



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL  
COURTS)**

**Civil Case 324 of 2005**

ARNOLD ETIANG ORO.....1<sup>ST</sup> PLAINTIFF

CHRISTINE MWEBE SHINGIRAH .....2<sup>ND</sup> PLAINTIFF

**(Suing as Trustees of Vineyard Christian Fellowship)**

**VERSUS**

ENGINEER M. K. MENGICH .....1<sup>ST</sup> DEFENDANT

D. MSHILA .....2<sup>ND</sup> DEFENDANT

ANDREW MANYARA .....3<sup>RD</sup> DEFENDANT

E. K. WESANGULA .....4<sup>TH</sup> DEFENDANT

**RULING**

This is an application by the Defendants/applicants under Order 6 Rule 13, (b), (c) and (d) of the Civil Procedure Rules. The prayers sought in the application are:-

- (1) That the amended plaint dated 16<sup>th</sup> June, 2005 and filed in court on 28/6/2005 be and is hereby struck out.**
- (2) That consequently the Plaintiff's suit be dismissed.**
- (3) That the costs of this application and the suit be borne by the plaintiffs in any event.**

It is the case of the Applicants that the Plaintiffs herein have no locus standi to institute and prosecute this suit and therefore have no cause of action against the Defendants. Secondly it is contended that the Plaintiffs are not the registered trustees of **International Faith Embassies Trust** on whose auspices they pleaded to operate from and which entered into a lease agreement with the Defendants. Thirdly it is alleged that the purported cause of action herein owes its roots and history to an agreement in which the Plaintiffs are strangers. It is also alleged that the Plaintiffs are non suited as against the Defendants hence the suit is scandalous, frivolous and vexatious, therefore ought to be struck out.

The application is premised on the affidavits of one **Akinwale Akinyemi** and **Mr. E. K. Wesangula**.

The contents of the affidavit of **Mr. Wesangula** is as follows: that on 25<sup>th</sup> March, 1997 the **Nairobi Railway Club** got into a lease agreement with **M/S International Faith Embassies Trust** at a monthly rent of Kshs.40,000/= . The said lease was executed by **Akinwale Akinyemi** and **Taiwo Akinyemi** as trustees of the tenant. The tenants thus put up an auditorium on the demised site at the sum of Kshs. 2 million for use as their worship center.

It is averred that sometimes in the year 2000 the trustees of the tenant left the country for further studies. And that the 1<sup>st</sup> Plaintiff subsequently took up the leadership of the church and commence correspondence with the Defendants as duly authorized representative of **M/S International Faith Embassies Trust**. The Plaintiffs then gave notice of their intention to relocate from the demised site and intimated their fraudulent intention to sell the auditorium to the club.

It is contended by **Mr. E. K. Wesangula**, the club unknowingly commenced negotiations over the sale of the auditorium with trustees of **Vineyard Christian Fellowship Trust**, who allegedly stated to have had full authority from **M/S International Faith Embassies Trust** to conduct and conclude the negotiations.

No doubt the Plaintiffs filed the present suit claiming the value of the auditorium. It is alleged the Plaintiffs are trustee of a church organization known as **Vineyard Christian Fellowship**. It is also contended that the initial lease was between the Defendants and **M/S International Faith Embassies Trust** who allegedly built the auditorium.

In this case, it is the Defendants who are stating that the Plaintiffs disclose no cause of action, it is frivolous and it vexatious. I appreciate any party is entitled to benefit from the summary procedure of the court. A Defendant is entitled to proceed under Order 6 rule 13 in a situation where the Plaintiffs' claim is frivolous, vexatious and an abuse of the court process. The summary power of the court is a method, which is intended to give quick remedy to a party who feels the case of the opposite has no chance of success at the trial. For the court to invoke its summary power, there must be some reasons why the case should not be allowed to proceed to full hearing.

I have considered the rival submissions by both counsel and I am of the view that the Plaintiffs' claim is not one, which can be dealt on the strength of affidavit evidence. There are a number of issues, which cannot be determined on affidavit evidence. Summary procedure is usually a radical remedy and in my view the court is usually very slow in resorting to this procedure, which should be applicable only in plain, clear and obvious cases. It is not within my powers to determine the merits of the case for that is the sole responsibility of the Judge who would hear the matter at trial. I have no powers to embark upon determination of the issues set by the Defendants.

It is admitted by the Plaintiffs that the initial lease agreement was between the Defendants and **International Faith Embassies Trust**. However, it is the contention of the Plaintiffs that they were mandated by the initial tenant to take over the lease agreement with the full knowledge, consent and permission of the Defendants. And in a letter dated 25<sup>th</sup> October, 1999 the 2<sup>nd</sup> Defendant acting on behalf of the club approved the Plaintiffs' intention to make improvements on the structure and confirmed the club's intention to purchase intact Auditorium when the Plaintiffs vacate the leased space.

The letter of 25<sup>th</sup> October, 1999 was followed by another letter dated 19<sup>th</sup> July, 2001 wherein the club confirmed its intention to purchase the Auditorium put up by the church on its volleyball pitch. The parties could not initially agree on the actual value of the structure and the mode of payment. But after meetings the parties agreed on the value and mode of payment of the structure. There was a joint valuation carried out by the club and the church on 3<sup>rd</sup> September, 2001 wherein the structure was valued at Kshs.2,336,120/=. There is also evidence of part payment made by the Defendants.

In the letter dated 25<sup>th</sup> October, 1999, **Mr. E. K. Wesangula** stated in part;

“You will leave the structure intact and be compensated by the club for costs incurred in the construction

of the church structure”.

The above letter was written to the administrative Manager of **Vineyard Christian Fellowship**. In another letter dated 13<sup>th</sup> September, 2001, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants wrote to the church in respect of a reconciliation meeting between the parties herein. The letter states in part;

“As already discussed and agreed in our meetings you will be entitled to 50% of payable rent in compensation for the Auditorium. Consequent upon this understanding arrangements are being made to pay you Kshs.51,000/= being the rent amount due for July/August 2001”.

From the material presented before me, I think the matter cannot be resolved on affidavit evidence. I am satisfied that the case of the Plaintiffs is not so hopeless to warrant a determination on summary procedure. There are weighty and substantial issues that calls for a full hearing between the parties. The matters set out by the Defendants are matters of evidence, which must be determined at full hearing.

**It is my decision that the application has no merit and it is dismissed with costs to the Plaintiffs.**

Dated and delivered at Nairobi this 28<sup>th</sup> day of March, 2007.

**M. A. WARSAME**

**JUDGE**