



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
Civil Appeal 50 of 2012
AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF
AFRICA TRUSTEES REGISTERED APPELLANT/APPLICANT
VERSUS
ELIJAH MIANO GATONYE.....1ST RESPONDENT/DEFENDANT
PETER WAIGWA NDOGO.....2ND RESPONDENT/DEFENDANT
IRENE GATHIGIA KINYUA.....3RD RESPONDENT/DEFENDANT

RULING

The African Independent Pentecostal Church of Africa Trustees Registered (the appellant/applicant) seek an order of injunction to issue against Elijah Miano Gatonye, Peter Waigwa Ndogo and Irene Gathigia Kinyua (the respondents) restraining them from conducting any business or acting on LR No. Laikipia/Gatero/1347 or in any other way dealing with the affairs of the African Independent Pentecostal Church of Africa.

The appellant/applicant was the plaintiff in SPMCC 44/2010, Nyahururu Court. On 1/2/2012, the court found inter alia that the plaintiff had failed to prove that it is the owner of LR Laikipia (Gatero) 1347 and dismissed the suit. The applicant is dissatisfied with the finding of the trial court and filed this appeal and an application dated 7/3/2012 for stay orders. The application is supported by the affidavit of David Ndumia Githinji, who describes himself as the chairman of Laikipia/Samburu Diocese of African Independent Pentecostal Church of Africa and a member of the Central Board of the Church. He deponed that the trial court in its judgment found that the 1st respondent's ordination as a deacon of A.I.P.C.A Eastern Archdiocese was unlawful; the 1st respondent's expulsion from AIPCA congregation was lawful; that L.R. Laikipia/Gatero/1347 was the property of AIPCA church and that the dispute between the respondent and appellant should have been resolved by the Church Tribunal and the court went ahead to strike out the suit; that when the respondent extracted the decree, only the dismissal order was captured and the said order was used to return to the suit premises on 12/2/2012 using Provincial Administration and denied 40 members of AIPCA from accessing the church, yet the court had decided that the church building belongs to the members. The applicant prays that the court grants an injunction pending the hearing of this appeal. The applicant contends that if the order of injunction is not granted, the congregation of Gatero church will suffer irreparably as it will miss spiritual nourishment from the church. In the supplementary affidavit dated 31/5/2012, the deponent said that the respondents had been expelled from the AIPCA membership and had no right to ownership of the church since the trial court had found that the respondents had been expelled from the church.

In reply to the application, Elijah Miano Gatonye swore a replying affidavit in which he contended that the principles for grant of an order of injunction pending appeal have not been satisfied; that members of Gatero AIPCA used to worship at the primary school and resolved to buy a parcel of land for purposes of putting up a church. They purchased LR Nyandarua/Gatero/1347 but during the construction of the church, a group led by David Ndumia filed PMCC 44/2010, claiming the land to be theirs; an order of injunction was issued which had the effect of evicting them from the church. That once judgment was given on 7/2/2012, they were allowed back into the premises; that on 12/2/2012, the non members voluntarily moved out of the church and they were surprised when they were served with pleadings in this

appeal; that if an order of injunction is granted it will amount to the court granting a mandatory injunction.

I have considered the application, affidavits filed and submissions of counsel. The applicant exhibited the judgment of the trial court which is the subject of this appeal. The court made several findings in the judgment that the decree did not reflect. For example the court found that the 1st defendant was ordained through the Eastern Arch Diocese which does not exist in the plaintiff's constitution and therefore the ordination was unlawful; that the 1st respondent's expulsion was lawful and within their Constitution. The court then went ahead to strike out the suit for want of jurisdiction in that the church's Constitution provided for arbitration in a tribunal first and that the applicant had not proved ownership but that the land belonged to Gatero Church. Having made those findings the lower court should have given some direction on how the parties should have proceeded so that it would not result in confusion and confrontation at the church as has happened. That being the case, and since that judgment is not yet set aside, the 1st respondent cannot purport to be the proper official of the church or that his faction is properly in possession of the suit premises.

Of interest is the fact that the suit land in respect of which the parties litigated before the Nyahururu Principal Magistrate's Court is LR No. Laikipia/Gatero/1347 which the appellant claims to belong to it. However, in the replying affidavit, the respondent claims to have purchased LR Nyandarua/Gatero/1347. They did not attach a copy of a title. The question is whether this dispute is over the same piece of land or not or whether the respondents have entered the wrong piece of land since their land reference number is different.

For orders of injunction to issue, the applicant has to demonstrate that it has a prima facie case with a high probability of success; or that if the order is not granted, the applicant will suffer irreparable injury/harm and lastly, if the court is in doubt, to decide the matter on a balance of convenience. The respondents claim to have entered the land soon after judgment of the lower court was given yet that same court had found that the 1st respondent's ordination was unlawful and his expulsion lawful. The lower court having made those important findings and only struck out the suit on the issue of jurisdiction, until the contrary is found the respondent is a breakaway group and not the owner of the land. I am satisfied that the applicant has demonstrated that it has a prima facie case with high chances of success. It attached a list of the members of the church which is not disputed.

The worshipers cannot access the premises for purposes of worship and the loss suffered by the congregation in terms of spiritual nourishment cannot be quantified or compensated in damages. For that reason, I am satisfied beyond any doubt that the applicant is entitled to an order of injunction pending the hearing and determination of the appeal. Costs of the application will abide the appeal.

DATED and DELIVERED this 28th day of September, 2012.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Chege for the appellant

Mr. Nderitu for the respondents

Kennedy – Court Clerk