



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI COUNTY

COURT NAME: MAKUENI HIGH COURT

CASE NUMBER: HCCA/E033/2025

JOHN MUMO MWANGANGI AND WILLIAM MWANGANGI VS EAGLE RISE CHRISTIAN CHURCH
AND MESHACK NYAMAI KITOO

RULING

REPUBLIC OF KENYA
IN THE HIGH COURT AT
MAKUENI CIVIL APPEAL NO.
E033 OF 2025

JOHN MUMO MWANGANGI.....1ST APPELLANT/APPLICANT
WILLIAM MWANGANGI.....2ND APPELLANT/APPLICANT

-VERSUS-

EAGLERISE CHRISTIAN CHURCH.....1ST RESPONDENT

MESHACK NYAMAI KITOO.....2ND RESPONDENT

RULING

Introduction



1. The Application before me is dated 29/04/2025 and was filed under certificate of urgency. It is brought under Order 51 Rule 1(a), Order 22 Rule 22 of the Civil Procedure Rules, Sections 1A, 1B & 3B of the Civil Procedure Act It seeks the following orders;

a) *Spent.*

b) **THAT** this honorable court do issue orders of injunction restraining the Respondents from interfering with the membership of the Appellants by evicting the Appellants and other members of the church under them or otherwise interfering with their attendance and participation in Sunday church worship, mid-week service and other programs of the church at the church the subject of these proceedings, namely Eagle Rise Christian Kalimani and the OCS Kalimani Police Station do enforce compliance of the said orders, once made.

c) **THAT** there be orders of stay of execution of the orders of the learned Principal magistrate, Makindu in CMCC E006 of 2025 made pursuant to his ruling delivered on 10/04/2025 which ruling is the subject of this appeal pending the hearing and determination of this Application and the appeal.

d) **THAT** the honorable court be pleased to make any other or other orders that will maintain the *status quo* of the church, the subject hereof as of the date the ruling was made or otherwise serve the interests of justice and fairness in the circumstances of the matter pending the hearing and determination of the appeal.



e) **THAT** the costs of this application be borne by the Respondents and in particular the 2nd Respondent.

2. The Application is supported by the grounds on its face and the 1st Applicant's Affidavit sworn on the same day. He deponed that he has authority to swear the affidavit on behalf of his co-Applicant and that the appeal has overwhelming chances of success.
3. He deponed that, if the orders sought are not granted, they will suffer loss and damage that cannot be compensated in monetary terms and the appeal will be rendered nugatory for the reasons that; (a) they are incapable of discharging their leadership roles in the church as they have been doing, (b) there are two camps apparently running worship services in the church with emotions running high and palpable which flies against any effective worship and programs besides the threat of physical confrontation and breach of peace, (c) the church structure, seats and other moveable equipment are at risk of getting lost as it is not even clear who is responsible for their security and safety. The pleadings and Orders in the trial court are exhibited as **JMM 1(a) - (d), JMM 2 (a) -(c), JMM 3(a) -(c) & JMM4.**
4. The Application is opposed through the 2 nd Respondent's Replying Affidavit sworn on 16/05/2025. He deponed that his Application for injunction in the lower court was necessitated by blatant interruptions of the Appellants in congregation and order of service in the preceding two weeks. That, as he was preparing to preach, the Appellants took to the podium, took over the microphone and started to preach inchoate things thereby angering the congregation who walked out in protest and scuttled the worship.



5. He deponed that he obtained orders of injunction on merits but they were vacated temporarily after the Respondents made wild allegations that were extraneous to the issues touching on the professional qualifications of his advocate and the allegations were subsequently rebuffed by the Law Society of Kenya. A bundle of documents is exhibited as **MNK 1**. That, the orders were reinstated after full hearing inter parties and the Appellants have conveniently omitted the proceedings from their pleadings. The Application for reinstatement and parties' submissions are exhibited as **MNK 2**.
6. He deponed that the issue of fixing dates is an administrative function of the courts which is not within the control of any of the parties herein. That, the court seized of the matter informed the parties that it was struggling to deliver all the rulings as scheduled due to abnormal workload in the court and also sought the indulgence of the parties in deferring the ruling.
7. He deponed that his advocate had filed suit on 14/01/2025 which was withdrawn on 17/01/2025 under instructions from the 1st Respondent, after the Bishop who had been away for a mission in Tanzania returned and supplied additional facts which were not within his (2nd Respondent) knowledge when he was instructing his advocate. That, at the point the suit dated 14/01/2025 was withdrawn, no pleadings had been served upon the Appellants and they were never parties to the said suit.
8. He deponed that he was never a party to the suit filed in Machakos, namely HCCC No. 13 of 2020 nor was his role and functions the subject matter in the said suit. That, the Appellants have not disclosed, to this court, the current status of the said suit particularly the fact that the said orders were



subsequently vacated. That, the Appellants have also failed to disclose that part of the reason for vacating the said orders was that the plaintiffs therein misled the court by basing their Application on a constitution that had not been ratified and adopted in line with the 1st Respondents rules and regulations or notified to the Registrar of Societies as required under the law.

9. He deponed that the orders of the trial court are very clear and explicit that he has to continue discharging his roles as the pastor of the church, and the Appellants are to attend and fellowship with the others without interrupting the worship. That, the ruling rendered by the trial court was fair and objective and the Appellants notice of motion and appeal are totally unfounded and an abuse of the court process.
10. He deponed that a magistrate has a right to recuse himself at any stage of the proceedings without being moved by either party and without disclosing his reasons for the same. That, the issue of him being a member of the 1st Respondent's national governing body was never an issue in the trial court neither was it a requirement for him to be so qualified in order to qualify as a pastor.
11. He deponed that he was the one who went to court after the Respondents disrupted services in his branch of the church and no one has ever challenged his appointment from the year 2020-when he was re deployed to the 1st Respondent's branch up to the time, he filed the suit in the subordinate court. That, from the foregoing, the appeal has little or remote chances of success and amounts to a waste of judicial time and resources.
12. He deponed that he has seen the orders and directions issued by this court on



02/05/2025 and is in full agreement that it is a matter fit and ripe for mediation. That, his reason for agreeing to mediation is that the objects and purpose of the establishment and existence of the 1st Respondent is to promote unity and spiritual nourishment of its faithfuls, which cannot be attained through an endless circus of litigation and law suits. That, the orders issued by the trial court have guaranteed and safeguarded the right of congregation and worship of all the faithfuls including the Appellants. That, he doesn't understand the loss or damage to be suffered by the Appellants if the orders are maintained. That, the orders amount to maintaining the *status quo* which was prevailing before the Appellants commenced disrupting services in the church. That, the Appellants ought to demonstrate the loss and prejudice they were suffering before the 2nd Respondent went to court and why they never sought legal redress of the same.

13. He deponed that the Appellants have not been discharging any lawful duties or roles in the church until they unlawfully took over the roles of the 2nd Respondent herein and precipitated the suit in the trial court. That, this court's jurisdiction cannot be invoked to protect an illegal take over in the leadership of the church. That paragraph 9(a) of the Appellants affidavit is a confirmation that the Appellants formed a parallel camp to perform parallel service in the church and precipitated the cause of action thus the need for this court to maintain the *status quo* in order to maintain civility within the 1st Respondent's premises. That, the rival camp refers to a handful of disgruntled and renegade members, among the Appellants, whose use of force and unorthodox means to take over leadership has violated and infringed upon the right of peaceful assembly and worship of numerous other members of the church.

14. He deponed that the Appellants are effectively seeking orders which will



violate, undermine, curtail and threaten the rights of such other members which amounts to discrimination before the law.

15. He deponed that he has been responsible for oversight, management and control of the 1st Respondent together with the local council for over 5 years and no loss of equipment or asset of the church has been lost or reported. That, the only threat of church equipment getting lost is represented by the Appellants who have twice cut down padlocks with hacksaws, chased away guards, replaced them with illegal goons and blocked innocent worshipers perceived to be aligned to the 2nd Respondent from accessing the 1st Respondent.
16. He deponed that from the foregoing, there exists no valid ground for staying the orders issued by the trial court in its ruling dated 09/04/2025 as the same will leave the 1st Respondent without a shepherd, without any order and open a wide door of anarchy, lawlessness and disintegration which will only suit the Appellants to the peril of the entire congregation.
17. The Application was canvassed through written submissions.

The Applicants' Submissions

18. It was submitted that the principles of injunction were not satisfied by the Respondents in the trial court in that; the Appellants being mere members and elders in the church, do not in any way control the pastor presiding over the church. That, the orders of the learned magistrate flew against this by ordering that the Appellants continue being members of the church with all their



constitutional rights and at the same time allowed the 2nd Respondent to continue worshipping in the church. That, the court did not make any clear order on whether the 2nd Respondent would take up the responsibilities of the church in the place of Pastor Lucy Mutua or whether the latter pastor would hand over the church to the 2nd Respondent thus creating a chaotic situation as is now happening on the ground.

19. It was submitted that the court refused to find that the 2nd Respondent was being imposed on the church unprocedurally, irregularly and unlawfully as the Bishop's actions were contemptuous of the court. It was contended that the best orders should have been for maintenance of the '*status quo*' as at the date the suit and application were filed. That, the *status quo* would have been to allow pastor Lucy Mutua to continue presiding over the church until the conclusion of the matter, which would have finally resolved the apparent leadership wrangles.

20. With regard to irreparable damage incapable of compensation by way of damages, it was submitted that the action of being posted to the subject church, the Respondents explicitly or by necessary implication admitted that pastors serving under the 1st Respondent are transferable which in turn means that the 2nd Respondent could still be transferred to another branch of the 1st Respondent and not the subject church. That, the 2nd Respondent never demonstrated any monetary or other such damage as could not be compensated by way of damages in the unlikely event that he would succeed in the main case.

21. With regard to balance of convenience, it was submitted that evidence was availed to the trial court to the effect that more than three quarters of the



church membership was totally opposed to the imposition of the 2nd Respondent on it, as opposed to the 2nd Respondent who had hardly 5 members he was bringing to the church in his support. That, the balance of convenience far weighed in favour of maintaining the *status quo* and not backing the imposition of the 2nd Respondent on the church, whether as a member or as a pastor. That, the innocent members were / are pawns in that battle and the trial court ought to have considered their rights and /or interests

22. It was submitted that the learned magistrate only made orders that each of the parties were at liberty to worship at the subject church, effectively shying away from his duty of giving clear and unequivocal orders of who should be in charge of the church as a pastor, between Lucy Mutua and the 2nd Respondent. It was submitted that the error can and should be corrected by this court by ordering that, if both parties continue to worship at the church as members, then the 2nd Respondent should subject himself to the said pastor Lucy Mutua just as the Appellants, and if he cannot, then his position is not cast on stone. That, he can still be transferred to another of the many branches of the 1st Respondent as the Respondents have now confirmed that pastors serving under it are transferable.

23. With regard to the current status, it was submitted that save for the Respondents trying without process to chase away the Appellants and take over the church premises, it has all been peaceful, with each of the antagonists holding their own worship services on Sundays. However, it was submitted that, there are mid-week services supposed to be taking place just like before the case was filed but have been disrupted by the Respondents who have admitted in an affidavit in the subordinate court that they hired and posted a security guard to the church but there appears to have been resistance from the



members of the church. That, this scenario calls for this court to intervene and either order the 2nd Respondent to subject himself to the leadership of the pastor he found there (Lucy Mutua) or at worst, order the parties to continue having different worship services but with specific times of the day to do so. That, the assets of the church (save for the sound equipment, which the 2nd Respondent carted away to an unknown destination) should be in the hands of the said pastor Lucy Mutua for security and safe custody without which, all the parties stand to lose if the assets are stolen or damaged.

24. It was submitted that the subject matter of the appeal is a church and no evidence has been laid before the court that the Appellants cannot pay any costs the court may award the Respondents if they succeed in the appeal. That, the Appellants will abide by any orders of this court relating to provision and/or nature of security if the court finds it necessary to order the same.

25. It was submitted that the appeal will be rendered nugatory if the orders are not granted. That by the time the appeal is heard and determined, almost everything will have changed including: (a) The appellants being forced to be led by a pastor who is now a clear adversary to them; (b) there is a current presiding pastor, Lucy Mutua, which the subordinate court found as a fact, and there is every likelihood that she will have been malevolently edged out of the church by the Respondents; (c) The evident wrangles now plaguing the church will have worsened, resulting to the loss of the worshippers including the Appellants; (d) Assets of the church, including the land on which the church structure stands, the structure itself and the other movable assets like seats will have been lost and not only the appellants but also the Respondent will lose permanently.



26. Reliance was placed on **Nairobi HCCA No. E 488 of 2022 Onesmus Muthoka Katoto -vs- Joram Mwanza** where the court noted that the 1st Respondent in that appeal had been pastor in the subject church for two years and rightly held that the balance of convenience weighed in favour of that pastor continuing with his pastoral duties at the subject church unperturbed, until the hearing and determination of the appeal.

27. It was submitted that the best order with regard to costs is that they should abide the outcome of the appeal.

The Respondents' Submissions

28. The issues for determination were determined to be;

- a) Whether the Appellants have made out a *prima facie* case meriting the grant of an interlocutory injunction.
- b) Whether the Appellants stand to suffer any irreparable loss if orders of injunction are denied.
- c) Where does the balance of convenience lie?
- d) Whether this honorable court ought to stay the orders issued by the trial court in Makindu E006 of 2025.

29. As to whether a *prima facie* case has been established, reliance was placed on **Mrao Ltd -vs- First American Bank of Kenya Ltd & 2 Others (2003) eKLR** where the Court of Appeal held;



“..a case which, on the material presented to court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party, so as to call for an explanation or rebuttal from the latter.”

30. It was submitted that the Appellants have not tendered a single shred of evidence showing that the Respondents have interfered with their right of assembly or worship. That, on the contrary, the Appellants have averred that they have been attending the church and holding parallel worship sessions. Reliance was placed on

31. **American Cyanide -vs- Ethicon Ltd** where the court stated;

“If there is no prima facie case essential to entitle the plaintiff to complain of the defendants’ proposed activities, that is the end of any interlocutory relief.”

32. As to whether the Appellants stand to suffer irreparable loss if the reliefs sought are not granted, it was submitted that the Appellants have not tendered any evidence to show that the Respondents have barred them from accessing the church or congregating in equal right and terms as other worshipers. That, as a matter of fact, it is the Appellants who have violated the constitutional order by cutting padlocks to gain unlawful entry, chasing away lawfully employed guards and replacing them with goons, conducting parallel worship and forcefully detaining the 2nd Respondent in collusion with police. Reliance was place on **Halsbury’s Laws of England, 3rd Edn, Vol 21, page 52, paragraph 739** where it is stated;

“It is the very first principle of injunction law that prima facie, the court



will not grant any injunction to restrain an actionable wrong for which damages are the proper remedy. Where the courts interfere by way of an injunction to prevent an injury in respect of which there is a legal remedy, it does so on two distinct grounds, first, that the injury is irreparable and second that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for in damages.”

33. With regard to balance of convenience, reliance was placed on **Chebii Kepkoech -vs- Barnabas Tue Toek Bargaria & Anor [2019] eKLR** where the court stated;

“The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to them would be greater than that caused to the defendants if an injunction is granted and the suit is ultimately dismissed.”

34. Further reliance was placed on **Paul Gitonga Wanjau -vs- Gathuithis Tea Factory Company Ltd & 2 Others (2016) eKLR** where the court stated;

“Where any doubt exists as to the Applicant’s right, or if the right is not disputed, its violation is denied, the court in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction is granted and he should ultimately turn out to be right and that injury which the Applicants on the other hand, might sustain if the injunction



is refused and he should ultimately turn out to be right.”

35. It was submitted that the 2nd Respondent came to court because the Appellants commenced disrupting the *status quo* prevailing since he took over as a pastor in the year 2020. That, it was not the Appellants who went to court to challenge his appointment, constitutional roles and functions. That, in granting the reliefs, subject matter in this appeal, the trial court was merely restoring orderly worship and state of civility prevailing before the Appellants commenced their acts of anarchy and lawlessness in the church. That, the Appellants have conveniently avoided telling this court that they are challenging the Respondent's appointment based on a new constitution which was neither adopted nor ratified or submitted to the registrar of societies.
36. It was submitted that the Appellants are seeking to overturn the prevailing order restored by the trial court without disclosing that they had filed an earlier suit against other church leaders in Machakos claiming legitimacy by virtue of the same constitution and obtained temporary injunctive reliefs which were later overturned after the court in Machakos established the truth of the matter.
37. It was submitted that no inconvenience can result where the court has issued orders restoring orderly worship and civility in the church.
38. As to whether this court should stay the orders issued by the trial court, it was submitted that the trial court orders preserve the *status quo* prevailing in the 1st Respondent before the Appellants started disrupting orderly worship.



39. It was submitted that discharging the orders will precipitate a situation whereby there is no shepherd in the 1st Respondent at a time when the church is currently polarized, constitutional order disintegrated and without proper framework/conducive environment for conducting fresh elections.
40. It was submitted that the Appellants have obscured from this court the fact that they have caused mayhem and disorder in several branches of the 1st Respondent as well as filed a multiplicity of suits in Nairobi, Machakos, Mavoko and now Makueni. That, the real motive of those cases is to run amok, vex and exhaust the 1st Respondent's leadership so as to cave in to their demands and give up their constitutionally secured positions, roles and mandates into the hands of anarchists.
41. It was submitted that the Appellants are invoking and employing the tool of vexatious, multifarious and nuisance litigation to force their way into office while there exists a constitutional framework and structure for ascending into office. This court was urged to resist the invitation to rubber stamp such machiavellian and disordered approach by the Appellants. Reliance was placed

on **Kenya Pipeline Company Ltd -vs- Glencore Energy (UK) Ltd (2015)**

eKLR where the court stated;

“There is a consistent line of decisions of this court where it has its face firmly and resolutely against those who breach, violate or defeat the law then turn to the court to seek their aid. The court has refused to lend aid or succor and has refused to be an instrument of validation for such persons...”



42. Further reliance was placed on **Beijing Industrial Designing & Research**

Institute -vs- Lagoon Development Ltd (2015) eKLR where the Court of Appeal held that; *“the law will not countenance a person benefitting from his own wrong doing or alleged wrongdoing.”*

43. It was submitted that according to the Appellants, the *status quo* which ought to prevail is the one obtaining on 06/02/2025 hence they are urging this court not to use its authority to recognize, legitimize and give its seal of approval to their position of advantage obtained through unlawful and extraneous means.

Reliance was placed on **Kamau Mukuha -vs- Ruppel Ltd [1993] eKLR**

where the Court of Appeal (*Hancox J-as he then was*) expressed itself as follows;

“in the instant case, it is of course possession rather than the destruction that the plaintiff was seeking...the statements contained in the above passages, however leave out of account, the situation when, as it is alleged, the defendant has taken the law into his own hands and taken direct action instead of going through the legally prescribed procedure....the status quo is the state of affairs subsisting before the Applicant entered into the premises, evicted the Respondent and installed another tenant. The learned judge recognized the seriousness of a temporary injunction but nevertheless decided to grant it and thereby restore the status quo and he has right.”

44. In the same case, Kwach JA expressed himself as follows;

“In the instant case, the Applicant is in flagrant disobedience of the order of the judge and now comes to the Court of Appeal for temporary



dispensation. He should not be allowed to use the process of the court



for such patently mischievous purpose. Having got back into the house with strong hand and multitude of people, he has established himself in the house and is then saying, ‘ I ought not to have an injunction given against me because I got back herein and got my boys back, and therefore I want the status quo preserved’. The status quo that could have preserved was the status quo that existed before these illegal criminal acts on the part of the defendant. It is a strange argument to address a court of law that we ought to help the defendant, who has trespassed and got himself in these premises in the way he has done and say that would be preserving the status quo and that it would be a good reason for not granting an injunction.”

45. Further reliance was placed on **New Zealand Shipping -vs- Societe Re Aleliers Et Chantiers De France (1919) AC 1** for the submission that a man shall not be allowed to take advantage of a condition which he himself has brought about.

46. With regard to costs, it was submitted that the Appellants have invoked the jurisdiction of this court with stained hands and without full material disclosure. That, they have also filed an application for stay and injunctive reliefs which is unsupported by evidence, devoid of merits and seeking reliefs which cannot reasonably be granted without resulting into constitutional disorder. Reliance was placed on section 27 of the Civil Procedure Act for the submission that costs should follow the cause unless the court, in its sole discretion, makes orders to the contrary.

47. I have carefully considered the the Application, the response and rival submissions, the only issue for determination is whether the application is



merited.

Analysis & Determination

48. The substantive orders sought in this application are orders of injunction and stay of execution.
49. The factors to consider in determining an application for interlocutory injunction were enunciated in the *locus classicus* **Giella -vs- Cassman Brown (1973) EA 358** as; *prima facie* case with probability of success, irreparable injury that cannot be compensated by award of damages and balance of convenience where the court is in doubt.
50. As for stay of execution, Order 42 Rule 6 of the Civil Procedure Rules outlines the following conditions which should guide the Court in determining whether to grant stay pending appeal; whether substantial loss will occur if stay is not granted, whether the application has been filed without unreasonable delay and furnishing security for the due performance of the decree.
51. In this case, the pleadings reveal that there are two factions seeking to control the affairs of the 1st Respondent (*the church*). There is a faction led by the Applicants and another one led by the 2nd Respondent. The Appeal and Application herein were precipitated by the trial court ruling delivered on 10/04/2025 in which the following orders were issued;

a) *That the parties are encouraged to engage in intense negotiations and*



talking to iron out issues as they proclaim to profess Christianity, a religion premised on peace, reconciliation and hope.

- b) That the 2nd Plaintiff (Meshack Nyamai Kitoo) cannot be prevented to participate, engage and be involved in church activities. There shall be temporary orders of injunction issued herein preventing the Defendants (Applicants herein) from locking the church, changing guards, blocking or in any other way interfering with the 2nd Plaintiff and any other bonafide members of the Eagle Rise Christian Church, Kalimani, right of access, congregation, worship and any other use of the church pending the hearing and determination of this suit and/or any other further order of the court.*
- c) That the OCS Kambu to enforce compliance with the Order (b) herein above.*
- d) That parties to proceed with their worship and peaceful agreement in the leadership of the church, the Defendants are at liberty to peaceful and in compliance with the subject order herein, attend and worship in the subject church, Eagle Rise Christian Church Kalimani.*
- e) That there shall be no orders as to costs of the application herein.*

52. It is evident that the suit in the trial court was commenced by the Respondents herein and it was an averment of the 2nd Respondent that he was transferred to



the church from Molenumi Branch as the pastor in charge on or about 07/08/2020. The cause of action was stated to arise from disruptions caused by the Applicants herein on or about 29/12/2024. It was stated that on the said date and while the 2nd Respondent was preparing to commence the worship service, the 1st Respondent herein ascended on the church alter and unilaterally began to preach thereby disrupting the service and scattering the faithfuls out of the church.

53. I have seen a letter (*filed in the trial court*) from the church dated 07/08/2020, addressed to the 2nd Respondent and titled; '*Transfer to Eaglerise Christian Church Kalimani Parish*'. It is therefore quite evident that the church was operating peacefully from 2020 to around January 2025 when the suit was filed.

54. One of the complaints by the Applicants is that the trial court refused to find that the 2nd Respondent was being imposed on the church unprocedurally, irregularly and unlawfully as the Bishop's actions were contemptuous of the court. In addition to the fact that this kind of determination could not be made by the trial court at an interlocutory stage, the question which arises is why it took the Applicants about 4 years to '*discover*' that the 2nd Respondent had been imposed on the church unprocedurally and irregularly. The Applicants have not demonstrated that they ever took any action against the alleged '*unprocedural and irregular*' appointment of the 2nd Respondent.

55. The complaints against the trial court's ruling are issues which can be determined after a full trial and considering that the matter is still live before



the trial court, my view is that this application and appeal are pre mature. Secondly, the Applicants have not demonstrated that they will suffer loss and damage which cannot be compensated by an award of damages. Their only deposition is that they will be unable to continue discharging their leadership roles . They have not specified what leadership positions they hold and how and when they were appointed.

56. Having weighed the propositions given by both sides, I am of the view that the application for injunction will turn on balance of convenience. In

Charter

House Investments Ltd -vs- Simon K. Sang and others, Civil Appeal No.

315 of 2004, the Court of Appeal held that:

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter right, even where irreparable injury is likely to result to the applicant. It is a matter of sound judicial discretion, in the exercise of which the Court balances the conveniences of the parties and possible injuries to them and to third parties.

57. The Applicants have argued that the best orders by the trial court should have been for maintenance of the ‘status quo’ as at the date the suit and application were filed i.e to allow pastor Lucy Mutua to continue presiding over the church until the conclusion of the matter, which would have finally resolved the apparent leadership wrangles. From the pleadings filed in court, it is evident that pastor Lucy Mutua was introduced by the Applicants faction and it has not been demonstrated that she ascended into leadership through recognized channels of the church.



58. The wording of order (b) in the trial court's ruling suggests that it is the Applicants who have been causing chaos at the church by disrupting worship and denying access to the premises by changing padlocks. This court refuses the invitation to rubber stamp a *status quo* which resulted from the forceful take over by the Applicants. Indeed, the Applicants cannot benefit from their own wrong doing.
59. It is unfortunate that the parties herein could not live by the tenets of their Christian faith, as urged by the trial court. I am of the view that they still have a chance to do so, and to redeem themselves and their church.
60. That said , it is my view that parties are to maintain the *status quo* which was prevailing from the time the 2nd Respondent took over as pastor in the year 2020. This is the same *status quo* the trial court maintained through the impugned ruling.
61. It is my view that issuing an order of stay against the said ruling will only legitimize the irregular change of leadership without the benefit of a full trial.
62. I find therefor that the application is not merited and is dismissed with costs to the respondents.
63. The parties be and are hereby directed to maintain the status quo prevailing as at the time the 2nd respondent took over as pastor in 2020.



64. Matter be returned to lower court for full hearing and determination.



65. Orders accordingly,

Dated, signed and delivered in open court on 4th March 2026

Mumbua T Matheka

Judge

Mr. Kivindyo for Respondents

N/A for Applicants

Ruling HCCA E033 of 2025

Page 2 of 2

SIGNED BY/FOR:
LADY JUSTICE MATHEKA, TERESIA MUMBUA

