



REPUBLIC OF KENYA



Living Waters E.A.P.C (Suing thro' the Registered Officials Rev. Andrew Nyaga, Fredrick Nteere & Cornelius Mworio as Chairman, Secretary & Treasurer respectively v East Africa Pentecostal Churches (Sued thro' its Registered Trustees, Rev. Justus Kinoti Ringera, Charles Lewa, Sospeter Njeru & Andrew Kinyamu) (Environment and Land Appeal 96 & 111 of 2008 (Consolidated)) [2023] KEELC 57 (KLR) (18 January 2023) (Ruling)

Neutral citation: [2023] KEELC 57 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL 96 & 111 OF 2008 (CONSOLIDATED)

CK NZILI, J

JANUARY 18, 2023

BETWEEN

**LIVING WATERS E.A.P.C (SUING THRO' THE REGISTERED OFFICIALS
REV. ANDREW NYAGA, FREDRICK NTEERE & CORNELIUS MWORIA AS
CHAIRMAN, SECRETARY & TREASURER RESPECTIVELY APPELLANT**

AND

**EAST AFRICA PENTECOSTAL CHURCHES (SUED THRO' ITS REGISTERED
TRUSTEES, REV. JUSTUS KINOTI RINGERA, CHARLES LEWA, SOSPETER
NJERU & ANDREW KINYAMU) RESPONDENT**

RULING

1. Before the court are four applications dated 25.10.2022, 10.11.2022 and two dated 27.10.2022 (hereinafter) the 1st, 2nd, 3rd and 4th applications.
2. In the 1st application, the court is asked to grant the firm of Kiogora Mugambi Advocates leave to come on record for the appellants, to stay the orders made on 19.10.2022 and leave to the applicants to appeal out of time against the judgment dated 22.7.2019.
3. The application is supported by the grounds on its face and the affidavit of Cornelius Mworio sworn on 25.10.2022 that; the suit was finalized on 22.7.2019 then being represented by the firm of Kiogora Arithi & Co. Advocates; the appeal has good grounds; a notice of appeal was filed on 13.8.2019 by the former advocates; time to file a memorandum of appeal out of time should be enlarged; the sentencing should await the outcome of the appeal; if execution occurs the appeal would be rendered nugatory and the congregants will have no other place of worship; the previous advocates kept the applicants in



the dark on the said judgment and failed to file the memorandum of appeal despite instructions to do so and lastly that mistakes of counsel should not be visited upon an innocent party.

4. The application is opposed by the decree holders through grounds of opposition dated 18.11.2022 on account of incompetence; as filed by an advocate not on record for the applicant; for lack of jurisdiction since a notice of appeal has been filed and for lack of audience since they should purge the contempt as a condition precedent.
5. In the 2nd application the court is asked to join Pastor David Nkunja, Patrick Mugambi, Haron Ikiara and Eliud Mugambi describing themselves as interested parties to this suit and secondly for the orders made on 19.10.2022 and 26.10.2022 to be set aside or vacated so that there can be a fresh hearing of the application dated 2.10.2019 where they can be given an opportunity to participate by calling evidence.
6. The application is supported by the grounds on its face and the affidavits in support sworn by Pastor David Nkunja and George Koome. The grounds are that; the intended interested parties were condemned unheard for they never participated in the contempt proceedings; no service of the application dated 2.10.2019 was made to them; they are a community/pioneer board of elders of Runogone Pentecostal Church who were given LR No. Nyaki/Kithoka/677 by the county council of Meru; the orders are prejudicial to the church founded in 2001 and that the orders violate the interested parties freedom of worship, association and right to property.
7. The 2nd application was opposed by the decree holders through an affidavit sworn by Rev. Samuel Muguna Henry on 4.11.2022. The basis of the opposition is that the dispute over Chugu Church started in 2004 and was settled by the judgment delivered on 3.6.2019 reaffirming ownership in favor of the decree holder; the interested parties are agents and or servants of the judgment debtor covered by the decree as both committee members and pastors; they are deemed to be fully aware of the judgment; the continued disobedience of the court orders attracts courts action; the pastors out of directions by the court attended court on 26.10.2022 and later allegedly organized some of their members to vandalize the church and its property so as to frustrate the decree; the interested parties are violent people who have no business seeking the setting aside the orders of the court; the interested parties were released on bond which should be cancelled and remanded in jail; execution has occurred hence there was nothing to stay or set aside; joinder of the interested parties on a concluded matter would serve no purpose since there is nothing pending court's adjudication; fines have already been paid hence the court is functus officio and the interest of the interested parties and the manner of loss or damage has not been demonstrated .
8. In a further affidavit by David Nkunja sworn on 6.12.2022 the interested parties have denied the alleged vandalism and averred that the photographs attached thereto as falling below the requirements of the law on photographic evidence; that by virtue of the court directions that they execute personal bond, it means the court is not functus officio; the court should find the joinder related to the contempt application and lastly that the application should be determined on merits.
9. Coming to the 3rd application the court is asked to vacate or set aside its orders, dated 26.10.2022, sentencing the judgment debtors to civil jail and enlarge time for them to file mitigation statements before the sentencing and or the intended appeal against the ruling made on 26.10.2022. The grounds are that on 19.10.2022 the applicants were found guilty of contempt of court and detained while awaiting sentencing on 26.10.2022; the applicants were not comfortable with the former advocates on record hence engaged the current lawyers who filed an application dated 23.10.2022 but were not allowed to address court on 26.10.2022; the former advocates did not file the mitigation statements; mistakes of counsel should not be visited upon them; the sentencing was done without an opportunity to file mitigation statements or mitigate before sentencing; it is in the interest of justice to be allowed to



- contest the orders of contempt and that the intended appeal has arguable grounds with high chances of success.
10. In The supporting affidavit by Cornelius Mworira dated 10.11.2022 he reiterates the above grounds save to add that the application dated 23.10.2022 was not heard thus overtaken by time and became nugatory.
 11. The 3rd application was opposed by the decree holders through a replying affidavit sworn by Rev. Samuel Muguna Henry sworn on 21.11.2022. The grounds are that after the applicants were found guilty of contempt on 19.10.2022, the court upon request for time to file mitigation statements and purge the contempt granted the judgment debtors bond till 26.10.2022; that the deponent secured his freedom hence had sufficient time and opportunity to see his lawyers and purge the contempt; that the applicants appeared alongside their lawyers hence cannot blame the court for the delay; that the applicants had a duty to give their lawyers on record mitigating factors; that there was no attempt to purge the contempt, apologize or show any remorse even after being given an opportunity to do so by the court; that the application dated 23.10.2022 was doomed to fail as it was filed by an advocate lacking capacity; that since the fines were paid the court is functus officio; that the applicants cannot have it both ways, seek to set aside the orders and at the same time appeal against the sentence; that the applicants usually treats the court with contempt, they chose not to instruct counsel and cannot be heard to plead for an extension of time when the sentence was netted and served.
 12. With leave of court, parties opted to canvass the applications by way of written submissions dated 6.12.2022.
 13. On the 1st application, the applicants submitted that their application was properly before the court in line with Order 9 Rule 9 & 10 of the Civil Procedure Rules. Reliance was placed on Nontimbe Hanson Nyumumba vs Thomas Ogondo (2018) eKLR. On the notice of appeal, the applicants urged the court to find that under Rule 14 of the Court of Appeal Rules (Cap 9), it has powers to enlarge time for preferring an appeal which rule should be construed alongside Sections 1A, 1B and 3A of the [Civil Procedure Act](#).
 14. On the 2nd application the applicants have submitted that under Order 1 Rule 10 (2) Civil Procedure Rules, the court can join a party at any stage of proceedings if the presence of that party is necessary for the court to determine the issue at hand. In this instance, the applicants submitted that since the court issued summons against them and were placed on bond to facilitate the hand over it means the matter is not over hence they should have an opportunity to be heard under Article 50 of [the Constitution](#).
 15. The applicants relied on Standard Chartered Financial Services Ltd and 2 others vs Manchester Out fitters (2016) eKLR on the proposition that the court has jurisdiction to re-open and re-hear a concluded matter where the interest of justice demanded so.
 16. On the setting aside, the orders issued on 19.10.2022 and 26.10.2022, the applicants submitted that the said orders were prejudicial to them since they were condemned unheard yet directed to facilitate the handing over.
 17. Regarding whether the court was functus officio the applicants submitted that a court does not merely become functus officio after the delivery of a final decision since it can stay, review, set aside or handle execution proceedings. Reliance was placed on Leisure Lodge Ltd vs Japhet S. Asige & another (2018) eKLR.
 18. On setting aside orders of 22.7.1999, 19.10.2022 and 26.10.2022, the applicants submitted the suit property did not belong to the decree holder, their freedoms of worship and association have been violated; the orders are prejudicial and that they did not participate in the proceedings leading to the



judgment and the subsequent orders. Reliance was placed on Order 21 Rule 6 of the Civil Procedure Rules on the proposition that as the registered owner of the Chugu plot, the decree holder failed to produce the title deed or notify them and that they were not aware of the judgment. Reliance was placed on Kibe Ltd vs Peterson Ondieki (2016) eKLR, Etton vs Davis & others (2019) eKLR, Francis Muruatetu & another vs Republic (2017) eKLR.

19. Lastly, on the application dated 10.11.2022, the applicants submitted that they did not have sufficient time and opportunity to prepare for mitigation or purge the contempt; their former advocates failed to visit them in prison; the delay was not inordinate; reasons for the same have been given and that the court should consider the overriding objective under Section 1A, 1B and 3A of the [Civil Procedure Act](#) as read together with Article 159 (2) of [the Constitution](#). Reliance was placed on Nicholas Kip too Arap Salat vs IEBC & 6 others (2013) eKLR.
20. As a starting point the court record indicates that the firm of Kiogora Mugambi & Co. Advocates were granted leave under Order 9 Rule 9 of the Civil Procedure Rules on 15.11.2022 to come on record for the respondents Living Waters EAPC. They were to file and serve a notice of change of advocates by 19.11.2022. This was so given that on 26.10.2022 the two law firms appeared before court and were unable to agree on the representation of the applicants. Be that as it may, it appears counsel for the applicant's has not complied with the said orders. The court will nevertheless determine the merits of the four applications.
21. Having read applications, the replies and written submissions, the issues for my determination are:
 - i. If there is a pending appeal against the judgment delivered on 22.7.2019.
 - ii. If there is a pending appeal against the orders granted on 19.10.2022 and 26.10.2022.
 - iii. If the court has jurisdiction to enlarge time where there is a pending notice of appeal so as to file a memorandum of appeal.
 - iv. If the applicant (Cornelius Mworira) is entitled to leave to appeal and stay of the orders made on 19.10.2022 and 26.10.2022.
 - v. If the applicant Cornelius Mworira was condemned unheard on 26.10.2022.
 - vi. If the court is functus officio in so far as the request by the judgment debtor Cornelius Mworira to mitigate before sentencing.
 - vii. If the applicant (Cornelius Mworira) can exercise the right to seek for stay/setting aside, a chance to mitigate before sentencing and at the same time seek for leave to appeal against the same orders.
 - viii. If the intended interested parties have a stake to be joined to the proceedings.
 - ix. If the intended interested parties were condemned unheard by the judgment dated 22.7.2019 and all the subsequent orders.
 - x. If the court is functus officio in so far as the request by the proposed interested parties to be joined to the suit and their participation thereof.
 - xi. If the proposed interested parties have capacity to be joined as parties post judgment on account of post judgment applications.
 - xii. If the judgment debtors and the intended interested parties are entitled to the orders sought.



22. There is no dispute that Living Waters EAPC brought this appeal through their officials among them Fred Nteere and Cornelius Mworio and participated fully in the appeal up to the contempt proceedings through an application dated 2.10.2019, by a replying affidavit sworn by Cornelius Mworio M'Ambutu and Fredrick Nteere Rukunga on 19.12.2019 and attaching several documents among them annexures marked CMCC 1 (a), (b), (c) and (d), a list of members, CMCC "2" a memorandum of appeal in Nyeri Court of Appeal No. 283 of 2019 filed on 25.10.2019 against the judgment filed by the firm of Kiogora Arithi and Associates dated 24.10.2019 which was received by the Court of Appeal Deputy Registrar Nyeri on 25.10.2019.
23. In the annexures to the replying affidavit by Fredrick Nteere Rukunga he attached annexure marked FNR1 being the minutes of the national executive council held on 16.2.2013. The minutes were duly signed by the incoming secretary Rev. George Koome Mutea. In annexure marked CMM (1) (c) the names of Francis Muriki member No. 104, Nahashon Mwiti No. 109, Martin Kinyua No. 130. The document has entitled Runogone Living Waters EAPC Church members.
24. Given the foregoing earlier admissions made on oath the deponent Cornelius Mworio is not only misleading the court but also perjuring himself to say that his former lawyers on record filed a notice of appeal dated 5.8.2019 yet in his earlier affidavit in this file, he attached a duly filed memorandum of appeal. To that extent therefore, the prayer for leave to file an appeal out of time is not only misplaced but also unnecessary.
25. Coming to the orders granted on 19.10.2022 and 26.10.2022 there is no indication if the applicant herein has preferred any appeal yet as at the filing of the four applications, the period to prefer an appeal had not expired. There is no explanation given why if the applicant was aggrieved by the two rulings did not prefer an appeal on time or at all. The court is also being asked to stay the orders of 19.10.2022 and 26.10.2022 with no appeal in place. The court cannot act in vain and give orders where a party has not exercised diligence in the agitation for his or her rights.
26. Looking at the notice of motion dated 25.10.2022 the affidavit in support and prior affidavits sworn by Cornelius Mworio the court can only but make a finding that his ground No's 4-12 thereof are not only erroneous, utterly misleading and read vis a vis paragraphs 6, 7, 8, 9, 11-18 of the supporting affidavits, the same are offensive to the Evidence Act and Order 19 Rule 3 & 6 of the Civil Procedure Rules. I find them scandalous, irrelevant and oppressive. The same are hereby struck out from the court record.
27. Coming to the prayer to stay the orders of 19.10.2022, by a ruling dated 19.10.2022 the court gave the citees more time to file written mitigate statements, purge the contempt and avail their pastors and committee members for the decreed properties during the sentencing.
28. The judgment debtor(s) were duly represented by counsel who told the court that they were going to write a letter to the general secretary of Living Waters to try to settle the matter out of court as well as the pastors of the various churches so as to fast track the compliance with the decree. The court made an order for mitigation statements or affidavits to be filed within 7 days. The court also exercised its discretion and released the contemnors on bail pending the sentencing. From the court record Cornelius Mworio posted bail on 26.10.2022 at 14.11.57 hours and a release order were signed on the same day.
29. On 26.10.2022, counsel for the judgment debtors appeared and informed the court that he had only instructions from the 2nd contemnor. The contemnors opted and proceeded to give oral mitigation statements. It was only after the said mitigation statements were recorded that counsel brought to the attention of the court a consent to come on record by Kiogora Mugambi Advocates for the appellant church. Already the mitigation had occurred and the pastors present had been noted in the court



- record. The court rendered its sentence and which to date has not been appealed against. The fines were duly paid on 26.10.2022 and 27.10.2022 respectively, hence the court became functus officio.
30. Regarding the pastors the court placed them on personal bond of Kshs.100,000/= in order to facilitate the full compliance until their two applications were determined. Given the foregoing therefore I find the application dated 25.10.2022 lacking merits, overtaken by events and nugatory as clearly admitted by the applicant.
 31. Concerning the application dated 10.11.2022, again as at its filing the court had already sentenced the applicants who had even paid the fines. Time to proffer an appeal to both the ruling dated 19.10.2022 and the sentencing on 26.10.2022 was yet to expire as at the time the application herein was made. The record of the court shows that there was ample opportunity and time granted to mitigate. The applicant also gave a mitigation statement before sentencing which the court considered on merits. At paragraph 7 of the supporting affidavit, Cornelius Mworira admitted that this application was overtaken by events. He however did not state why despite this and if aggrieved he had not contested the rulings before a higher court. Therefore, the court finds the application lacking merits since it cannot sit on appeal of its own orders nor has the applicant made a case under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules for review based on new and important evidence, error or mistake on the face of the record or shown any sufficient cause why the court should revisit or stay orders which are already spent. The application is dismissed with costs.
 32. Turning to the 4th application dated 27.10.2022, the proposed interested parties describe themselves as Pastor David Nkunjia, Patrick Mugambi vice chairman Eliud Kithinji, Treasurer Joel Mugambi, vice secretary Board of elders/committee who were summoned to appear before court on 26.10.2022. In the supporting affidavit sworn on 27.10.2022. Pastor David Nkunjia describes himself at paragraph 1 as the pastor in charge of Chugu Living Waters EAPC Church, duly authorized to swear on behalf of others as per authority dated 27.10.2022 by Patrick Mugambi, Haron Ikiara Eliud Kithinji and Joel Mugambi. The applicants stated that they were condemned unheard in the judgment delivered on 22.7.2019 and the subsequent orders made on 19.10.2022 and 26.10.2022 hence their land rights, freedom of worship and freedom of association have been violated by the court. They further averred under oath that they only came to know about the judgment and sentencing on 26.10.2022 and were never served with the decree and the application for contempt dated 2.10.2019.
 33. In a similar application of the same date, Pastor George Koome Henry Mutethia (treasurer) Francis Muriki (chairman) Martin Kinyua (Committee member) and Nahashon Mwitia committee member seek to be joined as interested parties. The application is supported by an affidavit sworn by Pastor George Koome saying that Parcel No. 677 belongs to them; that they were condemned since 2019 and only became aware after they were summoned to court on 26.10.2022.
 34. They therefore urge the court to re-open the suit, allow for their full participation including the contempt proceedings and that the suit be heard afresh including the application dated 2.10.2019.
 35. In the affidavit sworn on 19.12.2019 by Fredrick Nteere Rukunga to the application dated 2.10.2019 he attached annexure marked FNR the national executive meeting minutes for 16.2.2013. In the said minutes Rev. George Mutea Koome is listed as the secretary of Living Waters EAPC who is also the signatory to the minutes. Nahashon Mbaabu is listed as vice general secretary, while Rev. David Nkunjia is listed as present during the meeting. Similarly, and as indicated at paragraph 35 of this ruling, Cornelius Mworira in his replying affidavit sworn on 19.12.2019 listed George Koome as the secretary of the appellants as well as a member together with Francis Muriki, Nahason Mwiti and Martin Kinyua.



36. This has also been stated in the replying affidavit by the decree holder sworn on 4.11.2022 to the extent that the ownership of Chugu church was put to rest in the lower court judgment and subsequently the judgment of this court. The applicants as agents of the appellants are bound by the decree.
37. In a further affidavit sworn by Rev. David Nkunja on 6.12.2022, he terms the affidavit of Rev. Samuel Muguna as full of falsehoods and out to mislead the court. He states that the court has wide powers to review, set aside and or vacate the judgment and the decree together with the subsequent orders.
38. In the submissions dated 6.12.2022, the applicants have advanced the claim that they have a stake as per Order 12 Rule 6 Civil Procedure Rules, Kibe Ltd vs Peterson Ondieki (supra) and Elton vs Davis and others and Lodge Ltd (supra) hence the court is not functus officio.
39. There is no doubt that the applicants are seeking under Order 1 Rule 9 of the Civil Procedure Rules to be joined as parties to this matter. Similarly, they are seeking to re-open the suit, the judgment and all the subsequent orders thereto.
40. In Mary Wambui Njuguna vs William Ole Nabala and 9 others (2018) eKLR, the issue before the court was the validity of joinder, if it was proper when a suit has abated and whether the judgment could be reviewed while there was an appeal. The court took the view that it was not open for a party to pursue both an appeal and an application for review over the same orders at the same time.
41. In CCK and 14 others vs Royal Media Services Ltd & 7 others (2014) eKLR, the Supreme Court of Kenya held that an interested party is one who has stake in the proceedings though not a party to the cause ab initio and who stands to be affected by the decision of the court when it is made and whose presence would result in complete settlement of all the questions involved in the proceedings.
42. In JMK vs MWM and another (2015) eKLR, the Court of Appeal held that Order 1 Rule 10 (2) of the Civil Procedure Rules provides for joinder of parties where the proceedings are still pending before the court. In Ann Akuyen vs Lokadobong Elim & another (2020) eKLR what was before the court was a party who was neither a party to the suit, nor in the intended appeal claiming to have been condemned unheard. The court cited with approval, Boaz Kipchumba Kaino vs Gift Tanna and Sons Ltd; Isaiah Wanyonyi & 47 proposed interested parties and another (2021) eKLR, Carol Silcock vs Kassim Sharrif Mohamed (2013) eKLR on the proposition that joinder post judgment was possible only where the clear intention of the parties was laid out especially on review or setting aside the existing judgment and for a fresh hearing.
43. While considering the powers of court to enjoin parties in David Kiptugen vs Commissioner of Land Nairobi and others (2016) eKLR, an application had been filed before the Court of Appeal to join an interested party to the appeal and for remission of the matter to the trial court to be heard denovo. The court while allowing the application held it was unconstitutional and against the rules of justice to deprive a party an opportunity to be heard on his claim to the ownership of the suitland.
44. In CCK 7 and 4 others vs Royal Media Services Ltd (supra) the Supreme Court of Kenya held that an interested party has to demonstrate how the ends of justice would be served by enjoining it in the appeal and further held that it could not enjoin a party disguising itself as an interested party while in actual fact it was merely seeking to institute a fresh cause.
45. Having above set the law and decided cases binding on this court, it is quite apparent that the court has powers to allow for a joinder of parties even post judgment. The intended party must however meet various conditions including:
 - a. Demonstration of a right to some relief against him in respect of the matter involved.



- b. His presence would be necessary for the court to completely and effectually settle the matter. See *Civicon Ltd vs Kivuwatt Ltd and 2 others* (2013) eKLR.
- c. There would be no prejudice to the adverse party beyond compensation in costs.
46. In the case of *Jay Gas Distributors Ltd vs Said & others* (2014) E.A 448, the Court of Appeal in Tanzania took the view that joinder could occur even after judgment where damages were yet to be assessed but however, where the suit had finally been disposed of and if there is nothing more to be done the rule becomes inapplicable.
47. *Gikonyo J in Bellevue Devt Co. Ltd vs Vinayak Builders Ltd & another* (2014) eKLR gave some instances where joinder may be allowed post judgment as cases of representative, just substitution of parties in case of death in contempt proceedings or at the objection proceedings under Order 22 Rule 51 of the Civil Procedure Rules. The court however gave out a caveat that any joinder post judgment must surmount any possible constitutional objections on the front of rules of natural justice and the principle of finality of litigation.
48. In the present application, the court has already made a finding that the intended interested parties were alluded to as members of and officials of the appellant who have all along been under the representation of their registered officials. Specifically, the minutes attached thereto by the two officials, the contemnors have clearly demonstrated that the intended parties were and remained members of the EAPC church. Given the earlier averments on oath and annexures which none of the interested parties have denied in this application, I disagree with the contents of the application and the affidavit sworn by Rev. George Mutea Koome that the intended interested parties are separate and the suit land where Runogone prayer house stands belongs to Pentecostal church and not the judgment creditor.
49. To the contrary, Rev. George Koome and his proposed intended parties are bonafide members of the appellant church who were bound by the acts of omission and commission of the contemnors as officials of the appellant church both in the lower court, this court and the appeal pending before the Court of Appeal.
50. The judgment of the trial court was confirmed by the judgment of this court rendered on 3.10.2019. The decree has been satisfied going by the report tendered by the decree holder during the pendency of this applications. The further affidavit by David Nkunja has not denied that the take over of all the prayer houses has occurred to the satisfaction of the decree holder.
51. Additionally, the applicants were present in court at the sentencing of the appellant's representatives who not only paid the fines but also did not dispute that there was take over of the prayer houses including the Runogone prayer house.
52. In order to demonstrate stake in the matter, the applicants have attached minutes from the defunct County Council of Meru as proof of ownership rights. The minutes are neither certified nor accompanied by a letter of allotment, a certificate of lease and a certificate of official search showing that the applicants possess any ownership rights protected by law.
53. Further to the foregoing, if at all the applicants are a separate church entity from the appellant Living Waters EAPC with duly registered officials, the easiest thing would have been to provide before this court a certificate of registration from the Registrar of Societies together with a confirmation letter indicating that they are bonafide registered officials or trustees of the alleged property.
54. In absence of that, I find that the applicants herein lack legal capacity to file the application let alone represent the interests of their church if the court was to find them having a stake in the subject matter. See *Andrew Inyolo Abwanza vs Board of Trustees of PAG Kenya and 3 others* (2009) (eKLR).



55. Regarding delay, there is no doubt that the appellant after the judgment in 2019 preferred an appeal which is pending before the Court of Appeal. The appellants replied to the application for contempt of court claiming to represent the interest of their members and the church among them the intended interested parties.

If at all the applicants were in the dark regarding the subject litigation and or were not bound by the representation of the appellants in general and in particular the two contemnors, one would have expected a complaint to the police that the appellants have been falsely misrepresenting and or passing themselves as bonafide officials and members of the appellant church among them Runogone Church.

56. Similarly, if Rev. George Mutea Koome was the owner of Runogone land since 2001, it is inconceivable to have been unaware of the subject litigation right from the lower court to the present situation. The court must be given credible and tangible evidence why it should re-open this suit and grant the intended parties an opportunity to be heard.

57. The court has determined the subject suit to finality and went to an extent of enforcing the execution by way of contempt of court. There is no pending appeal against the ruling delivered on 19.10.2022 and the subsequent orders of 26.10.2022. The court cannot stay orders which are already spent and for no good reason. As at the time the applications were made, there was still time to proffer an appeal. None was filed and no good reasons have been given as to why.

58. Similarly, the contemnors paid the fines and have not appealed against the ruling dated 19.10.2022 as well as the orders issued on 26.10.2022. The intended parties cannot purport to talk on behalf of the contemnors more so after this court has made a finding that the proposed interested parties were and remain bound by the decree and any subsequent orders thereto.

59. Evidence produced by DW 1, DW 5 in the trial court was that the two contemnors were seeking the L.R No. 677 on behalf of the appellants. Since the two were their bonafide leaders at the time, the intended interested parties cannot purport to sever their relationship with their then officials and the current appellants before this court and in the Court of Appeal.

60. The alleged stake is not inseparable in law unless the applicants have proof that they are no longer an affiliate of the appellant or members to that effect or at the very least, bonafide registered owners of the suit parcels.

61. In Kitale Pentecostal Church (through the Board of Trustees vs Bernard Ayeka & 3 others (2019) eKLR, at issue was whether Kitale Pentecostal Church registered on 15.5.2012 was the same as KPC that was registered as the proprietor of the leasehold interest with the respondents as trustees. The court found no nexus between KPC the holder of the title deed and the appellants. The court held a society registered in 2012 could not possibly own property in 1997 long before it was registered.

62. In this suit the judgment herein indicates that the judgment decree holder produced registration certificates and ownership documents predating 2001, dated 2.6.1978 as well as certificate of incorporation under Cap 286 dated 14.2.1964 and an official search for L.R No. 677 as reserved for the church with effect from 2001.

63. The judgment dated 3.6.2019 made a clear finding that the judgment debtor had built a big stone church on Plot No. Nyaki/Kithoka/677 referred to as Kithoka Syo Mpuru EAPC branch with the consent from the defunct County Council of Meru.

64. Given the foregoing, the court comes to the irresistible conclusion that there is already a pending notice of appeal and a memorandum of appeal was deemed to be in existence against the judgment made in 2019.



65. Secondly, the court has made a finding that there was no appeal preferred against the rulings made on 19.10.2022 and 26.10.2022 by either the appellants or the intended interested parties. Therefore, it will be of no consequence to stay or set aside the said orders more so when the outcome was spent.
66. Thirdly, the court lacks jurisdiction to extend time to file either a notice of appeal, memorandum of appeal or record of appeal under the Court of Appeal Rules 2022.
67. Fourthly, the court finds no justification to grant leave to appeal and stay of sentencing in favor of Cornelius Mworira since the fine was made and paid for.
68. On issue no. (v) & (vii), the court makes a finding the contemnors were given a fair hearing and they gave a mitigation statement before sentencing which conviction and sentence has not been appealed against. To that extent, the court is functus officio in so far as the request to grant the contemnor an opportunity to offer mitigation before sentencing.
69. On issue No. (vii), the court finds the application to set aside or stay sentencing overtaken by events.
70. On the issue no. (viii) the intended interested parties have no stake to be joined as parties since the suit is already determined and pending appeal.
71. On the issue no. (ix) & (x), the court makes a finding that the interests of the proposed interested parties were fully catered by the appellants before the trial court, during the hearing of the appeal and the subsequent post judgment applications hence the court is functus officio in so far as the said request for joinder at the stage.
72. On issue no. (xi), the court finds the intended interested parties lacking capacity to be joined to the suit more so since they have brought no certificate of registration and ownership documents to prove that they can represent their respective churches.
73. Lastly, the court finds the intended interested parties and the appellants do not deserve the orders sought.
74. The applications herein are dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 18TH DAY OF JANUARY, 2023

In presence of:

C/A: Kananu

Kiogora for applicant

Murango Mwenda for respondents

HON. C.K. NZILI

ELC JUDGE

