



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 267 OF 2010

LUKA KOMU KARANJA.....PLAINTIFF/APPLICANT

VERSUS

SAMUEL NGANGA KARUGA.....1ST DEFENDANT/RESPONDENT
ZABLON GICHINA.....2ND DEFENDANT/RESPONDENT
PASTOR JOSEPH NYORO NGARUIYA.....3RD DEFENDANT/RESPONDENT
JOHN NGIGI.....4TH DEFENDANT/RESPONDENT
RUTH WAIRIMU.....5TH DEFENDANT/RESPONDENT

RULING

This Ruling relates to an application by way of a Chamber Summons dated 21st October 2010 in which the applicant seeks the orders following -

(a) That this Application be certified as urgent and service thereof be dispensed in the first instance.

(b) That pending the interpartes hearing hereof, this Honourable court be pleased to temporarily restrain the Defendants herein jointly and severally, whether by themselves, their agents, servants, employees or any other individual claiming authority from them, from entering, trespassing or in any other manner howsoever interfering with the Plaintiff's peaceful use, possession, enjoyment and occupation of his parcel; No. Nyandarua/Njabini/5048 or any other portion thereof.

(c) That pending the hearing and final disposal of this suit, this Honourable court be pleased to restrain the Defendants herein jointly and severally, whether by themselves, their agents, servants, employees or any other individual claiming authority from entering, trespassing or in any other manner howsoever interfering with the Plaintiff's peaceful use, possession, enjoyment and occupation of his parcel No. Nyandarua/Njabini/5048 or any other portion thereof.

(d) That the OCS Haraka Police Station do assist in the implementation of the orders herein as sought.

(e) That the Plaintiff/Applicant be awarded the costs of this Application.

The application was based upon the grounds on the face thereof, and the Supporting Affidavit of the Applicant sworn and filed on the same 21st day of October 2010, and a Further Affidavit of the

Applicant sworn and filed on 25th November 2010.

The Applicant is represented by the firm of Kiplenge and Kurgat while the firm of Waiganjo & Co. represents the Respondents. When this matter came up before me for hearing on 2nd December 2010, there was common agreement between Mr. Kurgat who urged the application on behalf of the Applicant and Mr. Waiganjo who urged the Application on behalf the Respondents that the suit land is indeed registered in the name of the Applicant or put differently, the applicant is the registered proprietor of the land, which includes ¼ acre portion upon which is erected the Respondent's Church - called the **Full Gospel Churches of Kenya** ("F.G.C.K"). The Applicant's and the Respondents' and the Respondents' and their counsel's point of departure is the nature of the interest of the Respondents on the said portion of land.

The Applicant's view which was urged by Mr. Kurgat is that the Applicant never sold any land to the Respondents. This is indeed so, but what the Respondent's say through the Replying Affidavit of Pastor Joseph Nyoro Ngaruiya is that the portion of land in question was sold to the Full Gospel Churches of Kenya through one Joseph Kabugi Kuria in the year 2003, and upon payment of the purchase price of Kshs 75,000/= the F.G.C.K. took possession of the land, and erected their church on it, and had the full name "**Full Gospel Churches of Kenya**" painted upon the iron sheets roof of the church.

All seemed well until the year 2007 when disagreement among members of the F.G.C.K., and Mr. Joseph Kabugi Kuria was removed as the pastor in the Church. Mr. Joseph Kabugi Kuria who was the front man of the F.G.C.K., moved away with his supporters to and held on to the documents of the sale and purchase of the parcel of land where the church stands. To secure their interest as purchasers the F.G.C.K. placed a caution on the title. That caution was removed by a court order in Nyahururu P.M.C. Misc. Application No. 2 of 2010, before the Hon. A. B. Mongare, Senior Resident Magistrate, paving the way for the Applicant to have the entire parcel of land registered in his own name.

Having achieved that task, the Applicant is now tackling the Respondents, and wants them restrained from holding any church services in his land, pending the determination of the suit he has filed against them.

The principles upon which courts give temporary or interlocutory injunctions were settled in the *locus classicus* case of **GIELLA VS. CASSMAN BROWN & CO. LTD [1973] 358**. These principles are that such an injunction will be issued where -

- (a) *the Applicant or Plaintiff has established a prima facie case with a probability of success,*
- (b) *the Applicant/or Plaintiff will suffer loss which he will not be adequately compensated in damages, or*
- (c) *if in doubt, on the balance of convenience.*

In this case, it seems clear to me that the Applicant has shifted allegiance from the Full Gospel Churches of Kenya to world wide **Full Gospel Mission of Kenya** to which Joseph Kabugi Kuria belongs and is also clear from the Replying Affidavit of the 3rd Respondent that documents of purchasing the suit land were given to one Stanley Waweru Kamau who was then the pastor in-charge of South Kinangop/Njabini Local Church Assembly. The said **Stanley Waweru Kamau** has also moved to the Worldwide Full Gospel Mission of Kenya and one cannot help but discern a grand strategy between the Applicant and the **Worldwide Full Gospel Mission of Kenya** to snatch the suit land from the F.G.C.K. to which the Respondents belong and probably contributed to the purchase price of Kshs 75,000/=.

The applicant claims that he had no capacity to sell the land in the year 2003. He is silent as to why he had no capacity. Obviously if he had a beneficial interest in the land he could enter into Agreement of Sale thereof and the sale could be perfected through his acquiring full interest in the subject

matter, the suit land.

I do not think he can escape his obligation by hiding behind the provisions of the Land Control Act, (*Cap. 302, Laws of Kenya*). The Respondents' advisers need to show the role of Stanley Waweru Kamau and Joseph Kabugi Kuria in the purchase of the suit land in relation to the claims of the Applicant.

I think there are serious issues of contract law, on the purchase of land before the Respondents can be enjoined from worshipping in their church built on land acquired through their church. I do not think they are trespassers. They are purchasers, or represent the F.G.C.K. in possession. There needs to be inquiry into the legality of F.G.C.K.'s possession of the land. There are also questions as to whether the suit lies against these Defendants who claim that they are not officials of F.G.C.K.

For all these reasons, I cannot say that the Applicant has established a prima facie case with any probability of success. He has nothing to suffer. He received the purchase price. Clearly the balance of convenience lies with the Respondents on behalf of their church F.G.C.K.

For those reasons, the Applicant's Chamber Summons of 21st October, 2010, fails and the same is dismissed with costs to the Respondents.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 11th day of March 2011

M. J. ANYARA EMUKULE
JUDGE