



**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Suit 1909 of 2001**

1. Land and Environmental Law Division
2. Subject of main suit.

**EVICTION**

of defendant/respondents from LR 36/VII/586

Eastleigh, Nairobi

- i) Respondents had filed a case against the applicants.  
(Hccc1416/95) challenging the transfer of suit land to the applicants
- ii) Judgment entered in favour of the applicants. Suit against respondents dismissed.
- iii) Respondent refused to leave premises applicants filed this suit Hccc1909/2001 seeking eviction.
- iv) 2003 applicants applied for title deed to be released from court to effect transfer.

3. **NOTE:**

- i) Court file with title deed, goes missing (Hccc1416/95)
- ii) Land office – file application to raise orders of injunction
- iii) Land file goes missing
- iv) Parties on land measuring acreage with copy of Land title deed
- v) Proposed sale of property being Ksh.80,000,000/- to Ksh.100,000,000/-.
- vi) Court file Hccc1909/07 goes missing
- vii) Proceedings in reconstituted file.

4. Application dated 19 October 2007

- i) Injunction against the defendants pending main application suit.

5. Held
- i) Injunction granted
  - ii) That the Deputy Registrar report the loss of 2 files and exhibits by way of a title deed to the police
  - iii) That there be a police investigations as to the loss of the title deed and the transfer transaction of a proposed sale of suit property by George Chege and one Mark Ngaira.
- i) That the Registrar of Titles do place a caveat on LR36/VII/586 (Original No.50-52 and 117) IR 5666/2 and not permit any transaction of the said land save the transaction decreed by this court
  - ii) That the injunction to remain in force till the determination of this suit/application and or orders of this court.
5. Case law - Nil
6. Advocates:
- a) B.M. Munyasya instructed by Munyasia & Co. Ltd for plaintiff/applicant
  - b) F.N. Wamalwa instructed by F.N. Wamalwa & Co. Advocates for the defendant

**THE GOOD NEWS CHURCH**

**THE GOSPEL FURTHERING BIBLE CHURCH TRUST (REGISTERED TRUSTEES)...PLAINTIFFS**

**VERSUS**

**JAMES K . MURIUKI**

**JOHN ASETE DHIWA**

**GEORGE CHEGE**

**EASTELIGH CHURCH NURSERY SCHOOL**

**KENYA EASTLEIGH CHURCH**

.....DEFENDANTS

**RULING**

1. I am rather taken aback and shocked at these proceedings before me.

2: Representation

2.1. The Good News Church of Africa and the Gospel Furthering Bible Church Trust (Registered Trustees) are represented by M/s Munyasya & Co. Advocates.

2.2. The first defendant, James K. Muriuki may not be represented.

M/s i. John Asete Ndiwa

ii. George K. Chege

- iii. Eastleigh Church Nursery School
- iv. Gospel Furthering fellowship of Kenya Eastleigh Church

are represented by M/s F.N. Wamalwa & Co. Advocates.

## II: Background of application Chamber summons

19 October 2007

3. There is a related suit to this particular suit being Hccc1416/95. I recall this suit well as I was the one who had conduct of it. The parties in that suit were James K. Muriuki & Others (the current defendants herein) who sued the Good News Church of Africa and others (the current plaintiffs herein). For ease of reference I will refer to the parties as applicants (M/s Good News Church of Africa & Others) and the respondents (James K. Muriuki & Others).

4. A dispute arose in which the respondent herein in the Hccc1416/95 suit challenged the (perpetual Succession) Act Cap.286 of the applicants. They sought to stop the transfer of land to the said applicants Trustee. I heard this suit on 15 December 1998, 28 June 2000, 3 July 2000, 6 July 2000, 31 July 2000

18 September 2000, 14 November 2000. The reason the hearing took long was due to the parties coming from outside the country. Judgment was delivered on 20 November 2000.

5. It was a suit whereby the respondent were aware that the original registered owner of land in Eastleigh was a church and missionary work had been since the 1930's transferred the land to the applicants. On hearing all the parties this court dismissed the case against the applicants and entered judgment in their favour. The respondents suit was dismissed with costs.

6. The respondent refused to leave the suit premises. It therefore necessitated the applicants to file this suit Hccc1909/07 to seek orders of eviction (this now being a new cause and no such prayers had previously been asked.).

7. In the said file Hccc1909/07 an application was filed for summary judgment. It came before Mbitio J. who asked for file Hccc1416/95 to be availed to him. It was then that it was disclosed the file had been lost though it was a strong room file. The parties case in Hccc1909/07 was not finalized as Mbitio J had left the bench. No ruling on the Summary Judgment for eviction was given.

8. The applicants stated they appeared before me to have the release of the title deed as an exhibit to court but that I directed all parties be served or notified before the title is released. I personally do not recall this but I would not normally release an exhibit without a formal request under Order L r 1 Civil Procedure Rules.

9. What transpired thereafter is hard to believe:-

9.1 The original court file Hccc1416/95 goes missing which contains the original title deed sometime in 2003.

9.2 In the Land Department an application is made to raise injunctive orders made against the title.

9.3. The file at the land office concerning the title deed goes missing thereafter.

9.4. People are seen on the suit land measuring the acreage. They have in their possession a copy of title deed with certain pages missing. They disclose a proposed sale of land between the respondent more so 3<sup>rd</sup> respondent with a third party for Ksh.80,000,000/- to Ksh.100,000,000/-.

9.5. The court file Hccc1909/07 goes missing which has now this present application of 19.10.2007 filed

under certificate of urgency to stop by way of an injunction activities by the respondent.

10. In reply, the advocate for the respondent stated that there was no basis to the said application. That the main suit sought vesting orders and instead of declaratory orders. That the defendant is in effect the owner of the suit property.

## II: Finding

11. The conduct of the respondent has been taken seriously by this court. In the Hccc1416/95 suit, the court clearly stated that the respondents are not and have never been the owners of the suit premises in questions. The applicants are to have the said premises transferred to them. Unfortunately the court has lost their title deed together with two files.

12. I would accordingly grant them an injunction as prayed on para 3 and 4 of the application. I further make orders that the injunction do so remain till the determination of the main suit and or application for summary judgment awaiting the ruling to be so delivered.

13. I further make the following orders under section 3A and in the interest of justice.

13.1. The Deputy Registrar of the High court of Kenya immediately report the loss of the exhibit by way of a title deed to the Kenya Police. To report the loss of two files being Hccc1909/09 and Hccc1416/95.

13.2. That there be a police investigations as to the loss of the said title deed, transfer transaction of a proposed sale of suit property by George Chege and one Mark Ngaira.

13.3. Investigation by police of all the defendants herein in conviction of the proposed sale of LR 36/VII/586.

13.4 That the Registrar of Titles to place a caveat on LR 36/VII/586 (original No. 50-52),117) IR 5666/2 and to not permit any transaction on the said land save the transaction decreed by this court to transfer land to the applicants but with leave of this court.

13.5. That the injunction herein will remain in force till the determination of this suit/application for summary judgment and or orders of this court.

14. There will be costs to plaintiff /applicants to be paid by respondent.

Dated this 5<sup>th</sup> day of December 2007.

**M.A. ANG'AWA**

**JUDGE**

Ohonde holding brief for B.M. Munyasia of Munyasia & Co. Advocates for the defendant/respondent

F.N. Wamalwa of F. N. Wamalwa & Co. Advocates for the defendant/respondent

Court directions

This suit will be handled by this court at all times.

**M.A. Ang'awa**

**Judge**

4.2.08

Order: Ruling 5.12.08 to be supplied to parties on payment of requisite fees and a copy to the deputy Registrar and two judges of this division.

**M.A. Ang'awa**

**Judge**

4.2.08

“By consent the application dated the 4.9.2002 be heard on 12.3.08 at 9.00 a.m.”

Signed B.M. Munyasa For Munyasaya & Co. Advocates for the plaintiff – 4.20.08

Signed: F.N. Wamalwa for Wamalwa & Co. Advocates for the defendant – 4.2.08

Application granted and orders.

**M.A. Ang'awa**

**Judge**

4.02.08

Position of file

1. Hccc1416/95 is missing with original title deed judgment for plaintiff (defendant in 1416/95).
2. Plaintiff files 1909/01 suit for vacant possession by defendant (plaintiff in 1416/95 claiming suit property).
3. Attempt by defendant to register title in their name and or sell property had been made.
4. Matters reported to police CID through ruling of this court 5.12.07.
5. Defendant may wish to appeal (Ruling 5.12.07 to be typed and provided to parties on payment of requisite fee).
6. Pending application 4 September 2002 for summary judgment by plaintiff. To be heard by consent 12.3.08 at 9.00 .am.
7. Request by advocate for defendant to have main suit heard by another judge but no objection for Preliminary to be heard by this court.
8. Request rejected all matters be handled by this court.

**M.A. ANG'AWA**

**JUDGE**

Hearing of application 4 September 2002 be on 12.3.08 at 9.00 a.m.

**M.A. ANG'AWA**

**JUDGE**