

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 2234 OF 2007

GOSPEL BIBLE BAPTIST MISSION (GBBM)PLAINTIFF

V E R S U S

ALFRED ROBERT LACKEY1ST DEFENDANT
KIDS ALIVE INTERNATIONAL2ND DEFENDANT
KIDS ALIVE REGISTERED TRUSTEES3RD DEFENDANT

R U L I N G

This suit is over a parcel of land No. Nyeri/Lusoi/1021 within Nyeri District. Under section 12 of the Civil Procedure Act (Cap. 21) the case ought to have been filed at the High Court in Nyeri. Secondly, the Plaintiff describes itself as “Gospel Bible Baptist Mission (GBBM) suing through its Registered Trustees”. It is alleged in the Plaint that the suit property is vested in the Trustees. Under Order 31 rule 2 the Trustees should have been named.

Lastly, there is the question whether the Amended Plaint filed on 22nd November 2007 was with leave of the court. The Plaintiff’s counsel states that leave was granted on 6th November 2007. The Defendants counsel appears to agree that on 6th November 2007 leave was granted for the amendment but says the same lapsed on 20th November 2007. I have read the record regarding the proceedings of 6th November 2007. The order made on that day is not clear. I have to resolve the matter in favour of the Plaintiff. However, the amendment did not meet the requirements of the law.

I consider that on the same 6th November 2007 the parties agreed to have the main suit heard. The Preliminary Objection dated 26th November 2007 would therefore go against that agreement. However, even such agreement would not confer jurisdiction to the court where none exists.

This is a land matter that has been in court since 2007. Given what has happened as shown by the record, and the provisions of sections 1A and 1B of the Civil Procedure Act and Article 159 (2) (d) of the Constitution of Kenya 2010, the objection by the Defendants is sustained with costs. However, leave of 14 days is granted to the Plaintiff to file a compliant suit at the High Court at Nyeri,

DATED AND DELIVERED AT NAIROBI

THIS 12TH DAY OF MAY 2011

A. O. MUCHELULE

J U D G E