



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 32 OF 2012**

**BISHOP BENEDICTO MAKANI BAHATI – CHAIRMAN.....1<sup>ST</sup> PLAINTIFF**

**DANIEL KHATERA – VICE CHAIRMAN.....2<sup>ND</sup> PLAINTIFF**

**RICHARD MUNYANG’ORI – SECRETARY.....3<sup>RD</sup> PLAINTIFF**

**SAMSON JUMA – ASSISTANT SECRETARY.....4<sup>TH</sup> PLAINTIFF**

**MARY WAIRIMU – TREASURER.....5<sup>TH</sup> PLAINTIFF**

*(Suing as the registered trustees of Global Field Evangelism Mission)*

**VERSUS**

**BEN MUNERIA WESONGA.....1<sup>ST</sup> DEFENDANT**

**ERI PLASTICS LIMITED.....2<sup>ND</sup> DEFENDANT**

**MUNICIPAL COUNCIL OF ELDORET.....3<sup>RD</sup> DEFENDANT**

**THE LAND REGISTRAR, UASIN GISHU COUNTY.....4<sup>TH</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR.....5<sup>TH</sup> DEFENDANT**

**RULING**

The registered trustees of Global Field Evangelism Mission (*hereinafter referred to as the applicants*) pray for an order that the *status quo* be maintained by restraining Eri Plastics Limited and others (*hereinafter referred the respondents*) either jointly or severally from evicting, harassing, threatening the applicant and or damaging the church premises standing on the suit property **L. R. No. Eldoret Municipality Block 2/83/1**, pending the conclusion of the intended appeal to Court of Appeal. The application is based on grounds that the application has been made without unreasonable delay and that If stay is not granted, the plaintiff will suffer substantial loss. The applicant is ready to abide by an order on security.

In the supporting affidavit of Mary Wairimu, she states that she is the Priest/Overseer and also the Treasurer of Global Field Evangelism Mission, the applicant herein hence competent and duly authorized to swear this affidavit. The applicant is/was aggrieved and dissatisfied by part of the Judgment which was delivered by this Honourable Court on 10<sup>th</sup> August, 2018.

The deponent states that it is within her knowledge that the applicant church has since instructed its advocates on record to lodge an appeal to the Court of Appeal as against that part of the Judgment that has aggrieved the church. That pursuant to the Applicant's instructions to appeal, the advocates on record have filed a Notice of Appeal and also applied for typed and certified proceedings and Judgment for purposes of the intended appeal.

It is feared that the Applicant church faces imminent eviction from the suit property and demolition of its structures standing on the suit property which would occasion substantial loss and irreparable harm and hardship to the church, its entire membership/congregants who number about 400 and includes Sunday school children and that in the event, the Applicant Church is forcefully evicted, the church members would be deprived of a place of worship thereby subjecting them to spiritual malnourishment, public odium and ridicule.

In tandem, the Applicant's church members of staff would be rendered jobless thereby subjecting them and their families to pecuniary

embarrassment and mental anguish. The Applicant church has been in occupation of the suit property since the year 2008 to-date a period of 10 years whereon it carries on its religious activities.

The status quo obtaining on the suit property is that the Applicant church is occupying the same for its day to day religious activities.

That the Applicant Church has no alternative premises whereon it could carry on its day to day religious activities.

That in the event the Applicant Church is evicted, it has no alternative place of abode and would result in the religious material including the buildings, furniture, preaching materials, public sound systems, et' all being exposed to damage, loss and attendant vagaries of weather elements.

The Applicant Church stands to lose a substantial investment in the sum of Kshs. 3,310,000/= which it had paid to the 1<sup>st</sup> Respondent towards the purchase price of the suit property. The Applicant church had raised the said amount through its membership tithes and contributions and as such its members would be grossly prejudiced unless preservative orders of status are granted as prayed herein.

That she is advised by Mr. Njuguna advocate on record for the Applicant that the church has fulfilled the conditions precedent for the granting of the orders sought thus the Applicant has filed a Notice of Appeal signifying its intention to appeal to the Court of Appeal. The Applicant has also applied for typed and certified proceedings and judgment. The instant application was filed without reasonable delay. The Applicant church has demonstrated that it is likely to suffer substantial loss and irreparable harm unless interim conservatory orders of status quo being maintained are granted as prayed.

That she confirms that the Applicant church is ready and willing to abide by any reasonable conditions that this Honourable Court may give as security and that as pertains to security, herself as the Priest/Overseer of the Applicant, she is ready and willing to deposit with the court her title document for land parcel number L. R. Eldoret Municipality Block 14/947 measuring half an acre situated at Pioneer Estate Eldoret Town.

That she therefore earnestly beseechs this Honourable Court to exercise its equitable jurisdiction in favour of the Applicant Church by granting conservatory orders of status quo thereby allowing the Applicant Church to continue occupying the suit property for its day to day religious activities pending the hearing and determination of this application inter-partes and thereafter pending the conclusion of the intended appeal to avert the course of justice from being defeated.

In the replying affidavit of **Rajesh Sanghrajka**, he states that the applicant has failed to satisfy that she has an arguable appeal with overwhelming chances of success. That the chances of the appeal succeeding is minimal. He states that there is no proper security to be deposited in court. He states that there is no substantial loss to be suffered as the applicants have erected temporary structures made of iron sheets.

The 1<sup>st</sup> defendant filed grounds of opposition stating that the application is an abuse of court process.

When the application came for hearing, Mr. Kipkurui learned counsel for the Applicant submitted that the application was filed timeously as judgment was delivered on 10.8.2018 and the application was filed on 17.8.2018.

He submits that the church is big with a congregation of 500 people. If the church was to be evicted, it would lose property of Kshs.3,000,000. The plaintiff/applicant is willing to deposit security thus the original title for Eldoret L. R./Block 14/947 which land is owned by the overseer of the church.

Mr. Mathai for 1<sup>st</sup> respondent submits that the application is an abuse of the court process because Order 42 Rule 6 of the Civil Procedure Act does not provide for status quo pending appeal but provides for stay of execution pending appeal. Moreover, that the security relied upon is owned jointly with a deceased person.

Mr. Aseo learned counsel for the 3<sup>rd</sup> defendant prays for status quo generally and in respect of the payment of Kshs.1,229,000.

I have considered the application, grounds of opposition and replying affidavit on record and do find that this court granted a negative judgment for the plaintiff/applicant during the suit and therefore an order of stay of execution cannot be granted as anticipated under Order 42 Rule 6. The court can only grant stay of execution of a positive judgment.

However, the applicant seeks for an order of *status quo*. A strict interpretation of Order 42, Rule 6(1) would lead the condition that court appealed from can only grant an order of stay of execution pending appeal.

An order of status quo can only be made by the court appealed to. However, under Section 1A, 3A, the court can make orders to enable the ends of justice meet. Moreover, Article 159 of the Constitution guides this court in exercising Judicial authority to apply the principles that justice shall be administered without undue regard to procedural technicalities.

It is for the provisions of section 1A, 3A of the Civil Procedure Act, Cap. 21, Laws of Kenya and Article 159(2)(d) of the Constitution that this court finds that an order of status quo can be issued by the court to preserve the subject matter pending appeal.

On substantial loss, I do find that the plaintiff has given a valuation of the loss it is likely to incur of more than Kshs. 3,000,000 and that eviction is likely to affect a congregation of about 400 persons. I do agree with the applicant that it is likely to suffer substantial loss if evicted by the defendant.

On security, I do find that the overseer of the plaintiff is a co-owner of the property preferred as security with the deceased Evangelist Bishop Benedicto Makani and therefore, the title to the property will not be sufficient security in view of the fact that the co-owner is deceased. On the security, I do order that the plaintiff deposit security other than the preferred title whose value is not less than 5 million within the next 30 days or deposit monthly rent of Kshs.100,000 in court from the 1<sup>st</sup> of December, 2018 to the date of determination of the appeal. The upshot of the above is that the parties herein are ordered to maintain status quo on the ground pending hearing and determination of the appeal but limited to 6 months.

The cost of the application in the preferred appeal. Orders accordingly.

**Dated and delivered at Eldoret this 23<sup>rd</sup> day of November, 2018.**

**A. OMBWAYO**

**JUDGE**