



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL & LAND CASE 343 OF 2011

THE REGISTERED TRUSTEES GOSPEL OF GOD CHURCH.....PLAINTIFF/APPLICANT

VERSUS

MOSES KAMUNDI.....1ST DEFENDANT/RESPONDENT

GEDIEL KIRIMI.....2ND DEFENDANT/RESPONDENT

FRANCIS MUCHERU.....3RD DEFENDANT/RESPONDENT

**THE REGISTERED TRUSTEES, GLORIOUS
GOSPEL OF GOD CHURCH.....4TH DEFENDANT/RESPONDENT**

**THE TRUSTEES
GOSPEL OF GOD CHURCH INTERNATIONAL.....5TH DEFENDANT/RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL.....6TH DEFENDANT/RESPONDENT

RULING

1. Before me is an amended Notice of Motion dated 11th July 2011 brought under order 40 Rule 1 and 2 of the Civil Procedure rules, Section 3A,5 and 63 (e) of the Civil Procedure Act Cap 21. This application is supported by an affidavit deposed by Stephen Motsi. The applicant has approached this court asking for the following orders:-

i. **THAT** pending the hearing and determination of this application the 1st, 2nd, 3rd, 4th and 5th Defendants/Respondents, their servants, members, employees representatives and or agents or otherwise be restrained from using continuing to use, carrying on business, preaching or howsoever representing or holding themselves out under the name **GOSPEL OF GOD CHURCHES INTERNATIONAL** or any other name relating to and similar to the plaintiff's name.

ii. **THAT** pending the hearing and determination of this application the defendants by themselves, their agents, employees or otherwise howsoever be restrained from interfering with the defendants quiet and peaceable enjoyment of all their properties namely L.R No.209/3012/6, LR No. 209/1542 and any property registered in the name of the plaintiff.

iii. **THAT** pending the hearing and determination of this suit the defendants by themselves, their agents, employees or otherwise howsoever be restrained from interfering with the defendants quiet and peaceable enjoyment of all their properties namely L.R No.209/3012/6, LR No. 209/1542 and any

property registered in the name of the plaintiff.

iv. **THAT** this honourable court be pleased to grant such further or other expedient in the circumstances.

v. **THAT** costs of this application be provided for and be borne by the defendants.

2. The application is premised on the grounds that the plaintiff is a registered society under the Societies Act Cap 108 by virtue of a certificate of exemption from Registration dated 20th August 1968 and has been in existence for more than 43 years. The trustees of the plaintiff are also registered as such pursuant to the trustees (perpetual Succession) Act Cap 164, Laws of Kenya which registration was conducted on 24th May 1974. It is further grounded on the fact that a separate society by the name of **GLORIOUS GOSPEL OF GOD CHURCH** was registered in Kenya on the 7th July 2004 and that later this society applied for change of name through an amendment of the church constitution to **GOSPEL OF GOD CHURCH INTERNATIONAL** which was allowed by the Registrar of societies. A complaint was lodged and after listening to the complaint the registrar of societies ruled on 1st August 2005 that the **GOSPEL OF GOD CHURCH INTERNATIONAL** does revert to its former name **GLORIOUS GOSPEL OF GOD CHURCH**. That despite the registrars orders, sometimes in May 2011 **GOSPEL OF GOD CHURCH INTERNATIONAL TRUSTEES** went ahead to alienate with the intent to sell one of the plaintiff's properties in Meru because the Registrar of Lands and other Government officials could not distinguish the difference between the two names. This case is pending in court. The plaintiff is therefore apprehensive that the 1st to 5th defendants may take over alienate and sell other properties of the plaintiff.

3. This application is supported by the affidavit of Stephen Motsi sworn on 11th July 2011 and a supplementary affidavit dated 9/8/2011 also sworn by Motsi. He swears that, he is one of the trustees of the plaintiff and duly authorised to swear the affidavit. He stated that the plaintiff is a registered society mandated to operate as a church under the Societies Act by virtue of a Certificate of exemption from Registration No.1807 dated 20th August 1968. The plaintiff also registered its Trustees by virtue of the trustees (perpetual succession) Act which registration was concluded on 24th May 1974 and has since been in existence. He further swears that the tranquillity of the church was broken in 1984/5 when some followers of the church together with the 1st, 2nd and 3rd Defendant/Respondent attempted to take over the leadership of the church by force. The aim of the defendants was to grab power by expulsion of some of the applicants and other senior members of the church mainly in Meru branch. When the wrangles hit the church the Registrar General cancelled the registration of the church in 1985. He deposed that when the Defendants/Respondents attempted to take over the church leadership by force but failed to and so they attempted to register a church similar to the **GOSPEL OF GOD CHURCH** under the name **GLORIA GOSPEL CHURCH** with the aim of deceiving the registrar that **GOSPEL OF GOD CHURCH** has changed his name to the **GLORIA GOSPEL CHURCH** and therefore the successor of the former church in all respects. Through the church's intervention, the government was made aware of the intentions behind the registration of the **GLORIA GOSPEL CHURCH** and refused to register it in 1987. In 2004, the Defendants registered a society by the name **GLORIOUS GOSPEL OF GOD CHURCH** under certificate number 23742 and in 2005 the said defendants applied to the Registrar of Societies to amend their constitution to change their name **GLORIOUS GOSPEL OF GOD CHURCH** to **GOSPEL OF GOD CHURCH INTERNATIONAL** which was allowed. This registration was appealed and subsequently the Registrar by a ruling contained in the letter dated 1st August 2005 ruled that due to the similarities of names between **GOSPEL OF GOD CHURCH** and **GOSPEL OF GOD CHURCH INTERNATIONAL** the church reverts to its former name **GLORIOUS GOSPEL OF GOD CHURCH**. In 2009 the plaintiff/Applicant petitioned the Registrar of Societies to reinstate the plaintiff as a society and on 11th November 2009 the plaintiff /Applicant was reinstated and registered. In May 2011 the Plaintiff moved court in Meru in CMCC NO. 116 of 2011 against the Defendant/Respondents representatives upon discovery that the church properties had been alienated and sold by **GOSPEL OF GOD CHURCH INTERNATIONAL** which case is still pending in court. The deponent believes that the transfer was done because the officials at the Ministry of Lands were not able to distinguish the difference between the two names. He swears that on further investigations they discovered that

GLORIOUS GOSPEL OF GOD CHURCH INTERNATIONAL had not reverted to the name **GLORIOUS GOSPEL OF GOD CHURCH** as directed by the Registrar. He concludes that they are apprehensive that the actions of the Defendants/Respondents are intended to alienate church properties for sale which will lead to irreparable harm to the church and wants this Honourable court to allow the application allowed.

4. The application is opposed. The Defendants/Respondents through the 1st, 2nd, and 3rd Defendants/Respondents swore Replying and supplementary Affidavits in opposition to the application. Moses Kamundi swore his affidavit on 25th July 2011 stating that he became a member in 1972 and subsequently became a preacher when the church was known as **GOSPEL OF GOD CHURCH**. He was elected trustee of the church in 1985. He states that after elections the former officials that had been voted out refused to hand over the office to the newly elected officials. A suit was subsequently filed in the High Court HCCC NO. 2409/85 compelling the old officials to hand over the management, items and properties of the church to the new officials which they did. In the same year, the government rescinded the exemption of Registration of the **GOSPEL OF GOD CHURCH** from registration. He further deposes that after they had taken over the office, they applied for registration but the Registrar of Societies declined in 1987 advising them to register under another name. In 2004 the church was registered in the name of **GLORIOUS GOSPEL OF GOD CHURCH** and in 2005 the church amended its constitution and adopted the name **GOSPEL OF GOD CHURCH INTERNATIONAL**. He swears that theirs is not a splinter group but legitimate and bonafide representatives of the church in Kenya recognised by the church headquarters in Zimbabwe. He explained that it is the activities of the Plaintiff/Applicants that led to the cancellation of the certificate of exemption of registration. He swears that they have been operating under the name Gospel of God International since 2005 and that the Plaintiff/Applicant is bringing un-necessary conflict by staking claim to church property. He concluded by asking this court to dismiss the application.

5. Mr Francis Mucheru swore his affidavit on 25th July 2011. He swears that **GOSPEL OF GOD CHURCH** existed since 1968 to 1985 when the exemption was rescinded. He further swears that the properties were taken over and continue to be catered for by **GOSPEL OF GOD CHURCH INTERNATIONAL**. He says the expulsion was conducted by government and not instigated by the Respondents. After the rescission of exemption from registration of the **GOSPEL OF GOD** the Defendants/Respondents submitted an application for registration in accordance with the law. The Registrar of societies declined to register Gospel of God and advised that registration should be done in another name. In the year 2004, they submitted an application for registration as **GLORIOUS GOSPEL OF GOD CHURCH** which was registered that same year. He further stated that no confusion could ensue from the use of the name **GOSPEL OF GOD CHURCH INTERNATIONAL** as **GOSPEL OF GOD CHURCH** is no longer in existence. He states that in view of the clear history showing how **GOSPEL OF GOD CHURCH INTERNATIONAL** evolved from **GOSPEL OF GOD CHURCH** the transfer of land was lawfully effected by the church. He contends that the defendants/Respondents legitimately hold the church properties and documents in accordance with the law and that the claimants are the ones who are trying to fraudulently benefit from church properties and frustrate the church from its mission work. He concluded that the application has no merit and should be dismissed with costs.

6. A Supplementary affidavit was sworn by Mr Stephen Motsi on 9th August 2011 who swore the affidavit on behalf of the Plaintiff/Applicant in which he replied to the affidavits of Gediel Kirimi Japhet, Francis M. Mucheru and Moses Kamundi deposed on 25th July 2011. He states that the affidavits are full of malicious falsehoods, lies and material non-disclosure explaining that the 1st, 2nd, and 3rd Defendant/Respondents were never given the documents relating to the church at any point in time or at all. He discloses that he has been holding on to the log books for motor vehicles since 1985. He also says there have never been any elections conducted in Meru neither have the Defendants/Respondents been registered as trustees of **GOSPEL OF GOD CHURCH** or as officials of the plaintiff and that they have never attended any sessions in the plaintiff/Applicant church situated in Nairobi since they left the church in 1985. He stated that the Registrar General recognised the Plaintiff church to be valid.

7. The parties filed their written submissions and appeared before me on the 24th April 2012 when each

party canvassed their case. Counsel for the applicant stated that he will rely on the ruling in **HCC No.114/11** delivered by Lesiit J and sought to be granted prayers 2 and 4 of the amended Notice of Motion which have been summarised in their submissions. He reiterated the contents of the affidavits. The Respondents counsel also highlighted the submissions he filed and reiterated the contents of the affidavits sworn by the 1st to 3rd Defendants/Respondents.

8. I have considered the submissions both written and oral from both parties and the issues that have been raised in the submissions and Affidavit. The main issues to be determined by this honourable court is whether the plaintiff/applicant has made out a case to justify the orders of injunction it is praying for. The case of **Giella –vs- Cassman Brown & Co.Ltd (1973) EA** clearly outlines the principles to be considered when granting an injunction and this can be summarised as follows:-

Does the applicant have a prima facie case in seeking injunction in terms of prayers 2 and 4? Has the Plaintiff/Applicant shown that it has suffered irreparable injury that cannot be compensated by damages? Where does the balance of convenience tilt?

9. In **Mrao Ltd vs. First American Bank of Kenya Ltd** the Hon. Mr. Justice Bosire JA(as he then was)said -

"..So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party, as to call for an explanation or rebuttal from the latter."

10. Retired Justice Kuloba in his book on Injunctions stated that an injunction can be defined as a solemn and authoritative remedial judicial command of a court of equity, couched in a formal order or decree directed against a person named in it and requiring him to take positive steps to do or refrain from doing an act or continuing a particular omission which is precisely set out in the decree or order.

11. I have been asked to grant prayer 2 and 4 of the application.

Prayer 2 is for orders to restrain the Defendants/Respondents, their servants, members, employees, representatives and or agents from using ,continuing to use carry on business, preaching or howsoever representing or holding themselves out under the name **GOSPEL OF GOD INTERNATIONAL** or any other name relating to and similar to the plaintiffs name. By a letter dated 22nd March 2005 the Registrar of Societies allowed the use of Gospel of God Church International after the defendants had applied to be registered under that name. However the Plaintiff/Applicant lodged an appeal on the use of this name and by a letter. This appeal was allowed and by a letter dated 1st August 2005, the registrar wrote to the Defendants/Respondents ordering that Gospel of God Church International revert to its former name of Glorious Gospel of God church failure to which the process of cancellation shall be commenced. This directive was made in August 2005 and both parties having participated in the appeal obviously knew the outcome .This application has been filed in July 2011, seven years later. Equity aids the vigilant and not the indolent. It goes without say that delay defaults equity and equity will refuses to aid stale delay. The plaintiff/Applicant was aware of this directive from the Registrar of societies and therefore fully cognizant of their rights and their infringement as early as 2005.Futhermore the Plaintiff/Applicant has the remedy of approaching the Registrar of Societies to commence cancellation process.

12. Prayer 4 is for injunction restraining the defendants from interfering with plaintiff's quiet and peaceable enjoyment of all their properties namely **LRNo.209/3012/6, and LR No 209/1542** and any other property registered in the name of the plaintiff. I have looked at the pleadings of both parties with the annexures therein. **LRNo.209/3012/6** is not clear and one can barely read the contents of the title .Furthermore there is an encumbrance lodged in 2002 which has not been lifted. That in itself has secured the title and therefore there is no need for an injunction .Further it is difficult to ascertain that **LR No 209/1542** indicated as annexure 3 of the Plaintiff/Applicant's supporting affidavit is owned by the Plaintiff/Applicant. The copy annexed is not complete and the court cannot discern the title from some sections of it, this title is not complete in itself. What has been exhibited as **Title No Ntima/Igoki/4485** is

a property that has not been specified in the application and which has already been disposed off. Court cannot issue orders in vain and also cannot issue ambiguous orders. Which other properties is the plaintiff claiming ownership that has to be protected? These properties must be stated to precision to enable court issue orders appropriately and property title deed attached to demonstrate ownership.

13. Courts have reiterated that it cannot embarrass itself by entertaining an action in which the relief claimed cannot be enforced or make an order that cannot be lawfully enforced. If it will be impossible to comply with the injunction sought, the court will decline to grant it. For these reasons, I therefore for dismiss the Notice of Motion dated 11th July 2011, with costs to the Respondents. Parties should settle this matter for full hearing for it is apparent from the pleadings that the parties are wrangling over ownership and control of the names of the churches they operate which in effect stems to the ownership of the church properties.

Orders accordingly.

Dated, signed and delivered on this 18th Day of September 2012

R.E.OUGO
JUDGE

In the presence of:-

.....For the Plaintiff/Applicant

.....For the 1st to 5th Defendants/Respondents

.....For 6th Defendant/ Respondent