



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT MALINDI**  
**CIVIL CASE 75 OF 2011**

**EMMANUEL CHURCH A.C.K. thro'**

**THE BOARD OF DIRECTORS .....PLAINTIFFS**

**VERSUS**

**KARIM SUKRI .....DEFENDANT**

**R U L I N G**

1. By the notice of motion filed on 20/6/11 the plaintiffs, EMMANUEL CHURCH A.C.K seeks an order restraining the respondent from inter alia alienating, transferring, selling, altering or committing wasting upon the subject matter of this suit described as Plot No.166, (although it appears that the correct No. is 1665) on grounds that the same is the property of the applicant and that the respondent had illegally commenced erecting structures thereon. The application is supported by the affidavit of Rev. EDWARD MGAZA JOSEPH. The key depositions therein are that;-

1. The plot no.1665 was awarded to the applicant during the Gongoni Settlement Scheme Land Adjudication process.

2. That the plaintiff has erected a church on the suit land.

3. That the Defendant, claiming a portion described as plot no. 3115 which was curved out of the applicant`s parcel of land has commenced the erection of a perimeter wall.

2. In his replying affidavit, the defendant depones that he acquired the Plot No.KILIFI/GONGONI/3115 in 2011 through an agreement of sale. He concedes however that there was a dispute between the previous plot owner/allotee and the plaintiff on claims that the plot no.3115 was curved out of the plaintiffs plot. The said dispute was allegedly resolved in the vendor`s favour following survey by the District Surveyor.

3. The respondent faults the plaintiff`s claim on grounds that the Attorney General has not been joined as a party and further that the applicant should have approached the court through Judicial Review

Proceedings. The parties filed submissions in respect of the application, which I have considered alongside the pleadings and affidavits of the parties.

4. It is apparent that the dispute before the court relates to the process of adjudication at Gongoni Squatters Settlement Scheme. The Defendant has submitted, and I think correctly that any objection to adjudication process ought to be lodged in the first instance with the land adjudication officer and the appeal, if any to the minister by virtue sections 26 and 29 of the Land Adjudication Act.

5. Secondly, the plaintiff's failure to join the Attorney General is both erroneous and baffling as the plaint contains adverse allegations of fraud and prayers directed at Department of Land Adjudication and Settlement.

6. In the case of **JAMES KOROPAN Vs KIMITEE OLE SELEK (2006)e KLR**, the court faced a situation not dissimilar to the present one. Acknowledging the special procedure provided for challenging the land adjudication process under the Land Adjudication Act, the court held that it had no jurisdiction to entertain land adjudication disputes, save perhaps through Judicial Review in regard to a minister's decision under section 29 of the Act.

7. For the foregoing reasons, I agree with the defendant's submission the plaintiff has erred by bringing an adjudication dispute before the High Court, whose jurisdiction is ousted by provisions of the Land Adjudication Act. The plaintiff's suit and application are according struck out.

Each party will bear its own costs.

Delivered and signed at Malindi this **11<sup>th</sup>** day of **May, 2012** in the presence of:

**C. W. Meoli**  
**JUDGE**