



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Civil Appeal 75 of 2005

CHRISTIAN BROTHERHOOD NKIBWE CHURCH TRUSTEE REGISTERED.....
APPELLANT

V E R S U S

BROTHERHOOD GOSPEL CHURCH.....1ST
RESPONDENT

PASTOR JOHNSON NKAABU.....2ND
RESPONDENT

HENRY MITHIKA - SECRETARY.....3RD
RESPONDENT

GEOFFREY NKUNJA –TREASURER.....4TH
RESPONDENT

R U L I N G

1. The appellants in this matter by their application dated 22/9/2005 seek orders as follows: -

(a)

(b) An order of temporary injunction do issue restraining the Defendants/Respondents, their agents, servants, followers, employees from entering or in any other way whatsoever interfering with the operations and affairs to wit praise and worship, and prayers of the applicant Nkibwe Church built on land parcel No. ATHIRU/RUUIJINE NDOLELI ADJUDICATION SECTION/75 until this appeal is heard and determined or until further orders of this court.

(c) The Hon. Court do issue such further orders as may meet the ends of justice in this matter.

(d) Costs of this application be provided for.

The grounds in support are set out as being that: -

(i) The Respondents have no legal right over the church built on land parcel NO. ATHIRU/RUUIJINE NDOLELI ADJUDICATION SECTION NO.75.

(ii) The Respondent who are not members of the applicants are purporting to take over the applicant’s

church by force.

2. In his supporting Affidavit, Rev. Jairus Mulanda states that the subject matter of the suit is a church built on land title number Athiru/Ruujine Ndoleli Adjudication Section/75. That the 2nd Respondent, an estranged and ex-communicated member of the Appellant church, on 19/9/2004 entered the Church with his followers and chased away worshippers and thereafter took over the building which he purportedly converted into a church in name of the 1st Respondent. The said 2nd Respondent then ensured that no member of the Appellant entered the church and the said members are disillusioned and the spread of the Gospel as they understand it is being hampered.

3. The 2nd Respondent swore an affidavit on 25/11/2005 and in it depones that the prayer for an injunction is premature as the Appeal has not succeeded and that in any event, the land in which the church is situated is land belonging to the 1st Respondent. That in fact it was the Appellants who invaded that land forcing the Respondents to file RMCC NO. 154/2004 whereat an injunction against the Appellant was issued. That subsequently in CMCC No. 709/2004, that suit filed by the Appellants was again struck out and the Appeal herein was filed. That therefore the Application was made in bad faith and was an afterthought.

4. In submissions before court Ms. Mwangi argued that the Appeal was necessitated by the fact that CMCC No. 709/2004 was struck out because no consent was obtained prior to filing suit (as is expected by s.30 of the Land Adjudication Act). That in fact no such consent was required as the register in the Adjudication section had been finalized and the suit was struck out before the Appellants could lay that evidence before court. Further, that the Respondents have their own land and are a splinter group from the Appellants.

5. On the hearing of the application there was no appearance for the Respondents although their advocate was aware of the hearing date.

6. A party seeking an injunction pending appeal has to show that unless the injunction is issued there is the risk that its proprietary interest over the suit premises may be rendered nugatory (see Eriford Properties Ltd vs. Cheshire County Council [1994] 2 All E.R. R. 448). That there is therefore need to preserve the suit premises until the Appeal is heard and determined.

7. In the instant suit, each party claims that the land on which the church stands belongs to it but none has exhibited any evidence to show that fact. The Appellant is saying that the Respondents have their own land but nowhere is that fact authenticated. It is their duty to show that firstly they have a discernible and enforceable legal interest over the land and sadly I have been shown nothing to that end. It may well exist but prima-facie I cannot make a determinate finding on the matter.

8. The Appeal is against a decision to strike out a suit for want of consent under s.30 of the Land Adjudication Act. Even at this stage and to show that there was indeed no need for such consent, the Appellant ought to show by some evidence that its position is plausible. Again sadly, the Affidavit in support of the Application is bare and lays no emphasis on the very fulcrum on which its case balances. I cannot tell if the Appeal is in any way a serious one or not and that if the injunction is not granted, great prejudice would be occasioned to the Appellants. That conclusion is to their disadvantage.

9. I should add here that the Respondents are in possession and I cannot see how at this stage of proceedings and they having obtained an injunction against some members of the Appellant church in PMCC 154/2004 this court can now issue an injunction as sought by the Appellants. It would create confusion on the ground and cloud issues for determination on Appeal.

10. On the whole, no reason has been properly advanced by the Appellants to warrant grant of an injunction pending Appeal. The application is sadly lacking in material and detail to which discretion can be swung in their favour.

11. I shall dismiss the application dated 22/9/2005 but shall make no order as to costs since the Respondents failed to attend and oppose it.

12. Orders accordingly.

Dated, signed and delivered in open court at Meru this 3rd day of May 2006

ISAAC LENAOLA

JUDGE