

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Case 63 of 2001

AUGUSTINE KOSKEI & 8 OTHERS.....
.....PLAINITFFS

=VERSUS=

THE COMMISSIONER OF LANDS

THE ATTORNEY GENERAL

**PENTACOSTAL EVANGELISM FELLOWSHIP OF
AFRICA....DEFENDANTS**

R U L I N G

This is an application by the Plaintiffs seeking review of the Order by this Court given on 8th November,2002 striking out the suit herein.

The suit by Plaintiffs No. 1,2,3,5,6,7 and 9 was struck out on the ground that none of them had sworn a verifying Affidavit. The verifying affidavits on record was sworn by the 4th Plaintiff who did not depose that he had been authorized to make the verifying affidavits by the other co-Plaintiffs or that he was making the affidavit on their behalf.

The 4th Plaintiff's cause of action/Suit survived being struck out on the said ground however; the Court still struck out the 4th Plaintiff's suit since he had not pleaded particulars of alleged fraud in the Plaint.

I have considered the application herein, the supporting affidavits, Grounds of objection and Submissions by Counsel.

The Honourable Judge considered the Preliminary Objection regarding the 8 Plaintiffs and their failure to make verifying affidavit. The Judge gave a reasoned ruling and the Plaintiffs filed a Notice of Appeal which is on record. This Court does not find that there is any discovery of any new and important matter or evidence by the 8 Plaintiffs to justify the review of the order striking out their suit. I also see no other sufficient reason. The Court exercised its discretion and upon giving a reasoned ruling made the decision. I cannot sit on appeal against the said decision. If the 8 Plaintiffs are aggrieved, then they are at liberty to prosecute their appeal.

The 4th Plaintiff's suit was struck out for a different reason namely, that he had not pleaded and set out particulars of fraud. It is my view that a decision to strike out a Plaint is a serious matter and ought to be made upon consideration as to whether an amendment of the Plaint can cure the omissions or offending parts of the pleading. In this case, an amendment of the pleadings could easily have cured the lack of particulars.

In any event, the First Defendant took up the matter by way of a Preliminary Objection on a point of

law. With respect, I think that they should have filed a substantive application or raised the matter at the trial. In my view, it was not right for the Preliminary Objection to be taken during the hearing of an application for Interim Injunctive Orders. This has denied the 4th Plaintiff the opportunity to effectively respond or make amends.

The foregoing is sufficient cause for this Court to review its orders. In the interest of justice and fairness, I do hereby review and Vary the Orders made on 8th November 2002 and reinstate the suit by the 4th Plaintiff as against the Defendants. I am unable to reinstate the application dated 20th December 2001 to enable him prosecute the same, since the supporting affidavit thereto was sworn by the 1st Plaintiff whose suit remains struck out.

Costs shall be in the course.

DATED AND DELIVERED AT ELDORET ON THIS 6TH DAY OF FEBRUARY, 2008.

M.K. IBRAHIM,

JUDGE.