



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 455 OF 2011**

**BISHOP ISAIAH CHALLO & 2 OTHERS ..... PLAINTIFF**

**VERSUS**

**THE TRUSTEES REDEEMED GOSPEL CHURCH & ANR .....DEFENDANT**

Coram : Mwera J.  
Amani for Plaintiffs  
Mrs. Barasa for Defendants  
Njoroge court clerk

**RULING**

The plaintiffs' notice of motion dated 30.8.11 was brought under sections 1A, 1B, 3A of Civil Procedure Act and Order 40 rules 2, 3, 4 of Civil Procedure Rules. They prayed for interim injunction:

i) that the defendants be restrained from entering, remaining on and interfering with their occupation and enjoyment of PLOT NO. 107/384, UMOJA II

The grounds stated that the defendants had been interfering with the plaintiffs' members by barring them from the suit premises – a place of worship, by mobilizing youths to heckle them or forcibly getting into the premises and remaining there. Another act was to get city council personnel to demolish the sanctuary.

The 1<sup>st</sup> plaintiff, Bishop Isaiah Challos deponed in a supporting affidavit that his side owned the suit property as per an annexed letter of allotment dated 11.8.98 from the City Council. That the property was transferred to the plaintiffs by the 1<sup>st</sup> defendant as per another annexed letter dated 1.11.99. Then the City Council gave them a lease on 24.1.01. Apparently a building/church was erected on the land.

Then on 23.8.11, the building was demolished when the City Council sent its motor vehicles reg. nos. KAV 349 E and KAV 316 E to the site. The council does not appear to be a party in these proceedings. And on 24.8.11 local youths came to the site shouting that it was intended for a social hall to be built by a local constituency fund. That despite the 1<sup>st</sup> defendant assuring the plaintiffs that the plot was theirs by a letter dated 4.8.11 (ann. F), it had advised the local council to demolish the building on the plot, claiming that they, the plaintiffs, were trespassers on it. In the light of all that, the injunction ought to issue.

In the grounds of opposition, it was contended that the motion was an abuse of the court process, based on untruths by the applicant(s) who had no *locus standi*. There had been non – disclosure of material facts and the motion was vexatious and misconceived etc.

In a long replying affidavit Bishop Arthur Kitonga, leader of the 1<sup>st</sup> defendant stated that the 1<sup>st</sup> plaintiff, Bishop Chalio (Kyalo), who once belonged to the 1<sup>st</sup> defendant, got permission in 1998 to start a church, Living Water International, on the 1<sup>st</sup> defendant's plot. The 1<sup>st</sup> plaintiff then defected from the 1<sup>st</sup> defendant church and proceeded to claim the suit plot as belonging to his church. The 1<sup>st</sup> plaintiff's church is not registered but was started in its own name but still as part of the 1<sup>st</sup> defendant. That the 1<sup>st</sup> defendant has other branches in Kenya also under different names. They are all built and occupy land registered in the name of the 1<sup>st</sup> defendant. And that is how the deponent moved the city council to demolish the 1<sup>st</sup> plaintiff's building on the suit-property to give vacant possession to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant had given authority that city council allow the suit plot to be used by the 1<sup>st</sup> plaintiff as part of itself not separate entity. So all in all the 1<sup>st</sup> plaintiff had suppressed material facts in order to seek the orders here. It is noted that the 1<sup>st</sup> defendant annexed all the relevant documents alluded to in its replying affidavit.

Directed to submit the plaintiffs maintained their position as men of the cloth who ought to be believed. They took all proper procedures to acquire the suit premises and so deserve the orders.

Having considered the depositions, documents and submissions herein, this court is unable to uphold a claim that the plaintiffs have made out a *prima facie* case. The position is that as of now the council lease dated 07.07.11 reads that NAIROBI/UMOJA/BLOCK 107/384 (formerly PLOT No. 384 Umoja II) is in the name of the 1<sup>st</sup> defendant – the Redeemed Gospel Church (ann. 14). Perhaps this dispute should be linked to the defection of the 1<sup>st</sup> plaintiff from the 1<sup>st</sup> defendant. He is now making moves to acquire the premises where his church stands. He did not deny the defection and, besides, the court was not favoured with a copy of registration of the 1<sup>st</sup> plaintiff's church. Or indeed the same was not readily available on the file.

In sum this application is dismissed with costs. This does not however mean that the plaintiffs have lost all. They still have the suit itself to prosecute their claim.

Orders accordingly.

Delivered on 24.10.11

**J. W. MWERA**  
**JUDGE**