



International Gospel Centre & another (Suing through Its Executive Officials Namely; Chairperson, Secretary, Treasurer and Pastor) v Magiri & another (Environment and Land Appeal E018 of 2024) [2024] KEELC 14005 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14005 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E018 OF 2024
CK NZILI, J
DECEMBER 18, 2024**

BETWEEN

**INTERNATIONAL GOSPEL CENTRE 1ST APPELLANT
JOSEPH KOOME M'MUKIRA 2ND APPELLANT
SUING THROUGH ITS EXECUTIVE OFFICIALS NAMELY; CHAIRPERSON,
SECRETARY, TREASURER AND PASTOR**

AND

**CHARLES MAGIRI 1ST RESPONDENT
ALICE NAITORE MAGIRI 2ND RESPONDENT**

RULING

1. The court is asked to grant a stay of execution of the judgment dated 6.11.2024, pending a hearing and determination of the intended appeal at the Court of Appeal.
2. The application dated 20.11.2024 is based on the reasons on its face and in a supporting affidavit of Charles Magiri sworn on his behalf and that of the 2nd applicant. The applicants aver that the effect of the judgment was that the interested party does transfer L.R No. Kiirua/Naari/Maitai/472 to the 1st appellant within 2 months from the date of judgment in default, the Deputy Registrar of this court to do so.
3. The applicants aver that there should be a stay of execution of the judgment so that they may have an opportunity to ventilate the grounds of the appeal; otherwise, the intended appeal shall be rendered nugatory. Similarly, the applicants aver that the subject matter of the appeal ought to be preserved to prevent unnecessary chaos and confusion; otherwise, they will be prejudiced if the 1st respondent



- begins to develop the suit property, which developments, if the appeal is successful may lead to demolition.
4. The application is opposed through a replying affidavit sworn on 26.11.2024 by Pastor Joseph Koome M'Mukira on behalf of himself and the 2nd respondent on the basis that the pendency of an appeal does not amount to an automatic stay.
 5. The respondents aver that the application should have been filed at the Court of Appeal; otherwise, this court cannot sit on appeal out of its own decision.
 6. The respondents term the application as frivolous, scandalous, an abuse of the court process, an afterthought, and lacking sufficient grounds, a delaying tactic, yet litigation must come to an end.
 7. In addition, the respondents aver that church members are distressed and disoriented by the demolition of the church building where they used to worship and now by this attempt to deny them a chance to enjoy the fruits of their judgment.
 8. Accordingly, the respondents aver that the applicants were estopped from saying that the intended stay was to preserve the suit land, yet they trespassed into the suit land and demolished the church building when the matter was still live and active in court; hence, they should be the last ones to talk about chaos, confusion and tidiness of the judicial proceedings.
 9. There is no dispute that the suit land no longer belongs to the applicants but to the interested party. There is no evidence that the applicants have the authority to speak for and represent the interests of the interested party who ideally is the judgment debtor in the decree. In *Kariuki vs CIC General Insurance* (Civ) Application No. E161 of 2022 (2022) KECA 1166 KLR (28th October 2022) (Ruling), the court observed that the filing of a notice of appeal was a jurisdictional prerequisite.
 10. A party seeking a stay has to satisfy the requirements of Order 42 Rule 6 of the *Civil Procedure Rules*, by demonstrating sufficient cause for granting a stay. In *General Plastics Ltd vs. Industrial Property Tribunal & another* (2010) eKLR, the court cited Kenya Commercial Bank vs Benjoh Amalgamated Ltd & another Civil Application No. 50 of 2001, that the onus of satisfying that unless a stay is granted, the appeal would be rendered nugatory, is on the applicant depending on the facts present in the case.
 11. In *Antoine Ndiaye vs African Virtual University* (2015) eKLR, the court observed that a stay should only be granted where there is sufficient cause, shown. In *RWW vs. EKW* (2019) eKLR, the court said that the purpose of a stay is to preserve the subject matter in dispute so that the two rival rights are protected by weighing them on a scale so that no one is prejudiced more than it can be compensated by way of costs. In *Butt vs. Rent Restriction Tribunal* (1982) KLR 417, the court said that if there is no other overwhelming hindrance, a stay ought to be granted to forestall the appeal being rendered nugatory.
 12. In this application, the fear expressed by the applicants is that the respondents will commence developments on the suit land. The applicants have not expressed fear of the suit property changing hands to third parties once the same is transferred to the 1st respondent. The applicants have not demonstrated what personal loss, damage, or harm they will suffer now that they relinquished their right to the land in 2017, after transferring the title to the interested party. The applicants have not offered to surrender any security, including the title deed for the land, before this court. The applicants have not offered to surrender part of the costs of the appeal before the court as a security.
 13. Substantial loss and damage must be proved through cogent and concrete evidence. See *James Wangalwa & another vs Agnes Naliaka Cheseto* (2012) eKLR. Execution is a legal process that by itself



does not amount to substantial loss. The respondents have expressed their reservations. The upshot is that I find the application lacking merits. It is dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 18TH DECEMBER, 2024

In presence of

C.A Kananu

Applicant

Appellant

Maheli for Wambua for respondents

HON. C K NZILI

JUDGE

