



Association of Evangelicals in Africa v Nairobi Elite Academy (Environment and Land Appeal E091 of 2024) [2024] KEELC 6710 (KLR) (17 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6710 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E091 OF 2024
MD MWANGI, J
SEPTEMBER 17, 2024**

BETWEEN

ASSOCIATION OF EVANGELICALS IN AFRICA APPELLANT

AND

NAIROBI ELITE ACADEMY RESPONDENT

(In respect of the application dated 2nd August, 2024 seeking to arrest the ruling of this court scheduled for 17th September, 2024)

RULING

1. The application before me is by the Respondent in this matter. It is dated 2nd August, 2024 and seeks to arrest the ruling of this court scheduled for delivery on 17th September 2024.
2. The Respondent who is the applicant for purposes of this ruling moved the court under certificate of urgency. On 6th August, 2024, the court certified the application urgent and directed that the same be served upon the Appellant for inter partes hearing on 16th September, 2024.
3. The Respondent as already pointed out seeks to arrest the ruling scheduled later today and further that it be granted leave to file a response to the Appellant's application dated 12th July, 2024 which is the subject of the ruling sought to be arrested. The Respondent, through Simon Teddy Mwangi, the deponent of the affidavit in support of the application asserts that it was unable to participate in the proceedings of 29th July, 2024 during the hearing of the Appellant's application dated 12h July, 2024 owing to a technical hitch that prevented its Advocate from accessing the court's virtual platform in spite of the fact that the Advocate was logged in. The Advocate was admitted into the court session at 10.30 am after the court had already concluded its consideration of the Appellant's application.
4. The Respondent implores the court to allow it an opportunity to ventilate its case and respond to the Appellant's application that seeks final eviction orders otherwise it shall be condemned unheard.



Response by the Appellant

5. The application was opposed by the Appellant vide its replying affidavit sworn by one Lilian Wambui Maranga. The Appellant avers that the Respondent was served with the application dated 12th July, 2024 both physically and electronically as evidenced by the affidavit of service on record. In spite of service, the Respondent did not file any response to the application. Therefore, on 29.07.2024 when the application was slated for hearing, the same was unopposed for all intents and purposes.
6. The Appellant therefore vehemently opposes the Respondent's application of 2nd August, 2024 on the premises that:
 - a. It was never served on it despite the court's directions. The Appellant only chanced on it on the court's CTS.
 - b. The Respondent's right to be heard has not been violated as alleged in its application.
 - c. The Respondent has not advanced sufficient grounds to warrant the grant of the order sought.
 - d. The Respondent is no longer operating a school on the suit property.

Court's Directions.

7. The application was orally argued before the court on 16.09.2024. The proceedings of the day form part of the record of the court and I need not replicate them here.

Issues for Determination.

8. I have keenly considered the application by the Respondent and the response by the Appellant. The issue for the court to determine is whether the Respondent is entitled to leave to respond to the Appellant's application (dated 12th July, 2024) and the incidental order of arresting the ruling of this court.

Analysis and Determination

9. The Respondent has invoked the inherent orders of this court under Sections 3 and 3A of the *Civil Procedure Act* in order to safeguard its right to a fair hearing under Article 50 of *the Constitution*. The Respondent further cites the provisions of Sections 1A and 1B of the *Civil Procedure Act* and Article 159 of *the Constitution* urging the court to administer justice without undue regard to procedural technicalities.
10. It is the Respondent's argument that considering the nature of the orders sought by the Appellant in the application of 12th July, 2024, it stands to suffer great prejudice if it is denied the right to present its side of the case and have the issue considered on its merits.
11. The Appellant's counter-argument is that the Respondent has only itself to blame. Despite being served with the application; it did not respond to it. In its application under consideration too, it did not bother to attach a draft response to demonstrate that it has a triable issue and its seriousness to justify the grant of the orders sought. The Appellant further urged the court to consider the Respondent's failure to comply with the court's directions on service of the application dated 2nd August, 2024. The Appellant reads mischief in that failure. The Appellant opined that the intention of the Respondent was to delay the determination of this matter by occasioning an adjournment.
12. The Appellant's application of 12th July, 2024 seeks 3 main orders, namely;



- a. Stay of execution of the orders of the Business Premises Rent Tribunal (BPRT) issued on 14th June, 2024.
 - b. An order allowing “Serving Orphans Worldwide” to take possession and occupy the suit property pending the hearing and determination of the appeal.
 - c. An order allowing its auctioneers to move the Respondent’s property to a suitable location to allow “Serving Orphans Worldwide” to conclude moving into the suit property.
13. I agree with the Respondent that the orders sought by the Appellant are final in nature. If granted, they would substantially and finally determine the appeal and the Respondent’s position in the suit property, if at all.
 14. In the course of the submissions by the parties, the court was able to pick out substantive issues of fact raised by the parties. One such critical issue is whether the Respondent is still in occupation of the suit property and running a school therein. The issue is hotly contested. It is appropriate that the court hears from both sides on this issue and the other substantive issues in contention before making a decision.
 15. Courts of law exist to administer justice. In doing so, and as the court held in the case of *Equity Bank Ltd – Vs- West Link MBO Ltd (Civil Application No.78 Of 2011)*,

“..they must of necessity balance between the competing rights and interests of different parties but within the confines of the law, to ensure the ends of justice are met.”
 16. The responsibility of this court at this juncture is to balance between the constitutional obligation to expedite the hearing and determination of disputes and the need to uphold procedural and substantive justice by granting the other party in the dispute an opportunity to present and ventilate its case before a decision is made.
 17. In the case of *Bellinda Murai & Others – Vs- Amos Wainaina (1978) KKR, 27, Madan J*, (as he then was) stated that a party should not be denied an opportunity to ventilate his grievance(s) merely on the basis of a mistake.
 18. That was the same position upheld by the court in *Philip Chemwolo & Ano – vs- Augustine Kabende (1982-1988) KAR at 1040* where *Apalloo J* (as he then was) stated that,

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case heard on merit. The court as often said exists for the purpose of deciding rights of parties and not the purpose of imposing discipline.”
 19. Considering all the foregoing, I will allow the application by the Respondent dated 02.08.2024. I grant the Respondent 5 days from today to file and serve its response to the Appellant’s application of 12th July, 2024 with corresponding leave to the Appellant to file a further affidavit in 5 days after service by the Respondent. The court shall give a hearing date for the Appellant’s application on a priority basis.
 20. I have taken note of the submissions by the Appellant on the failure by the Respondent to comply with the courts directions on service of its application upon the Appellant as well as the inconvenience caused by this ruling occasioned by the Respondent’s indolence. To remedy the same, the Respondent shall pay the Appellant thrown-away costs of Kshs. 10,000/- payable in the next 30 days from the date of this ruling.



It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF SEPTEMBER, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kimathi for the Appellant

Mr. Ragot for the Respondent

Yvette: Court Assistant

M.D. MWANGI

JUDGE

