

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

Civil Case 602 of 2003

JOSEPH MUIRU & TWO OTHERS.....PLAINTIFF

VERSUS

JANE NJERI KIMANI.....DEFENDANT

J U D G M E N T

This Originating Summons is brought by three persons suing on behalf of themselves and as registered Trustees of Bethel church INC.

In the Originating Summons they claim to be (on behalf of Bethel Church Inc) the absolute owner of L.R. No. Limuru/Bibirioni/T.512 by virtue of adverse possession and seek orders *inter alia*:

1. *That the Bethel Church INC which has been in adverse possession of L.R. No. Limuru/Bibirioni/T 512 from 1975 to date be declared the owner thereof and be registered as the absolute proprietor thereof*”.

In the further replying affidavit sworn on 4th June, 2007 by the Respondent it is averred that Bethel Church INC is not a society registered under the Societies Act, (Cap 108). On page 31 of the said affidavit a certificate of registration No. 10977 is issued in the name of Bethel Church as at 7th November 1981. This originating summon was filed on 17th June, 2003. Still the names of an unregistered Society is placed on an Applicant and that shall make the Applicant Society an unlawful Society as per provisions of section 4(1) of the Societies Act.

In the replying affidavit there is averment that Bethel Church INC is not a registered Society and contrary to what was contended by Mr. Mwara, the burden to prove that it is a registered Society is on the Applicant. I have only to refer to section 45(b) of the Societies Act which stipulates

“45 (b) where it is alleged that a Society is an unlawful society. The burden to proving that it is a registered Society or an exempted society or that it is not a Society, shall lie on the person charged.”
(emphasis mine)

Thus the Applicants, who have filed this originating summons as trustees of an unlawful Society, not only that they do not have *locus standi*, but are also contravening the provisions of the Societies Act.

I thus find that the Applicants have no *locus Standi* to file the Originating Summons on behalf of an unlawful Society.

With the above finding, I need not go into merits of the case and the issues raised.

I dismiss the Originating Summons with costs to the Respondent.

Dated, Delivered and Signed at Nairobi this 29th day of November, 2007.

K.H. RAWAL

JUDGE