



**Revelation Mission Centre (Suing through its registered trustees) v African Church of the Holy Spirit (Suing through its registered trustees) (Environment and Land Appeal E052 of 2023) [2024] KEELC 1770 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1770 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E052 OF 2023  
CK NZILI, J  
MARCH 20, 2024**

**BETWEEN**

**REVELATION MISSION CENTRE (SUING THROUGH ITS REGISTERED TRUSTEES) ..... APPLICANT**

**AND**

**AFRICAN CHURCH OF THE HOLY SPIRIT (SUING THROUGH ITS REGISTERED TRUSTEES) ..... RESPONDENT**

**RULING**

1. The court is asked to grant leave to the firm of Mwirigi Kaburu & Co. Advocates to represent the appellant in this appeal and to stay execution of the eviction order or decree following judgment on 6.12.2023 at the lower court. The grounds are set out on the face of the application and in the affidavit sworn by Samuel Kithinji M'Arithi on 19.12.2023. Briefly, it is averred that the trial court gave the appellant a 30 day's notice to vacate with effect from 6.12.2023 or face eviction; it had lawfully been allocated ½ an acre of the suit land by the defunct county council in 2007, but on 12.10.2011, it was taken away and given to the respondent by a town planning and market committee decision which was illegal and unprocedural for lack of fair hearing or ratification by the full council; the applicant has constructed a permanent church building on the suit land though the respondent has a title deed for L.R No. Abogeta/U-Kiungone/3444, have never occupied the suit land, which houses the appellant's church members, now about to be demolished.
2. Further, the applicant avers that the suit property should be preserved; otherwise, the worshippers would be devastated if evicted or it is demolished. The applicant avers it came to court on time and was ready to offer security for the due realization of the decree. The applicant has attached a copy of the judgment, memorandum of appeal, application for the plot and receipts, full council meeting minutes for 9.5.2008 and 12.10.2011, copies of green card and photographs as SKM 1 - SKM 7, respectively.



3. The application is opposed through a replying affidavit sworn by Gilbert Miriti M'Rewa Josephat Mwiti on 6.2.2024. It was averred that the respondent was a registered church as per certificate of registration and incorporation annexured as GMM "1" & "2". The respondent averred before the appealed judgment that a similar suit had been filed, namely Nkubu ELC No. 108 of 2014. It termed the applicant as an imposter and intruders out to take away the property from them, only registered in 2001 as opposed to their church which was registered in 1974 and began constructing on it.
4. The respondent avers that the appellant did not join the defunct county council that allegedly took away the plot, which was a separate and distinct plot from L.R No. 3444. The respondent maintained it substantially constructed the permanent church building existing on the suit property and any subsequent improvements though denied amounted to trespass and unwelcome acts of waste going by the invitation card attached as GMM "8".
5. Similarly, the respondent avers that the applicant was a completely different entity from them, that does not own the suit land or buildings therein due to their late registration whose claim for some land in circumstances similar to the present situation were denied by the Court of Appeal in Nyeri C. A No. 4 of 2022 is attached as GMM "9".
6. The applicant relied on written submissions dated 16.2.2024. It is submitted that substantial loss is demonstrated out of the application, allocation, and payment receipts for the plot from the defunct county council and occupation and developments thereon for 53 years, which now risk eviction or demolition, which may not be compensated by way of damages. Reliance was placed on *Selestica Ltd vs Gold Rock Development* (2015) eKLR and *James Wangalwa & another vs Agnes Naliaka Cheseto* (2012) eKLR.
7. The applicant submitted it came to court on time barely 13 days after the judgment. Reliance was placed on *Christopher Kendagor vs Christopher Kipkorir Eldoret* ELC 919 of 2012. Further, the applicant submitted that it was ready to offer security as may be ordered by the court.
8. On its part, respondent relied on written submissions dated 21.2.2024. Regarding substantial loss, the respondent submitted the suit property belongs to them and would be a fool landing to be told that they would destroy or demolish the church sitting on their land as per GMM "5".
9. A party seeking for stay of execution has to apply within a reasonable time, establish substantial loss or damage, offer security for the due realization of the decree should the appeal fail, and lastly, establish if it is in the interest of justice to grant the orders sought.
10. Substantial loss is the cornerstone of an application or stay of execution. It is what is to be prevented from happening. It has to be demonstrated through tangible and cogent evidence. It is not enough to allege that execution is due or imminent. See *James Wangalwa vs Agnes Naliaka Cheseto* (*supra*). In *Selestica Ltd vs Gold Rock Development Ltd* (*supra*), the court said the purpose of a stay is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the right of appeal are safeguarded and if the appeal is successful, is not rendered nugatory. In doing so, the court said it has to weigh the right against that of a successful litigant who is entitled also to enjoy the fruits of his judgment.
11. In this application, both parties are claiming ownership and development of the suit property. One is saying that it was the first allottee, occupier and the initial developer of the church premises now taken by a splinter group, while the other one is in actual occupation and in possession of a copy of an official search showing that the land was reserved for them.



12. The applicant says it is the one in occupation, and if the lower court decree is not stayed, the substratum of the appeal shall dissipate and render the appeal nugatory. Further, the applicant says the worshippers of the church shall be rendered churchless and suffer grave loss and damage.
13. The implication of taking vacant possession or the eviction of the applicant from the decreed plot is what the applicant seeks to stay. The respondent has confirmed that they are ready to take over the prayer house, which, in any event, was developed by them until the appellant went in and made some improvements as a trespasser. The respondent term the occupation wrongful and illegal. The appellant at the lower court had a counterclaim for the suit land and the house of God standing on it. Evidence tendered at the lower court showed that one Joel Njeru, a member of the respondent, defected and started the appellant's church. So, the appellant is alleged to be a splinter church of the respondent registered on 4.5.2001, unlike the former that was registered on 6.5.1974.
14. From the registration documents of the respondent, there is no evidence that as of 22.11.2007 L.R No. 3444, the suit land was one of the immovable properties that was vested in its trustees. There is no survey or land registrar's report on the locality of L.R No. Abogeta-Kiungone/3444, as of the ground where the appellant's church is.
15. Both parties hotly contest the ownership of the church and the land it sits on. Justice, therefore, demands that the prevailing status quo be maintained until the appeal is heard and determined. The applicant moved to this court barely 13 days after the judgment at the lower court. It has also offered security for the due realization of the decree should the appeal not succeed.
16. The upshot is a stay of execution of the decree or judgment delivered on 6.12.2023 is granted. The orders shall last for one year from the date hereof. The applicant shall deposit Kshs.100,000/= as security for costs, within 14 days from the date hereof; otherwise, the stay orders shall lapse. Lower court file to be availed. Mention on 20.5.2024.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 20<sup>TH</sup> DAY OF MARCH, 2024**

**HON. C K NZILI**

**JUDGE**

In presence of

C.A Kananu

Mwirigi Kaburu for applicant

Onyango for Gitonga for respondent

