



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 832 of 2012

ARCHBISHOP STEPHEN MUSA THUO.....1ST PLAINTIFF

SENIOR VICAAR JOEL MACHARIA.....2ND PLAINTIFF

All suing as officials of Kenya Israel Evangelist Church of East Africa

VERSUS

BISHOP JOHANA KAMANDE.....1ST DEFENDANT

JOHANA MUNGAI CIURI2ND DEFENDANT

RULING

This is a Notice of Motion dated 9th November, 2012 brought by the Plaintiffs/Applicants for orders that:

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(a)The Respondents whether by themselves, their servants, employees, agents or persons claiming under their authority be restrained by injunction from interfering, alienating, dealing in any manner whatsoever with the affairs of Kenya Israel Evangelist Church of East Africa Saba Saba on Plot No. 5 until the determination of the suit herein.

(b)That the officer commanding Saba Saba Police Station do supervise and or oversee the compliance.

(c)Costs of the application be provided for.

The application was brought under *Order 40 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.*

This application is supported of the grounds on the face of the application and also annexed affidavit of Joel Machael.

It was started that the plaintiffs are officials of Kenya Israel Evangelist Church of East Africa.

That the church aforesaid was allotted a plot by County Council of Maragua in Saba Saba Town in 1998. That the Defendants are official of Israel Prophetic Missionary of Mercy Church and are interfering, meddling with the plaintiffs' church by running their church therein and that the members of the Plaintiff's church have been displaced.

In his Affidavit, Joel Macharia, a Senior Vicar of Kenya Evangelist Church of East Africa, Saba Saba (herein after referred to as the church) averred that the church was founded and registered in the year 1998. That the church applied for a space to Maragua County Council in 1998 and the church was allotted plot No. 5 in Saba Saba Township.

That the 2nd Respondent was for many years the presiding Arch-deacon at the plaintiff's church Israel Prophetic Missionary of Mercy where he is the Arch-Deacon todate.

He further averred that on or around the month of June 2012, the 2nd Defendant invaded the plaintiff's church and has been purporting to be the presiding Arch-Deacon in the said church.

That on 30/9/2012, the parties met led by Arch-Bishop Stephen Musa Thuo and 2nd plaintiff and the Defendants agreed to vacate the premise however the defendants have not vacated the church and plaintiff fear that the Defendants means to fraudulently displace them and their members the use of the church without due process of the land.

The plaintiffs therefore prayed that the Defendants be ordered to vacate the plot and officer commanding Saba Saba Police Station do assist in supervising the order.

The application herein was not opposed. There was a return of service dated 23/11/2012 which showed that the Defendants were served with the Notice of Motion but declined to sign for receipt of the same. The application proceeded for hearing on 26/11/2012 exparte.

The Court has now considered the application herein and the relevant law. The application is brought under *Order 40 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act*.

Order 40 Rule 1 states as follow: -

“Where in any suit it is proved by affidavit or otherwise.

a) That any property in dispute in a suit is on danger of being wasted, damaged or alienated by any party to the suit or wrongful sold in execution of a decree or

b) That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may obstruct or delay in the execution of any Decree that may be passed against the Defendant in the suit.

The court may order a temporary injunction to restrain which act or make such other order for the purpose of staying and preventing the wasting, damaging, alienating, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders”.

In the instant suit the property in dispute is Plot No. 5 which is in Saba Saba Township the Plaintiffs/Applicants alleges that the said plot was allocated to the 'Church' by Maragua County Council in the year 1998.

The plaintiffs/Applicants further alleges that the Defendants have now moved into the said 'Church” and the members of the Plaintiff/Applicants church have beenthe use of the said church.

Order 40 Rule 1 gives instance of case which qualifies for temporary injunction: that the property in dispute is in danger of being wasted damaged or alienated by any of the paty herein.

The Applicants averred that the Defendants are using the land at the expense of the members of the plaintiffs church. But does that act of Defendants a movement to causing danger of wasting, damaging or alienating the suit property? I do not think so as the plaintiffs have not demonstrated that the Defendants intends to waste, damage or alienate the said suit property.

There was also not evidence that the Defendants intends to remove or dispose of the suit property.

The application herein does not qualify under the case stated by Order 40 Rule 1 where an order for temporary injunction may be issued.

The application is also brought under Section 3A of the Civil Procedure Act, Section 3A of the Civil Procedure Act states;

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.”

The plaintiffs averred that the Kenya Israel Evangelist Church of East Africa was allotted Plot No. 5 in Saba Saba Township in the year 1998.

that the 2nd Defendant who was an Arch-Deacon in the Plaintiff's Church decamped to Israel Prophetic Missionary of Mercy Church and have been interfering and meddling with the Plaintiffs Church by running their church in the Plaintiff's Church. Thus the members of the Plaintiffs Church have been displaced and this act by the Defendants would likely cause altercation and or lawlessness. The Plaintiffs therefore pray for restraining order against the Defendants.

If the plaintiffs have been using the premises since 1998 and now they have been displaced of the same, then the Plaintiffs are justified to seek the end of justice in Court of Law.

The fact that members of plaintiffs' church have been displaced and have nowhere to worship means that they have suffered psychological torture and loss of a place to worship. Can such a lost be compensated by way of costs if at all the plaintiffs will succeed in their case in future? I doubt that.

The cardinal principles applicable in an application for temporary injunction unlike well land out in the case of ***Giela vs. Cassman Brown & Co. Ltd. Civil application No. 51 of 1972.*** where it was held.

- a) The Applicant must show *prima-facie* case with probability of success.
- b) The Applicant might suffer irreparable injury.
- c) When the court in doubt it will decide on a balance of convenience.

Section 3A of the Civil Procedure Act also donates to this court inherent power to make such orders as may be necessary for the end of justice.

Members of the Plaintiffs/Applicants church have been kept out of their place of worship. For the said members to feel the ends of justice, the court finds it proper to allow the applicants application in terms of prayers No. 3 and 4.

The court allows the Applicants application and orders ad follows: -

- a) The 1st and 2nd Defendants/Respondents whether by themselves, their servants employees, agents or persons claiming under their authority be and are hereby restrained by an injunction from interfering, alienating, dealing in any manner whatsoever with the affairs of Kenya Israel Evangelist Church of East Africa, Saba Saba on Plot No. 5 until the determination of the suit herein.
- b) The officer commanding Saba Saba Police Station do supervise and or oversee the compliance of the order.
- c) Costs of this application be in the cause.

Dated, signed and delivered this 17th day of December, 2012.

L.N. GACHERU
JUDGE

In the Presence of:

.....for the Plaintiffs/Applicants

.....for the Defendants/Respondents

.....Court clerk