



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 181 of 2009

KENYA CHURCH OF CHRIST REGISTERED TRUSTEE.... PLAINTIFF
VERSUS
WILMOSE KIPLANGAT & 2 OTHERS.....DEFENDANTS

RULING

The application before me is dated 1st April 2009 brought pursuant to Order 39 Rules 1, 2 & 9 of the Civil Procedure Rules. It is supported by the affidavits of **James David Reppart** and **Kenneth Beckloff**. It seeks a temporarily injunction to issue against the defendants, their agents, their servants, their adherence or any persons aligned to them ,from trespassing, entering, remaining, taking up or in any manner dealing with the Plaintiff's property known as L.R.NO. 37/723(IR 408/70) at Birongo Square Nairobi West and cost of the application.

The defendants opposed the application and have filed a replying affidavit dated 5th May 2009, sworn by Wilmoose Kiplagat

It is submitted on behalf of the Plaintiff, that the suit property is registered in the name of the Plaintiff, under Registration of Titles Act and the certificate of title issued ought to be taken by all as conclusive evidence of ownership. Further it was submitted that the 1st and 2nd defendants are in possession of the suit premises yet they are no longer members of the plaintiff as they belong to a new church known as **New Life Christian Church**. That the plaintiff has not given authority or consent for the defendant's new church to occupy the premises. It was also submitted that the **New Life Christian Church** has doctrine organization and rituals that are not acceptable to the Plaintiff. The estimate of the suit property given is Ksh 60 million. Finally that the continued occupation of the premises has dented the image of the plaintiff in the eyes of its international donors.

On their part, in objecting to the application the defendants states that they have been in possession of the suit premises since 2004, and have been conducting their affairs in the same premises. They contend that there is an issue as to whether the plaintiff mandated filing of this suit, as the suit ought to have to filed in the names of the Officials of the Plaintiff. That J. D. Reppart does not describe himself as an official or trustee of the Plaintiff and therefore, he is not competent to swear the affidavit on behalf of the plaintiff and as such there is no proper applicant before the court.

It is submitted further that the parties had entered into a consent in H.C. MISC Application No. 419 of 2003 and this application is an attempt to undermine the consent order and therefore the plaintiff should not have benefit of injunctive orders. The defendants also argued further that the New Life Christian Church is an offshoot of the plaintiff and it is premature for the court to consider the issue of the title at this point.

I have considered the submissions and authorities cited by counsel for the parties. For consideration before the court is whether or not to issue the restraining orders sought by the Plaintiff.

It is not in dispute that the suit premises is registered in the name of the Plaintiff and that J.D. Reppart is a founder trustee of the Plaintiff. It is not in dispute either that New **Life Christian Church** has been in occupation of the suit premises for several years. From the lengthy affidavits filed by the parties it appears that at some point there was only the Kenya Church of Christ where the different officials named in the pleadings belonged. However to the there seem to have been a fall out in the church. It is my view that several issues have emerged and the same can only be determined at a full trial. The said issues include, whether or not **J. D. Reppart** remains a trustee of the Plaintiff, Whether or not **Wilmore Kiplagat** still remain an official of Kenya Church of Christ , whether the defendant Church is part of Kenya Church of Christ, and who are the current trustees of Kenya Church of Christ etc.

In determining the application I am guided by the case of **Giella Vs Cassman Brown Ltd (1973) EA at 358** the case set out the conditions of granting of interlocutory injunction. The said conditions are that an applicant must show a prima facie case with a probability of success, secondly that an injunction will not issue if the injury suffered may be compensated by an award of damages. And where the court is in doubt it will decide the application on a balance of convenience.

The defendants exhibit W1A, the consent letter recorded in court is not clear as to who the individual congregation and trusts referred to are. It is also not clear to me from the said letter who the parties in that suit are. However, I take note of the various triable issues emerging from the pleadings and the fact that the purpose of an injunction is to restore to a previous position or condition. What has come out clearly is that the defendants have been in occupation for five years and have been carrying their affairs in the said premises. In the circumstances of the case I am of the view that the balance of convenience tilts in favor of the defendants. It would be in the interest of all parties that status quo be maintained pending full hearing and determination of the suit. I therefore decline to grant the application I will also make no orders as to cost at this stage.

Dated and delivered at Nairobi this 17th day of December, 2009.

ALI-ARONI

JUDGE

Ruling read in the presence of

.....For the Applicant

.....For the Respondent