction compelling the defendant to give due cognizance to the officials of the plaintiff elected as at 05.02.2022 and the defendant ordered to surrender the car KBY 989G, mission house and office and any other property and all documents belonging to the plaintiffs herein.**
- v. A permanent order of injunction restraining the defendant, his servants, agents or anyone acting through him from engaging, interfering, trespassing and/or in any other manner whatsoever from dealing in any business and/or affairs of the plaintiffs save for what may be permissible by the leadership of Turkana Mission Fellowship and/or its successor.**

11. Looking at the prayers sought, against the orders made by the trial court, coupled with the arguments before this Court, we have not been persuaded by the applicant that the appeal will be rendered nugatory if stay is not granted. This is because the applicant is in essence inviting us to reverse the orders of the trial court at this interlocutory stage of the proceedings. If allowed to stand, the appeal would in actuality, be determined substantively without hearing both sides on the issues raised in the appeal. A casual look at the issues and the judgment shows that nothing will be rendered nugatory, as whatever action is taken by the respondents is

reversible if the appeal succeeds. Upon balancing the rival submissions, we agree with the respondents that the applicant has not satisfied the second limb of the twin principles.

12. In view of the above, we come to the inescapable conclusion that the Notice of Motion dated 7th July 2025 lacks merit. It is hereby dismissed with costs to the 1st – 5th respondents.

Dated and delivered at Eldoret this 28th day of November 2025.

M. WARSAME

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JUDGE OF APPEAL

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA C. Arb, FCI Arb.

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JUDGE OF APPEAL

*I certify that this is a
True copy of the original
Signed*

DEPUTY REGISTRAR