



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**SUIT NO. 190 OF 2015**

**JAMES MAINA MAIGUA.....1<sup>ST</sup> CLAIMANT**

**JOHN NJOGU GACHAU.....2<sup>ND</sup> CLAIMANT**

**PAUL MWANGI WARUI.....3<sup>RD</sup> CLAIMANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF THE**

**ANGLICAN CHURCH OF KENYA.....RESPONDENT**

**RULING**

1. The garnishment sought is in respect of funds held pursuant to a determination by Ongaya J. In his Ruling granting stay, the learned Judge on 30<sup>th</sup> September 2016 granted a stay of execution of prayer (d) which relates to the issues now sought in garnishment. The Court declined to grant any stay of the other parties of the Judgment pending Appeal.

2. It is common ground that the Court of Appeal dismissed the application under Rule 5(2) (b) of that Court's Rules. The stay that therefore subsist was granted by this Court and the said stay was conditional. The stay granted was on terms that there be payment of certain sums. A decree *nisi* was obtained and the sums in question were deposited by parties on compliance with the Court Orders. Mr. Onsare submits they are open for attachment as the Respondent did not comply fully. Mr. Muthee submits for the Church Commissioners that the sums are not capable of attachment.

3. The Court being mindful of the execution process returns as follows in regards to the present application. Whereas a deposit of funds was made pursuant to the conditional stay granted by Ongaya J. the stay excluded application to the funds. Order 22 on execution of decrees and orders under Rule 46 thereof an attachment can be made in respect to property in custody of the Court. The Claimants therefore can seek and obtain and they have sought a decree absolute on garnishee proceedings against the funds that were held pursuant to order of the Court. Expected that there are grounds for the grant of the sums to Claimants and the decree now crystalizes, the garnishee *nisi* granted herein is made absolute and the funds held by the Advocates in the interest earning account may be released to the Claimants' Advocate for release to the 3 Claimants as per the Judgment of the Court by Ongaya J. given on 9<sup>th</sup> September 2016.

It is so ordered.

**Dated and delivered at Nyeri this 13<sup>th</sup> day of December 2018**

**Nzioki wa Makau**

**JUDGE**