



**REPUBLIC OF KENYA  
THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 2289 of 2007**

1. Land and Environmental Law Division

2. Subject of main suit: Land

LR No. 1/239

Wood Avenue/Kindaruma road Nairobi

a) Property belonged to one Jane W. Mubea.

b) Leased property to the Eritrea Orthodox Tewhado church (No. SOC/19988) aka Eritrea Orthodox Church – officials

Hadga Gebrehalmanot and 3 Others (tenants) (Ksh.50,000/- pm).

c) Jane W. Mubea sells property to Wariwax Generations Ltd. Gives notice to Eritrea Orthodox Church to vacate property.

d) Eritrea Orthodox Church files suit Hccc672/07 seeking injunction orders withdrawn.

e) Hccc2286/07 filed seeking same orders.

f) Hccc2289/07 filed by new buyers seeking eviction of Eritrea Orthodox Church.

g) Case of former tenant to Jane Mubea

DR Ainea Otieno Oyoo

V

Jane Mubea & City Council of Nairobi.

[Hccc18/95]

3. Civil Practice and Procedure

a) Application dated 23 January 2008 seeking leave for City Council of Nairobi to be enjoined as 5<sup>th</sup> defendant (Hccc2286/07) pending

- b) Application dated 30 January 2008 seeking leave to strike out suit (Hccc2286/07) pending
- c) Hccc2289/07 application 23.1.08 City Council of Nairobi to be enjoined to suit.
- d) Hccc2289/07 application 5.12.07 for summary judgment by plaintiff Wariwax Generation Hccc2286/07
- e) Application dated 28 January 2008 seeking consolidation of suit by the Eritrea Church.
- f) Court rules (10.06.08) application to be enjoined be heard first.
- g) Preliminary Objection heard together to the application

4. Application 23 January 2008

- a) To be enjoined to suit as proposed 5<sup>th</sup> defendant.
- b) Reasons

The issue as to who is Bona fide proprietorship to suit?

- c) City Council claims proprietorship since February 2003. Letter of cancellation of allocation Plot/House No.1/239 Wood Avenue.
- d) In reply Advocate for plaintiff

Premises sold 21.9.92 (10 years ago) to Jane W. Mubea by proposed 5<sup>th</sup> defendant.

- e) In Hccc18/95

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Suit did not belong to City Council according to a affidavit by the City Council but was sold and transferred to Jane Mubea.

- f) 5<sup>th</sup> defendant estopped from challenging plaintiffs ownership.
- g) Lease made between Jane Mubea and 5<sup>th</sup> proposed defendant.
- h) Mischievous application.
- i) No reply by advocate for defendants.

5. Held:

- i) New Material fact
- ii) City Council of Nairobi to be enjoined

6. Case Law - nil

7. Advocates:

O.A Kenyatta instructed by Kenyatta & Co. Advocates for the Interested Party/applicant – present

G.E.O. Oluoch instructed by G.E.O. Oluocho & Co. Advocates for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendant/respondents – absent

J.P. Machira appearing with S. Kimondo Instructed by Kimondo Mubea & Co. Advocates for the 1<sup>st</sup> defendant/Respondent -present

I.W. Maina instructed by E.N. Omoti & Co. Advocates for the 5<sup>th</sup> Respondent- present

**WARIWAX GENERATION LIMITED..... PLAINTIFF**

**VERSUS**

**HADGU GABREHAIMANOT ..... 1<sup>ST</sup> DEFENDANT**

**TEKIA MEBRAHTU ..... 2<sup>ND</sup> DEFENDANT**

**YAPHEF KIROS ..... 3<sup>ND</sup> DEFENDANT**

**ABAHAM WELDERUFAEL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

**APPLICATION DATED 23 JANUARY 2008**

1. The City Council of Nairobi has made application under Order 1 r 10 (2) of the Civil Procedure Rules and section 3A of the Civil Procedure act to:-

“1. **Be enjoined as a 5<sup>th</sup> defendant applicant in this suit**

2. \_\_\_\_\_

3. \_\_\_\_\_”

2. The grounds being that the proposed 5<sup>th</sup> defendant has a legal and legitimate interest in this case.

**II: Background to the application**

3. A brief history of this matter is that one Jane W. Mubea was an employee of the City Council of Nairobi. She was allegedly allocated a former council property being LR No.1/239 Wood Avenue/Kinduma road Nairobi.

4. On the said premises was a tenant who sued her and the City Council of Nairobi in Hccc18/95 one DR Ainea Otieno Oyoo.

5. It seems that J. W. Mubea then rented the premises to the Eritrea Orthodox Church who use the premises as a place of worship. Their membership is about 400 persons. The church is registered in Kenya (No. SOC/19988) and has four office bearers sued as defendants No.1, 2, 3 and 4 namely:-

5.1. Hadgu Gebrehaimanot (Chairman)

5.2. Tekia Mebrahtu (vice chairman)

5.3. Yaphef Kiros (Secretary)

5.4. Abaham Weldarufel (Treasurer).

6. Jane W. Mubea gave notice to the defendant in 2007 that she intends to sell the said property. The tenants protest and filed Hccc 672/07 which was withdrawn as being defective. The suit had sought injunctive orders to restrain the said Jane W. Mubea from evicting them.

7. They filed Hccc2286/07 seeking the same orders of injunction. The said Jane W. Mubea nonetheless sold the property to M/s Wariwax Generation Limited. They in turn filed Hccc2289/07 seeking the courts orders to evict the Eritrea Orthodox Church from the premises that Jane W. Mubea and the City Council have a dispute that is pending on ownership. That the two do sought this issue out.

9. The City Council of Nairobi applied to be enjoined to this suit and that of Hccc2289/07. There were other applications pending such as:-

i) The application of 28 January 2008 seeking the consolidation of the 2 suits by the Eritrea Orthodox Church (Hccc2280/07).

ii) The application to strike out suit by Wariwax Generation Limited dated 30 January 2008 (Hccc2286).

iii) The application 5 December 2007 seeking for summary judgment by Wariwax Generation Limited against the Eritrea Orthodox Church (Hccc2289/07).

10. This court gave direction and ruled that the application by the proposed 5<sup>th</sup> defendant be heard first seeking to be enjoined. The Preliminary Objection Limited was to be heard together.

## **II: Arguments by the applicant/City Council of Nairobi.**

11. In the year 2003, the dawning of the “NARC Government” the town clerk issued notices of cancellation of allotment of plot and houses. The house effected to that of House No.1/239 – Wood Avenue that had belonged to Jane Mubea.

12. On receipt of this alleged notice Jane W. Mubea offered the property for sale for Ksh.55 million. This is therefore the reasons that she asked the plaintiff Eritrea Orthodox Church do vacate the premises.

13. The Eritrea Churches alleged that they had no where to go with their 400 members.

14. The advocate for Wariwax Generation Limited made no mention at all about this notice of February 2003. They instead focused on the case law of:-

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**Hccc18/95**

15. In that case, the issue between the plaintiffs tenant who questioned the ownership of the property.

16. The said City Council in support of Jane Mubea, deponed and fully participated in the case in her

replying affidavit stated that the property was no longer that of the City Council of Nairobi. That it had sold and transferred the same in September 1992 (this being the dawn of multiparty politics in Kenya).

17. It is therefore the duty of this court, argued the respondent to estop the proposed defendant from being enjoined. The issue before court is a lease agreement between the defendant church and Wariwax Ltd. This has nothing to do with the City Council. They can indeed file their own separate suit.

### **III: Opinion.**

18. I have given the brief background in order to comprehend more fully what the issue herein are.

19. Whilst the suit was pending, the Jane W. Mubea sold the same in 2007. She was aware that her title was cancelled in 2003 and should have been a subject of a judicial review or separate suit with the City Council of Nairobi.

20. The Council has chosen to be enjoined to this suit. The Eritrea Church have an application pending wishing to consolidate this suit and await the out come of the dispute between the City Council of Nairobi and Wariwax Generations Ltd.

21. It seem that new material fact has and will be brought into this matter. I accordingly allow the application to enjoin the City Council of Nairobi to be the 5<sup>th</sup> proposed defendant to file their defence within 15 days of to days date and serve all parties to these proceeding and the proceeding of Hccc2286/07.

22. I award costs to the respondent/plaintiff. Costs is awarded to defendant 1, 2, 3 and 4, to be paid by the proposed 5<sup>th</sup> defendant.

DATED THIS 28<sup>TH</sup> DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

### **JUDGE**

O.A Kenyatta instructed by Kenyatta & Co. Advocates for the Interested Party/applicant – present

G.E.O. Oluoch instructed by G.E.O. Oluocho & Co. Advocates for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendant/respondents – absent

J.P. Machira appearing with S. Kimondo Instructed by Kimondo Mubea & Co. Advocates for the 1<sup>st</sup> defendant/Respondent -present

I.W. Maina instructed by E.N. Omotti & Co. Advocates for the 5<sup>th</sup> Respondent- present