

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

LAND & ENVIRONMENT CASE NO. 307 OF 2013

**ANTONKIA PENTECOSTAL ASSEMBLIES OF GOD CHURCH (suing through
JAMES ASALIKHA BARASA – CHAIRMAN**

JOSEPH MUMANYISI – SECRETARY
..... PLAINTIFF

V E R S U S

CHAIRMAN
RICHARD M. KONDO –

**JOSEPH WESONGA – MEMBER (being sued as official and Member of KAKAMEGA COUNTY
JUA KALI**

ASSOCIATION
DEFENDANTS

R U L I N G

The application dated 30.10.2013 seeks an order of injunction restraining the respondents from dealing with the plaintiff's plot number **379** located in Kakamega Town. The application is supported by the affidavit of **JAMES ASALIKHA BARASA** who is the chairman of the **ANTOKIA PENTECOSTAL ASSEMBLIES OF GOD CHURCH**. Mr. Odongo, counsel for the applicants submitted that the plaintiff's plot was initially measuring **9 x 4.5 meters**. The applicants applied for the extension of the plot and the request was allowed. The plot was extended to **13.5 x 15.5 meters**. The plot is fenced but the respondents on the 26.10.2013 invaded the plot and brought down part of the fence. The respondents subsequently alienated part of the plot. Counsel annexed documents issued by the then Kakamega Municipal Council showing how the plot was allocated. The request for the extension and a letter confirming that the request had been granted.

Mr. Ombaye, counsel for the respondents, relied on two replying affidavits sworn by **RICHARD MOMANYI KONDO** and **JOSEPH JOTHAM KALERWA WESONGA**. Counsel submitted that there was no extension of the applicant's plot. The replying affidavits annexed the area map for all the plots.

The documents annexed by the applicant shows that the applicant was allocated plot number **379** at Jua kali area on 2.10.1997. The allotment letter indicates that the plot will be measuring **9 x 4.5 meters**. There is also exhibited a notice for a meeting for the Town planning and Works Committee of the Kakamega Municipal Council that was to be held on 15.5.2001. One of the agenda items was the extension of the plot allocated to the applicant. There is a letter dated 10.6.2002 addressed to the applicant indicating that the size of the applicant's plot should not be more than **9 x 4.5 meters**. The applicants have been paying the Municipal rates for the plot. Although the applicants contend that their plot was extended, there is no sufficient evidence to prove that allegation. The request for extension is not annexed and the letter confirming that the plot was extended is also not there. The purported survey map annexed by applicants does not prove anything. It is a handwritten draft with no letter head or information as to its origin. The respondents annexed a survey map of all the plots which shows that plot number **379** borders plot number **254** and **148** on both sides. There is a road at the back and at the front

of the plot. Any extension of plot number **379** would mean that it would encroach on the other two plots or go to the two roads. There is no information that the sizes of these other two plots were reduced. The information from the Municipal council is clear that the applicants plot cannot be more than **9 x 4.5 meters**. The respondents maintain that all the plots are of the same size.

From the pleadings herein, I am not satisfied that the applicants plot was extended. There is no evidence that the respondent have gone beyond the size of the plot allocated to them. The application lacks merit and the same is dismissed. Costs shall follow the outcome of the main suit.

DATED AT KAKAMEGA THIS 20TH DAY OF MARCH 2014

SAID J. CHITEMBWE

J U D G E