



**Chege v Kenya Assemblies of God (Employment and Labour Relations Appeal E012 of 2024) [2024] KEELRC 2747 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2747 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E012 OF 2024  
MA ONYANGO, J  
NOVEMBER 7, 2024**

**BETWEEN**

**PASTOR PETER GITAU CHEGE ..... APPLICANT**

**AND**

**KENYA ASSEMBLIES OF GOD ..... RESPONDENT**

**RULING**

1. Before the court for determination is the application dated 9<sup>th</sup> April, 2024 brought under Article 23(3) (a), (b), (c), (d) & (e), 41(1), (2)(a) & (b), 50 & 159(2)(d) of *the Constitution* of Kenya, Sections 1A, 1B, 3, 3A and 63(e) of the *Civil Procedure Act*, sections 17 and 25 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and all the other enabling provisions of the Law of Kenya. The Applicant seeks the following orders:
  - a. Spent.
  - b. That the Honourable Court be pleased to issue preservatory order injunctively to restrain and preserve the proprietary interest from being disposed off, enter and/or alienated till the application and the appeal herein.
  - c. That pending hearing and determination of this application, the Honourable court be pleased to issue a temporary injunction order restraining the Respondent, it's agents, servants and or workers from intermeddling by appropriating, entering, working, constructing, interfering and/or dispose off the security property interest in Land Registration Lulyet Farm Block 23 Provisional NO. 1 16 till further order of the Honourable court.
  - d. That the Honourable court do issue directions to first track the Appeal in order to accord the appellatant be given a fair hearing under Article 50 of *the Constitution* of Kenya.
  - e. That the costs of this application be provided.



2. The application is premised on the grounds that:
  1. That there existed an Employer/Employee relationship between the Appellant and Respondent.
  2. That the Appellant invested the substance of loans in the Respondent's security plot interest in Land Registration Lulyet Farm Block 23 Provisional NO. 116 as assured by the Respondent for a refund.
  3. That upon resignation/forced departure the Applicant/Appellant's interest has not been settled.
  4. That the trial court did not determine the Appellants interest as employee.
  5. The Applicant/Appellant shall suffer substantial loss if the intermeddling of the Respondent's agents and or proxies are not stopped by an order of court.
  6. That there is arguable and overwhelming appeal against the judgment of the trial court.
  7. That the Respondent shall not suffer any prejudice if the orders sought are granted since the security parcel of land has been open and undeveloped during the pendency of the Chief (Magistrates Court Civil Suit No. 1320 of 2017: Kenya Assemblies of God = VS= Pastor Peter Gitau Chege, that is for the last six years.
  8. The application is made without delay and in good faith.
  9. That the applicant is willing to comply with any conditions the court may impose on grant of preservative order herein.
  10. That it is just and fair that the application be allowed and the Applicant accorded an opportunity of being heard on his intended appeal pending in court.
3. The application is supported by the annexed affidavit sworn by the Applicant on 9<sup>th</sup> April, 2024 in which he reiterates the averments on the face of the application.
4. It is the Applicant's case that he was retained as a pastor by the Respondent at its Jerusalem Church at inception in 2005. That the Church initially met in rented premises until the local church council agreed to purchase a plot to save on rent.
5. It is the Applicant's case that as the local pastor he was instrumental in the purchase of the plot and that he and his wife took loans from the Kenya Assemblies of God Cooperative to finance the purchase of the church plot and are still servicing an outstanding loan of Kshs. 730,000 invested in the Respondent's church plot, buildings, and furnishings which the Applicant was assured by the Respondent that it would refund.
6. It is his case that when he was forced to resign the Respondent's agents, workers, management and/or leadership failed to consider his interest in the security of the plot or to settle his share of investment.
7. That the trial court did not determine his interest as an employee of the Respondent.
8. It is the Applicant's case that on 4<sup>th</sup> April, 2024 he was informed by members of the church that the Respondent had sent its agents to enter into the suit premises to fence it without the Applicant's consent or a court order.
9. That he reported the incident at Kapsoya Police station vide OB No. 19/4/4/2024 and a warning was sent to the Respondent but in vain.



10. The Applicant states that he was aggrieved by the decision of the trial court and filed the instant appeal which has high chances of success.
11. It is his case that he will suffer substantial losses if the Respondent and its agents, workers and/or proxies are not stopped from entering into the suit premises to continue with raising of structures on a section of the plot without an order of the court or the Applicant's consent.
12. It is his case that the Respondent shall not suffer any prejudice but he will be greatly affected as he is threatened by actions conducted on the parcel after he reported to the police.
13. In his submissions the Applicant relies on the decision in *Giella v Cassman Brown & Co. Ltd* [1973] EA and *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR where the principles for interlocutory injunction were restated.
14. The Applicant further relied on the decisions in *Dr. Simon Waihoru Chege v Paramount Bank of Kenya* and *Pius Kipchirchir Kogo v Frank Kimeli Tena* [2018] eKLR, the case of *Refrigeration and Kitchen Equipment Utensils Ltd v Shah & Others* 1990 LLR 294 (CAK) and *American Cyanamid v Ethicon Limited* [1975] AC 396.
15. The Applicant states that there is need to preserve the suit security property interest pending determination of the appeal.
16. The Respondent opposed the application. It filed a replying affidavit of John Kamau Mariko, the Bishop of the Kenya Assemblies of God sworn on 15<sup>th</sup> June 2024 and submissions dated 7<sup>th</sup> October, 2024.
17. It is the Respondents position that it is in possession of the suit premises which are registered in its name. Further, that it is capable of making good should the appeal be in favour of the Applicant. It is further the position of the Respondent that this court does not have jurisdiction to determine the instant appeal.
18. According to the Respondent the appeal does not raise triable issues, and it would be prejudiced by the orders sought if granted.
19. The Respondent submits that the Applicant has not satisfied the conditions for grant of the orders sought as set out in *Giella v Cassman Brown*. That the Applicant has not established a prima facie case. That the applicant has further not demonstrated that he will suffer irreparable harm. That the grant of the orders would, on the contrary, cause inconvenience to the Respondent. That the balance of convenience tilts in favour of not granting the orders sought by the Applicant.

### **Analysis and Determination**

20. Having considered the application, the grounds and affidavit in support thereof, the replying affidavit and the submissions filed by the parties, the issues for determination are whether this court has jurisdiction to determine the instant appeal and if the Applicant is entitled to the orders sought.
21. It was the Respondent's position that this court does not have jurisdiction to determine the appeal herein or to grant the orders sought since the prayers are a preserve of the Environment and Land Court as they touch on disputed ownership of land. Further, that the Applicant's counterclaim had nothing to do with a claim for land.
22. I have perused the Amended Plaintiff as filed in the lower court which was attached to the Replying affidavit of the Respondent. The prayers made therein against the Applicant herein are for general



- damages for unlawful demolition of a church and restitution of property of the Plaintiff, now Respondent, alleged to have been removed from the said premises by the Applicant.
23. The counterclaim is for terminal dues of the Applicant following his alleged forced resignation. The Applicant further claimed that he expended personal funds some of which were loans that he is still servicing, to pay for the plot on which the church is built and to build and furnish the church.
  24. My understanding of the application is that the Applicant is seeking that the premises be secured as security for his interests in the same. He is not claiming ownership of the property which as the Respondent has rightly pointed out and provided proof of, is in its name. The Applicant has specifically pleaded that upon his resignation/forced departure his interest in the plot has not been settled. That he seeks the orders only for protection of his interests. He is not claiming title in the plot.
  25. I therefore find that the counterclaim being a claim for employment benefits and refund of monies expended on the Respondent's property by the Applicant while he was in the employment of the Respondent, the counterclaim falls squarely within the jurisdiction of this court and has nothing to do with the jurisdiction of the Environment and Land Court.
  26. On the second issue, it is the Applicants case that he invested substantially in the Respondent's plot on assurance by the Respondent that he would be refunded, that he was forced out of employment and the premises by the Respondent without refund of his investment in the property and that he seeks to secure his interest in the property pending the hearing and determination of the appeal herein.
  27. The Respondent has not denied that the Applicant was its employee. It has not denied that the Applicant invested personal funds in the property. It has not denied that it gave the Applicant an assurance that his investment would be refunded.
  28. I must clarify that I make these observations without having had the benefit of seeing a copy of the Respondents defence to the counterclaim, the proceedings and the judgment of the lower court, which none of the parties availed to the court. The observations are thus based on information placed before me by the parties.
  29. As is apparent on the face of the sale agreement for the property in question, the Applicant was a signatory on behalf of the Respondent. The Respondent has further stated in the Plaint that the Applicant relocated from the subject plot to the plot adjacent to the said plot.
  30. The Respondent has pleaded that it will be in a position to refund the Applicant should the appeal be in his favour. It has however not demonstrated its ability to make the refund.
  31. From the foregoing it is my finding that the Applicant has demonstrated that he has a prima facie case that warrants this court to inquire into. He has further demonstrated that he has an interest in the suit property as security for funds he expended in the said property on behalf of the Respondent on the understanding that he would be refunded and which he has not been refunded. The Respondent has not demonstrated that it will have the ability to make good any orders of this court should the court decide in favour of the Applicant.
  32. I find that the Applicant has satisfied the conditions for grant of the orders sought by demonstrating that he has a prima facie case and that he would suffer irreparable loss should the orders sought not be granted.
  33. For the forgoing reasons I make the following orders: -
    - a. That there be and is hereby issued a preservative injunctive order restraining the Respondent, its agents, workers or any person claiming through it from disposing off, alienating or in any



other manner interfering with the property known as Lulyet Farm Block 23 Provisional No. 116 pending the hearing and determination of the appeal herein.

- b. For the avoidance of doubt the Respondent is at liberty to use the property provided the title is preserved as ordered in (a) above.
- c. The Applicant should likewise not interfere with the use and enjoyment of the property by the Respondent pending hearing and determination of the instant appeal.
- d. The costs of this application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 7TH DAY OF NOVEMBER, 2024**

**MAUREEN ONYANGO**

**JUDGE**

