



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MIGORI**

**ELC CASE NO. 56 OF 2017**

**(FORMERLY KISII ELC CASE NO. 6 OF 2015)**

**SAMWEL ORWA WAYUGA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**THE CHURCH COMMISSIONERS OF KENYA**

**OF THE ANGLICAN CHURCH OF KENYA .....DEFENDANT/APPLICANT**

**RULING**

1. I have heard Mr. Ochwangi counsel for the Defendant / Applicant and studied the entire Notice of Motion dated 23/6/2017. I consider the orders one to eight sought, the grounds of the application and the documents in support of the Notice Motion application.
2. The Plaintiff / Respondent counsel was duly served for inter partes hearing fixed for today. An affidavit of service sworn on 28/6/2017 is in support of the service thereof. The Plaintiff / Respondent's counsel is absent without any reason or at all.
3. I note the orders sought in the Notice of Motion. Mr. Ochwangi has urged this court to grant Order No. 5 namely:-

***“The Honourable Court be pleased to grant an Order of stay of Execution of the Judgment and Decree of this Honourable Court made on the 27<sup>th</sup> day of June 2016, particularly, the limb thereof touching on the permanent Injunction, pending the hearing and determination of the Intended Appeal to the Honourable Court of Appeal.”***

4. The judgment in this matter was prepared by S. Okongo J. It was delivered by J. Mutungi J at Kisii ELC on 27/6/2016. The period of twelve months of the suspended permanent injunction has elapsed. The Defendant / Applicant is a religious organization bound to suffer irreparable harm if the suspended permanent injunction is not extended bearing in mind the holding in **Giella vs= Cassaman Brown (1973) EA 358**. The reasons given by the Defendant / Applicant's counsel, Mr. Ochwangi, include the delay in the typing of proceedings for the preparation of record of appeal. I find the application especially for order number 2 merited. The order reads:-

***“Pending the hearing and determination of the instant Application, the Honourable Court be pleased to grant an Extension relating to the Suspension of the Implementation and/or Enforcement of the Order of the Permanent Injunction issued to and/or in favour of the Plaintiff/Respondent herein in terms of the Judgment rendered on the 27<sup>th</sup> day of June 2016.”***

5. Consequently and for the foregoing reasons, I direct and order as herein under:-

- (a) **The period of suspension of the permanent injunction and/or stay of the same further to judgment delivered on 27/6/2016 is hereby extended for sixty(60) days from the date hereof.**
- (b) **Certified copies of proceedings be supplied to the Defendant /Applicant's counsel urgently.**
- (c) **Mention 20/9/2017 for directions**
- (d) **The Plaintiff / Respondent's counsel be served.**

**DELIVERED, SIGNED and DATED** in open court at MIGORI this 29<sup>th</sup> day of **June 2017**.

**G. M. A. ONGONDO**

**JUDGE**

**In the presence of:**

Mr. Ochwangi counsel instructed by Oguttu Mboya for the Applicant / Defendant -

Tom Otieno; Court Assistant

**G. M. A. ONGONDO**

**JUDGE**