



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Suit 781 of 2012**

**ST ANDREWS CHURCH NAIROBI REGISTERED TRUSTEES.....APPLICANT**

**VERSUS**

**METHODIST CHURCH MISSIONS KENYA REGISTERED TRUSTEES.....RESPONDENT**

**RULING**

1. Coming up before me for determination is a Notice of Motion dated **31<sup>st</sup> October, 2012** brought under Section 1A, 1B, and 3A of the Civil Procedure Act and Order 40 Rules 1 and 3 of the Civil Procedure Rules. This application seeks the following orders:

a. That a temporary injunction do issue restraining the Respondent from sub-dividing, alienating, selling, disposing, swapping or in any way interfering with the land parcels without the written concurrence of the Applicant and Interested Party pending the hearing and determination of the suit;

b. That a temporary injunction do issue restraining the Respondent from suspending, punishing, demolishing or otherwise arbitrarily dealing with the Applicant's Minister at the Church as well as Representative to the leaders Meeting in violation of both the Trust Deed dated 20<sup>th</sup> December, 1959 and Chapter XVI, Standing Order 151 of the Methodist Church in Kenya Standing Orders and Agenda 1996 pending the hearing and determination of the suit.

c. Costs of the application.

2. The same is founded upon the grounds listed upon the face of the application and the Supporting Affidavit sworn by Prof. Christopher Karue. The grounds listed on the face of the application are as follows:

a. That by a tripartite Trust Deed dated 20<sup>th</sup> December, 1959 executed by and between the Applicant, Respondent and Interested Party (herein referred to as the "Trust Deed"), the Respondent was issued with the Certificate of Title Number I.R. 17048 over the two land parcels L.R. Nos. 3734/613 and 3734/627 (herein jointly referred to as the "Land") situate in Lavington, Nairobi and entrusted to hold and manage the property in a fiduciary capacity for the mutual benefit of the three parties.

b. That the object of the Trust outlined in the Trust Deed was to create joint ownership and usage of the land and an interdenominational church – the Lavington United Church (herein referred to as the “Church”) – equally involving the three parties with no party having exclusive ownership rights of usage on the land or sole discretion in running the affairs of the Lavington United Church.

c. That the Respondent through amongst others its Superintendent Minister has acted in blatant breach of Trust in managing the property and running the affairs of the Church by:

I. Acting unilaterally in running the affairs of the Church without regard to the interests of the Respondent or Interested Party.

II. Effecting developments on the land notably engaging in subdivision or swapping the land with a neighbouring plot without informing or requiring the consent of the Respondent or Interested Party against Clause 1 of the Trust Deed.

III. Denying the Respondent and Interested Party the chance to celebrate any Service of Holy Communion or any other service in a calendar month in violation of Paragraph 4 of the Trust Deed.

IV. Holding meetings and making decisions at the Church without the representation of the Applicant or Interested Party in violation of the Methodist Church of Kenya Standing Order 151 in the Constitution of the Church.

V. Single-handedly appointing Ministers of Lavington United Church without prior consultation of the Applicant or Interested Party and vigorously resisting the appointment of the Applicant’s and Interested Party’s Minister to the Church.

VI. Purporting to exercise unfounded powers to arbitrarily punish the Applicant’s Youth Minister at the Church.

VII. Failing to involve the respective heads of the Applicant and Interested Party in the confirmation service in the Church.

VIII. Changing the Church Logo which was detailed and bold about and truly reflected the triunion of the parties to the Trust Deed to one which not only hides this fact but was also not agreed on by the Leadership Meeting.

3. The Application was also founded upon the Supporting Affidavit of Prof. Christopher Karue in which he swore as follows:

a. That by virtue of the Trust Deed, title to the Land was jointly owned by the Applicant, Respondent and Interested Party with no party having exclusive ownership rights.

b. That the Trust Deed obligated the Respondent to develop the Land only with the concurrence of the Applicant and Interested Party.

c. That the Respondent has acted unilaterally by going to the extent of seeking to subdivide and swap one of the Land.

d. That as a result of this the Applicant was forced to register a caveat on the Land to prevent the Respondent’s improper dealings with the Land on 1<sup>st</sup> March, 2012.

e. That the Respondent defied the caveat and instructed a surveyor to sub-divide the Land.

4. The Interested Party filed its Affidavit sworn by Reverend Joshua Omungo in response to the Applicant’s Application to the following effect:

- a. That by virtue of the Trust Deed, the Applicant, Respondent and Interested Party entered a tripartite relationship enabling the joint ownership and usage of the Land.
- b. That in pursuance to the Trust Deed, a united interdenominational Church was established comprising the Applicant Church, the Respondent Church and the Church of the Interested Party.
- c. That under the Trust Deed, title to the Land was registered in the name of the Respondent to hold it as trustee for the Respondent and Interested Party and that the Trust Deed provides for the development and use of the Land on a Cooperative basis between the three Churches.
- d. That the Trust Deed provides that the Pastoral oversight over the Church is entrusted to the Respondent.
- e. That pursuant to the Trust Deed, the Superintendent Minister of the Church can be appointed from any of the three Churches.
- f. That over the years the Superintendent Minister including the current one has been appointed from the Respondent with little or no consultation being made with the Applicant and Interested Party.
- g. That the said Superintendent Minister has been single-handedly running the major administrative affairs of the Church without consulting the Respondent and the Interested Party and relegated representatives of the Respondent and Interested Party to mere helpers.
- h. The Respondent is spearheading developments of the Land without consulting the representatives of the Applicant and Interested Party.

5. The said Application is contested. The Respondent filed their Grounds of Opposition dated 9<sup>th</sup> November, 2012 to the following effect:

- a. That the application is based on a misapprehension of both the Trust Deed which governs the running of the Church and the way the Land was acquired and registered in the name of the Respondent.
- b. The Applicant has turned itself into a busybody in running of the affairs of the Church.
- c. The Applicant's right is to be consulted when the activities of the Church are being planned.
- d. Pursuant to clause 2 of the Trust Deed, only the Respondent has a right to determine what developments are to be effected on the suit properties.
- e. According to the Trust Deed, because of their small contributions towards the purchase and development of the Land, the Respondent and Interested Party have small voices only in the management of the Land.
- f. That according to the Trust Deed, the Applicant is only entitled to be represented in the management of the Church if matters of discipline are concerned or activities and meetings are being planned.
- g. That the Applicant and Interested Party have a right to be considered to have their Ministers considered for appointment to be in charge of the Church but that consideration does not require that their views to be taken into account by the Respondent.
- h. That the Trust Deed gives the Respondent the absolute right to determine who at all times the minister in charge of the Church will be.
- i. That the Applicant is a small investor in a project and now claims an equal share in benefits of the investment despite the fact that its investment is small.

6. The Application is further contested by the Replying Affidavit sworn by Rev. Dr. Stephen Kanyaru M'impwii on 9<sup>th</sup> November, 2012 to the following effect:

a. That the opportunity for the Respondent and Interested Party to buy the Land presented itself when their financial positions were so bad that they could not purchase them on their own and that the Applicant and Interested Party invited the Respondent which was financially strong to buy the Land and it did.

b. That of the 8,800 British Pounds spend on the purchase of the Land, the construction of the Church and furnishing of the same, the Respondent contributed 7,800 British Pounds which is 88.6% of the cost.

c. That in addition to that contribution, the Respondent provided the Church with the first Minister Rev. John Clarke who served it for 5 years at the expense of the Respondent.

d. That since the construction of the Church, the Respondent has effected the following additional developments at its own cost on L.R. NO. 3734/627:

i. A two storey office block

ii. A primary school housed in a three storey building

iii. Catering facilities

iv. Car parks

v. Toilets

e. That the Respondent has added a second residential house to the one that was originally built on LR. NO. 3734/613.

f. That the effect of the improvements referred to above has been to enhance the value of interest of the Respondent and to reduce the joint value of interest of the Applicant and Interested Party to about 5% of the Land.

g. That the Respondent is happy to buy out the interest of the Applicant and Interested Party since they appear unhappy with the Trust Deed and the nature of interest which the Respondent has acquired.

h. That because of the greater contribution towards the purchase, construction and furnishing of the church and the Minister's house, the Trust Deed gave the Respondent control over the use of the Land.

i. That the Trust Deed provided inter alia that:

i. Title to the Land was taken by the Respondent as trustee for the parties.

ii. That the Land would be developed and used by and on behalf of the parties on a co-operative basis.

iii. The Land was developed by the Respondent and if it so wishes it would demand that the Applicant and Interested Party contribute 500 British Pounds towards the cost of such development.

iv. That services including those of Holy Communion were to be open to all members of the three churches.

v. The Land was to be managed by the Respondent in accordance with its constitution.

vi. Activities and meetings in the church were to be discussed and agreed at leaders meetings.

- j. As regards the land, though the Respondent is shown as the sole owner, it owns part of the beneficial ownership upon trust for itself and the Applicant and Interested Party to the extent of their respective contributions.
- k. There is no presumption that where three parties contribute different amounts of money towards the purchase of a property, they hold the beneficial ownership equally.
- l. The Applicant's case is based on a wrong assumption that its share in the suit property is the same as that of the Respondent.
- m. The Applicant's only right is to be consulted when the activities to be carried on the Land are being planned and to be consulted when the Respondent is appointing its Minister who is to have pastoral charge of the Land.
- n. Under Clause 2 of the Trust Deed, the Respondent alone has a right to determine what developments are to be effected on the suit properties.
- o. That this suit has been brought to protect the employment of Ms. Lucy Waweru, the Coordinator for the youth who is employed by the Church and also the status of Mr. C.P. Mwangi who claims to be a representative of the Applicant.
- p. That since early in 2012, the Applicant has wrongly claimed that it is an equal owner of the Land and the Respondent has rejected this claim.
- q. That in a letter which it sent to the Respondent on 7<sup>th</sup> May, 2012 the Applicant made it clear that if it does not have its way, it will petition for the dissolution of the trust and the sharing out of the Land amongst the three churches.
- r. That since 2010, the Applicant has been claiming that it ought to have an equal say in the management of the Land despite the fact that the Trust Deed states otherwise.

7. The Applicant then filed an Application dated 31<sup>st</sup> January, 2013 for leave to amend the Notice of Motion that included the following further prayers:

- a. That a temporary injunction do issue restraining the Respondent from unilaterally controlling and managing the Budget or any other financial matters of the Church without the prior consultation and concurrence of the Applicant and Interested Party in accordance with the Trust Deed.
- b. That a temporary injunction do issue to restrain the Respondent from making any payment out of the Church's accounts without the written consent of the Applicant and the Interested Party herein pending the hearing and determination of the suit.
- c. That a temporary injunction do issue restraining the Respondent from single-handedly appointing a Minister(s) of the Church without prior consultation with the Applicant or Interested Party contrary to the provisions of the Trust Deed.
- d. That the Court appoints a Caretaker Committee comprising of equal representation of the three trustees to oversee the Church's day to day activities pertaining to the financial and personnel issues.

8. That application was supported by the Supporting Affidavit sworn by Charles P. Mwangi on 31<sup>st</sup> January, 2013 to the following effect:

- a. That he is the applicant's duly appointed representative at the Church.
- b. That the sidelining and frustrations of the Applicant and Interest Party's Ministers and representatives

continues unabated despite the suit against the Respondents.

c. That the Minister-in-charge of the Church was transferred and a new Minister would assume office on 1<sup>st</sup> February, 2013 representing personnel changes done single-handedly by the Respondent without consultations with the co-trustees.

d. That the Respondent is purporting to exercise control of the income and budget for the Church for the year 2013 in breach of the Trust Deed as there has been no consultation with the Applicant and Interested Party on the matter.

e. That the Respondent is using the Church's funds to settle disputed expenses not approved by the Applicant and Interested Party such as legal and other expenses for example an amount of Kshs. 300,000/= was drawn from the Church's account in order to pay the legal fees of the lawyer representing the Respondent in this suit.

9. The Respondent filed a Replying Affidavit in response sworn by Rev. Dr. Stephen Kanyaru M'impwii dated 11<sup>th</sup> February, 2013 in which he stated as follows:

a. That the activities of the Church are planned by a Leader's meeting held once a month and that about 20 leaders, elected by the Annual General Meeting of the congregation, attend the monthly Leaders meeting and that elected leaders come from the Methodist, P.C.E.A. and Anglican Churches.

b. Clause 10 of the Trust Deed vests in the Leader's Meeting the power to plan activities on the Land.

c. That Clause 9 of the Trust Deed gives the Minister appointed by the Respondent the authority to hire and fire employees of the Lavington United Church without reference to the Applicant and Interested Party.

d. That the management of the accounts of the Church is with the Leader's Meeting who have been authorized to do so by the constitution of the Respondent.

e. That the Trust Deed does not permit either the Applicant or the Interested Party to have a Minister in the Church.

f. That to date, the Respondent has merely adhered to the Trust Deed.

g. That the manifest object of the Applicant and the Interested Party is to the compel the Respondent to consent to a rewriting of the Trust Deed.

10. The Interested Party filed another Affidavit sworn by Rev. Joshua Omungo on 18<sup>th</sup> February, 2013 to the following effect:

a. That despite clear requirements of the Trust Deed, the Respondent has continued to frustrate and sideline the Applicant and Interested Party in the running of the affairs of the Church.

b. The Respondent has also continued to administer and manage the affairs and resources of the Church without prior consultation with the Applicant and Interested Party.

c. The Respondent has not bothered to respond to the issues raised by the Respondent and Interested Party and continues to act in defiance by its recent unilateral appointment of a Minister in charge of the Church.

d. That the Interested Party supports the grant of prayers for injunction to maintain the status quo pending the resolution of the substantive matters raised in these proceedings.

11. The Applicant, Respondent and Interested Party have all filed written submissions and made oral submissions all of which have been considered.

12. Very spirited arguments have been advanced on the part of all parties to this application. The arguments advanced clearly go to the core of this suit, namely the determination of the ownership rights over the two properties jointly referred to as the Land together with the Lavington United Church herein referred to as the Church. On the part of the Applicant and Respondent, both the Land and the Church are equally owned by all the parties herein and ownership rights thereof are equally shared by all the parties. However, on the part of the Respondent, they argue that there are no equal ownership rights evidenced by provisions contained in the Trust Deed together with the fact that it is the registered proprietor of the Land.

13. Upon serious consideration of the issues raised in this application, I am of the considered view that the import thereof is to urge this court to make a finding at the interlocutory stage of this suit which should actually be determined after the hearing of the Originating Summons hereof.

14. The Applicant's prayers if granted would have such far reaching impact upon the Church and place the 1000+ membership in a state of uncertainty and even confusion should this Court grant the said prayers in the interim period and later make a different finding on the same issues after the hearing of the Originating Summons and consideration of all evidence presented at that juncture.

15. Owing to these grave concerns, this Court dismisses the application. No order as to costs.

**SIGNED AND DELIVERED THE 15<sup>TH</sup> DAY OF MARCH 2013.**

**MARY M. GITUMBI**

**JUDGE**