



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

**ELC Case 274 of 2008**

**DARASA INVESTMENTS LIMITED.....PLAINTIFF**

**AND**

**MARK NGAINA**

**GEORGE  
KANYUIRA CHEGE**

**Sued as the Registered  
Trustees of**

**THE GOOD NEWS  
CHURCH OF  
AFRICA and**

**THE GOSPEL  
FURTHERING  
BIBLE CHURCH  
TRUST**

**(Registered Trustees).....DEFENDANTS**

**R U L I N G**

Before me is an application by way of a Chamber Summons dated 12<sup>th</sup> June 2008 and amended on 26<sup>th</sup> June 2008 brought under Order XXXVI Rule 8A and 12 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act in which the plaintiff seeks orders that this court do give directions in the manner in which this suit should proceed as to whether evidence should be led by way of affidavit or *viva voce*. These proceedings were originated by originating summons filed on 9<sup>th</sup> July 2008 by Darasa Investments Limited seeking a declaration that the plaintiff herein is the lawful Registered owner of the suit property being LR No.36(VII) 586 IR 23941 and the continued occupation of the said parcel of land by the defendants is unlawful and the same constitutes illegal trespass; that the defendants be evicted from the said parcel of land being LR NO. 36 (VII) 586 IR23941 situated in Eastleigh in Nairobi; that the defendants do pay mesne profits for the continued occupation of the suit property from the 20<sup>th</sup> July 2007 until the final determination of the summons and that the defendants do bear the costs of this application.

The facts which gave rise to this litigation briefly may be stated. The President of the Republic of Kenya issued a grant to THE GOSPEL FURTHERING FELLOWSHIP REGISTERED TRUSTEE, a body corporate duly established under the provisions of the Land (Perpetual Succession Act Chapter 286) Post Office Box Number 1141 Nairobi herein called "the Grantee" ALL that piece of land situated in the City of Nairobi containing by measurement 2.501 Ha being LR No.36/VII/586. By a transfer Agreement between THE TRUSTEES OF THE GOSPEL FURTHERING BIBLE CHURCH AND THE TRUSTEES OF GOOD NEWS CHURCH OF AFRICA AND DARASA INVESTMENTS LIMITED at a consideration of Kshs.42,000,000/=. The transfer was signed by MARK NGAIRA and GEORGE KANYUIRA CHEGE on behalf of THE GOSPEL FURTHERING FELLOWSHIP REGISTERED

TRUSTEES and HILLOWLY IBRAHIM NOOR and ALI MUSA MOHAMMED on behalf of DARASA INVESTMENTS LIMITED but the names of the Trustees for THE TRUSTEES OF THE GOOD NEWS CHURCH OF AFRICA are not indicated alongside the photos.

Seemingly as gathered from the affidavit evidence the defendants never vacated the suit premises. The defendants being a church, a body of corporate duty established under the provisions Land (Perpetual Succession) Act there should be evidence to minutes where the congregation passed a resolution to sell the church together with its buildings. Further the grant was issued by the President to THE GOSPEL FURTHERING FELLOWSHIP REGISTERED TRUSTEES but in this suit the defendants include THE GOOD NEWS CHURCH OF AFRICA and the transfer is not accompanied with the Agreement. In view of the above, I give directions that this suit do proceed by way of *viva voce* evidence after compliance with the provisions of Order 11A (I) of the Civil Procedure Rules and the suit ought to be brought by way of a plaint.

Dated and delivered at Nairobi this 17th day of October 2008.

**J. L. A. OSIEMO**

**JUDGE**