



**Mutuma (Suing as the Chairman of EAPC Kaithe Church) & another v M'ambutu
(Environment & Land Case 55 of 2015) [2024] KEELC 1528 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1528 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 55 OF 2015**

CK NZILI, J

MARCH 20, 2024

BETWEEN

**SAMUEL MUTUMA (SUING AS THE CHAIRMAN OF EAPC KAITHE
CHURCH) 1ST PLAINTIFF**

EAST AFRICAN PENTECOSTAL CHURCHES 2ND PLAINTIFF

AND

CORNELIUS MWORIA M'AMBUTU DEFENDANT

RULING

1. The court is asked to stay the execution of a judgment or decree issued on 15.12.2022 pending a hearing and determination of the appeal at the Court of Appeal following the filing of a notice of appeal on 17.1.2023. The grounds are set out on the face of the application and in the supporting affidavit of Cornelius Mworira M'Ambutu, sworn on 17.1.2023. The applicant states that the transfer of the suit land to the respondents may prejudice him once he succeeds in the appeal, more than it would prejudice the respondent. He avers that the respondent is moving with speed to execute the decree hence the need to maintain the *status quo*.
2. The application is opposed by a replying affidavit sworn by Samuel Mutuma on 24.1.2024. It is averred that the application is filed by a law firm improperly on record for the applicant. The respondent says there is no pending appeal given the ruling by the Court of Appeal in Civil Application No E062 of 2023 dated 17.11.2023.
3. Further, it is averred that the ingredients to grant a stay of execution have not been met more so when the substratum, which is immovable property, would be available to any party at the success of any appeal.
4. Additionally, the respondent avers that no substantial loss or damage has been demonstrated and to grant the orders sought to deny the enjoyment of the fruits of the judgment. It averred that the



application is vexatious, frivolous and an abuse of the court process and contrary to the interest of justice.

5. By a ruling dated 1.3.2023, this court granted the application by the decree-holder for the discharge of a charge on the suit property to pave the way for the execution of the decree. The transfer documents were eventually executed by the Deputy Registrar on 25.9.2023, in line with the decree issued on 25.7.2023.
6. The applicant now seeks a stay of execution pending an appeal. Order 42 of the Civil Procedure Rules requires that the application must be made on time, substantial loss be demonstrated, and security for the due realization of the decree should the appeal fail be availed.
7. The application has been filed after an inordinate delay since 30.11.2022, the signing of the decree, the filing of the notice of Appeal, and the dismissal of his application in the Court of Appeal. The delay has not been explained. Further, the law firm that has filed this application has not complied with Order 9 Rule 9 of the Civil Procedure Rules.
8. Substantial loss is what is to be prevented from happening. See James Wangalwa v Agnes Naliaka Cheseto (2012) eKLR. The same has not been demonstrated. The status of the execution process has not been mentioned or verified. It is not enough to allege substantial loss without substantiating the same. The respondents had paid value for the suit land. The applicant, during the trial, acknowledged the occupation and receipt of the purchase price from the respondent. The rights of the decree-holder are equally important, and it should not be denied the right to enjoy the fruits of the judgment unless there are good reasons.
9. The applicant is silent on the implications of the ruling by the Court of Appeal in Civil Application No E062 of 2023. Similarly, the applicant has not offered to surrender the original title deed to court as security as well as costs for the suit. It is also not in the interest of the administration of justice to grant a stay order where there is no pending appeal.
10. The upshot is that I find the application lacking merits. The same is dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 20th DAY OF MARCH, 2024

In presence of

C.A Kananu

Mwirigi Kaburu for the plaintiff/respondent

HON. C K NZILI

JUDGE

