

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 190 of 2009

GEOFFREY M. GITAU.....PLAINTIFF

VERSUS

STANLEY W. KAMAU.....1ST DEFENDANT

MOSES KIMANI.....2ND DEFENDANT

PAUL MUNDIA MURITHI.....3RD DEFENDANT

RULING

Both the plaintiff and the 1st defendant are churches carrying out their preaching missions in South Kinangop and elsewhere in the Republic of Kenya. The plaintiff claims in its plaint that in 1999 it bought the piece of land known as **Title Number Nyandarua/Githioro/1696** (the suit land) from the 2nd defendant and obtained consent for that transaction on 6th October 2005. It thereafter built a temporary church on the land and has been worshipping in it.

In June/July 2009 the plaintiff was shocked to learn that the 1st defendant which is a church of a splinter group of its members had fraudulently transferred to itself the suit land. The plaintiff therefore prays that the register in respect of the suit land be rectified to reflect its name as the owner thereof, a permanent injunction to restrain the defendants by themselves, their servants and/or agents from entering into, remaining upon, building, alienating or in any other way disposing of or interfering with its quiet possession of the suit land, general damages, costs and interest.

Contemporaneous with the filing of the suit the plaintiff filed a chamber summons under **Section 63(c)** of the **Civil Procedure Act** and **Order 39 Rules 1, 2, 3 & 9** of the **Civil Procedure Rules** and sought a temporary injunction to restrain the defendants by themselves, their servants and/or agents from entering into, remaining upon, disposing or in any other way interfering with of the suit land until this suit is heard and determined.

The application is supported by the affidavit of Reverend Joseph Mutheca Gitau, the registered trustee of the plaintiff, in which he has repeated the above averments and stated that the plaintiff is apprehensive that its services on the suit land may be interfered with by the 1st defendant.

In response both in its defence and in the replying affidavit of Moses Kimani Ngaruiya one of the alleged trustees of the defendant the 1st defendant averred that this suit is incompetent and bad in law as the named trustees of the plaintiff having been barred by an order issued in Nairobi HCCC No. 1236 of 2004 from being registered as the trustees of the plaintiff have no capacity to bring this suit. The 1st defendant also denied the plaintiff's claim and averred that it is the duly registered proprietor of the suit piece of land having bought it from the 2nd defendant on

31st October 2006. It has since been worshipping on it and if anything it is the plaintiff who is trespassing on it. As such it rubbished the consent obtained by the plaintiff as a forgery and null and void for the reason that it was obtained out of time without leave of court.

Mr. Njuguna for the plaintiff submitted that the officials of the 1st defendant got possession of the Title Deeds in respect of the suit land while they were still members of the plaintiff before forming the splinter group after which they got the 2nd defendant to transfer it to the 1st defendant. On his part Mr. Mwaniki for the 2nd defendant also rubbished the consent obtained by the plaintiffs and added that the agreement exhibited by the plaintiff is inadmissible as it is not stamped.

I have considered these rival submissions and read the pleadings in this case. Having not heard evidence I cannot at this

stage make any definitive findings on matters in controversy. As the defendant's allegations that the named officials of the plaintiff and the 1st defendant have no capacity to sue or to be sued are begged on the order allegedly obtained in Nairobi HCCC 1236 of 2004 the exact details of which I do not have, I cannot at this stage determine whether or not the said officials have locus standi in the matter. That will have to be decided by the trial court.

However, from the pleadings and especially the photos of the plaintiff's church on the suit land which the defendants said nothing about, I am satisfied that the plaintiff has made a case for injunction. Consequently, I grant this application and order that pending the hearing and determination of this suit a temporary injunction is hereby issued to restrain the defendants by themselves, their servants and/or agents from entering into, remaining upon or in any other way interfering with or disposing of the suit land until this suit is heard and determined. The costs of this application shall be costs in cause.

SIGNED, DATED and DELIVERED this 19th day of April March, 2010.

**D. K. MARAGA
JUDGE.**