

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NO. 49 OF 2012

EAST AFRICA PENTECOSTAL CHURCHES REGISTERED:.....PLAINTIFF

VERSUS

CHARLES NAKALI EMEJEN & 8 OTHERS:.....DEFENDANTS

JUDGMENT

The plaintiff brought this suit against the defendants claiming the following reliefs:-

1. An order of permanent injunction to restrain the defendants, their servants, agents and or anyone claiming through them from interfering with the plaintiff's use of plot No.82 Lodwar municipality.
2. A declaration that the plaintiff is the lawful owner of plot No. 82 Lodwar Municipality and an order of eviction to issue against the defendants.
3. Costs and interest on costs.

The defendants who had been duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. The defendants were not present during the formal proof.

During the hearing PW1 Philip Muya Zamani, a pastor with the plaintiff church testified that the plaintiff is run by trustees registered under the Land (perpetual succession) Act cap 286 Laws of Kenya. On 28.2.1997 the plaintiff was allotted plot No.82 by Lodwar urban council (exhibit 3). When Lodwar urban council was elevated into a municipality the municipal council issued the plaintiff with an allotment letter in respect of the same plot (exhibit 4). The plot was subsequently surveyed as confirmed by letter dated 23.10 accompanied with drawings of the plot (exhibit 5 and 6 respectively).

In the year 2011, PW1 proceeded for a course in Meru and while there he was informed that some people had invaded church land and erected some structures. When he came back he found the first defendant who had erected the structure. He was residing on the land with the second defendant who is his nephew as well as the third defendant who is his uncle. The fourth defendant is also on the land and claims that she bought the land from someone else.

The church lawyer was contacted and wrote a demand letter (exhibit 7). In response to the demand letter, the nine defendants responded to the same in what they described as a defence (exhibit 8). The defendants contend that their community gave the plaintiff a plot measuring 50 x 100 which it should be contented with. The plaintiff tried to talk to the defendants through church elders and the area chief but they could not listen. The plaintiff then approached the municipal council who wrote a letter asking those who had invaded the church land to move out (exhibit 9). The defendants did not move out prompting the plaintiff to bring this suit against them.

I have carefully gone through the plaintiff's documents. It is clear from the District Survey office Turkana that the land was surveyed and is 1.253 hectares. The defendants had been given time to prove if they had ownership documents to any portion of the church land. They did not produce any. It is clear that the suit land was allotted to the church in 1997. The plaintiff's evidence has not been controverted. The allotting authority has confirmed that the plot in issue was allotted to the plaintiff. The defendants have therefore no business in laying claim over the same. I find that the plaintiff has proved its claim against the defendants on a balance of

probabilities. The plaintiff is entitled to a permanent injunction against the defendants or their representatives. The defendants have no business remaining on the land. They should be evicted from the land. The defendant shall also pay the costs of this suit to the plaintiff.

Dated, signed and delivered at Kitale on this 20th day of January,2014.

E.OBAGA

JUDGE

COURT - Judgment signed in open court in the absence of parties Parties can read the same at the registry. Court clerk Kassachoon.

E. OBAGA

JUDGE.

20/1/2014