

REPUBLIC OF KENYA

High Court at Kakamega

Petition 13 of 2012

PENTECOSTAL ASSEMBLIES OF GOD (K) PETITIONER

V E R S U S

HON. ATTORNEY GENERAL 1ST RESPONDENT

PERMENENT SECRETARY,

MINISTRY OF PUBLIC HEALTH..... 2ND RESPONDENT

MINISTRY OF FISHERIES DEVELOPMENT 3RD RESPONDENT

R U L I N G

The petitioner, Pentecostal Assemblies of God (Kenya), filed the chamber summons dated 12.9.2012 seeking a conservatory order in relation to plot number TIRIKI/HAMISI/"A"/880 pending the hearing and determination of the petition. The application is supported by the affidavit of Rev. Elisha K. Bitok sworn on the same date. Parties agreed to rely on the documents on record and file written submissions. No written submissions were filed.

The petitioners contend that the suit plot belongs to Kakamega County Council and was reserved for the construction of Gimogoi School which is sponsored by the petitioner. The land was requested by the Tirikispeaking minority people and that is why it was reserved. In January 2012 the medical officer of health Hamisi hospital started constructing a health center on the plot without consulting them. Members of the petitioner church complained to the District Commissioner as well as to the Permanent Secretary, Ministry of Provincial Administration and Internal Security. There is a church structure on the land which has been there for many years but it is being threatened with demolition. They would like the activities of the respondent to be checked and there be status quo pending the hearing and determination of the petition.

The respondents filed a replying affidavit sworn by Dr. Joel Edalia on 27.9.2012. The respondents contend that the land in issue belongs to the Vihiga County Council. The Council initially had given the land to the community for purposes of building a primary school by the name Gimogoi Primary School. The community discarded the idea of building a school because there were two adjacent schools nearby and decided to construct a health facility. The financing of the facility was to be provided by the Vihiga County Council as well as the Constituency Development Fund. A dispensary was built on the plot and it started delivering services from the 27.5.2010. Currently the community would like to construct a maternity wing for the dispensary. The petitioners constructed a semi-permanent structure on the land purporting to be a church. According to the respondents the petitioners are trespassers.

The official search annexed by the petitioner show that the land in dispute is about 2.20 hectares. It was registered in the names of the Kakamega County Council on 4.3.1974. The search indicate that it was reserved for Gimogoi School. It is clear from the official search and contentions by the petitioners that the land was reserved for the community. As to whether the reservation was meant for the Tiriki speaking people exclusively is a matter to be determined during the hearing of the petition. The land is big enough to cater for both the church and the health center. Although the respondents attribute ownership of the land to the Vihiga County Council, there is no evidence to that effect. There are no minutes from both Kakamega and Vihiga County Councils indicating that the original idea of constructing a school was

abandoned. I do find that the application by the petitioners is merited and the same is granted as prayed. The petitioners church should not be demolished and the petitioners should be allowed to continue utilizing the suit property. As indicated herein the land is big enough to accommodate both the dispensary and the church, I do direct that the construction of the maternity wing to continue but that development should not extend to where the petitioners' church is. The respondents should consult the petitioners as they are the ones who know the history of the suit land.

In the end the application dated 12.9.2012 is granted as prayed. However, the construction of the maternity wing should continue as herein stated. Each party to meet its own costs.

Delivered, dated and signed at Kakamega this 7th day of February, 2013

SAID J. CHITEMBWE
J U D G E