



REPUBLIC OF KENYA



Seventh Day Adventist Church EA Ltd v Isoge FCS Ltd (Environment & Land Case 42 of 2021) [2023] KEELC 18284 (KLR) (21 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18284 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 42 OF 2021**

JM KAMAU, J

JUNE 21, 2023

BETWEEN

SEVENTH DAY ADVENTIST CHURCH EA LTD PLAINTIFF

AND

ISOGE FCS LTD RESPONDENT

RULING

- 1 Judgment was delivered in this case on the 21/10/2021 dismissing the plaintiff's claim of adverse possession. Thereafter, the Plaintiff prayed for stay of the Notice to show cause why the Plaintiff should not vacate the suit premises Kisii/Isoge Settlement Scheme /170. On 22/04/2022, both parties entered into a consent as follows: -
 1. The plaintiffs are allowed to continue using the Sabbath church without any further construction on the suit premises up and until 21/04/2023.
 2. The plaintiff should however inform their members to peacefully co-exist with the Defendants and do limit themselves to the worship activities on land Parcel No. Kisii/Isoge Settlement Scheme /170.
 3. Each party to bear their costs of this Application and not of the suit.
- 2 Later on 25/04/2023, the plaintiff made an Application for the enlargement of the time for the stay to 30/10/2023 in order to enable the applicant to make necessary arrangement to purchase a piece of land, fence it and have the properties of the applicant safeguarded for the establishment. The plaintiff also prayed for leave to hold a camp meeting in the months of August/September 2023 to enable the church register all members and collect funds to enable the Applicant move out. The said camp meeting for Christians of the Seventh Day Adventist Church is scheduled to take place in the aforesaid months. The plaintiff says that the Application is brought in good faith in order to strengthen the faith of the members of the church. The Application was opposed vide an affidavit in Reply sworn by the



defendant's Chairman of the Management Committee, Mr. Isaya Abaga on 02/05/2023 who claims that the Affidavit in support of the Application is sworn by one Reuben Ochenge Miyogo who is not even a member of the plaintiff and is therefore a non-starter ab initio.

4 I have heard both sides of the suit. It is true that the deponent of the Supporting Affidavit Mr. Reuben Ochenge Miyogo has not described himself in relation to the plaintiff/applicant, who he is in the church organization and whether he is indeed a member or not. There is however a letter filed and attached to a latter affidavit from the church Secretary Vincent Nyamwaya Nyaberi who describes Mr. Miyogo as a member, of good standing in the church and a regular attendant. This should not be enough. The affidavit ought to have been sworn by a person who holds a position in the church or one who gives better reasons for representing the church in court. However, the facts are not in dispute. Extension of time is allowed under order 50 Rule 6 of the *Civil Procedure Rules*; even after the time to be extended has expired. The court finds that the extension of time sought is for good reasons and in good faith. The same is for performing legitimate religious services to strengthen the faith of the church members and there is no good reason not to enlarge it. In the premises, the court grants the following prayers:

- a. That the honourable court be and is hereby pleased to enlarge time to October 30, 2023 within which to enable the applicant to make necessary arrangement to purchase a piece of land fence it and have the properties of the applicant safeguarded for the establishment;
- b. That the applicant seeks an extension of time within which to get money in the month of August/September to enable them register all members and collect funds to enable the applicant move out and;
- c. That the hon. court be and is hereby pleased to allow the applicant to hold a camp meeting in the Month of August/September to enable them register all members and collect funds to enable the Applicant move out.
- d. There are no orders as to costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 21ST DAY OF JUNE, 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff: N/A

Defendant Mr. Onyancha holding brief for Mr. Masese

