



Seventh Day Adventist Church v John & 6 others (Environment and Land Appeal E031 of 2024) [2024] KEELC 13950 (KLR) (17 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13950 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E031 OF 2024
FM NJOROGE, J
DECEMBER 17, 2024**

BETWEEN

THE SEVENTH DAY ADVENTIST CHURCH APPELLANT

AND

LUCAS NGANGA JOHN & 6 OTHERS RESPONDENT

(Being an application for stay of execution in an appeal arising from the judgment and decree of Hon. P.E. NABWANA delivered on 3rd July 2024 in Mpeketoni SRMCC ELC NO. E014 of 2022)

RULING

1. The application dated 2/8/2024 seeks an order of stay of execution of the judgment and decree of Hon. P.E. Nabwana delivered on 3rd July 2024 in Mpeketoni SRMCC ELC NO. E014 of 2022 pending the hearing and determination of the appeal. The grounds on the basis of which the application is made are as follows: the applicant's portion of land measuring 0.3 ha would be lost if the judgment was executed; costs of the excision exercise would be lost also; there is an arguable appeal with great probability of success which would be rendered nugatory by execution.
2. The application is supported by the sworn affidavit of Christopher Kimani Gitau on behalf of the appellant.
3. The 1st respondent filed his sworn affidavit dated 19/8/2024 opposing the motion. He deponed that the court has declared him the owner of land registered vide an earlier PDP identified as plot no 327 thereon of which he is in possession save for a fence erected by the applicant and the applicant has not demonstrated what loss it would suffer unless stay is granted. He adds that he is capable of making good any financial loss. He avers the expected loss would be more likely on his side as his tenants who occupy the houses that he has erected on the suit land may vacate owing to the protracted dispute in which case he would lose income.



4. The application was disposed of by way of written submissions. I have considered those submissions, filed by the applicant and the 1st respondent. The other respondents never participated in the application.

Determination.

5. The issues arising for determination in the application are as follows:
 - a. Whether there is an appeal;
 - b. Whether the applicant may suffer any substantial loss unless the stay orders are issued;
 - c. Whether there was delay;
 - d. Whether security has been given by the applicant.
6. The memorandum of appeal has been filed and it raises 8 grounds. There is therefore an appeal in place.
7. Regarding the second issue, the applicant submits that there is apprehension that at the expiry of the stay orders given by the lower court there is risk of contempt orders being sought by the respondents against the applicant's directors. Secondly there was an order that the fence be demolished and in default of its removal by the applicant the respondent will be at liberty to take action. That fence secures the church against loss and property may be lost if it is demolished, and the applicant may suffer the expenses of reinstating the same.
8. On this court's part there is merit in the argument that all the costs associated with execution of the decree may be lost forever in the event that the appeal is successful and this per se calls for preservation of the current status quo.
9. I have noted that the application having been filed on 2/8/2024 while the judgment had been delivered on 3/7/2024, there was no delay in approaching this court.
10. Regarding security, this court may impose security as it deems fit upon the applicant.
11. I find that the application dated 2/8/2024 has merit and it is hereby granted in terms of prayer no 3 thereof on condition that the applicant shall file and serve its record of appeal within 30 days of this order and in default the stay of execution orders granted in this ruling shall automatically lapse and execution may in that event proceed. The costs of the motion shall abide the outcome of the appeal.
12. This matter shall be mentioned on 11/2/2024 for confirmation of compliance and issuance of directions as to hearing.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 17TH DAY OF DECEMBER 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

