



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE 140 OF 2005
THE BOARD OF DIRECTORS INLAND CHURCH.....PLAINTIFF
VERSUS
TIMOTHY MULEHI & OTHERS.....RESPONDENT

RULING

On 8/2/05, the Plaintiff, the Board of Trustees of the African Inland church, through the Chamber summons herein, sought the following orders:

1. **Already spent**
2. **Injunction restraining the Defendants, their assigns and or their agents, heirs from developing, excavating, or removing anything or doing anything to the structures and appurtenant to three parcels of land belonging to the Plaintiff/Applicants, namely Mashimoni Local Church, Mashimoni/Lindi primary School allocated to the applicants vide letter of allotment dated 23/7/92 Deed Plan No. 169945; L.R. No. 209/11813 measuring 0.8262 Hectares pending the interparties hearing of this application.**
3. **Same as 2 above, but pending the hearing and determination of the main suit.**
4. **That the Defendants unconditionally reinstate and restore full possession and give the Plaintiff vacant possession within 14 days all the above parcels of land.**
5. **Costs to be paid by the Defendants.**

The application is brought under Order 39 rules 1, 2, 3 and 9, and Order 35 rule 4(b) and 2; Sections 3, and 3A of the Civil Procedure Act, Cap. 21 Laws of Kenya, and is supported by an Affidavit by Pastor Justus Mutinda of even date, and on the grounds that:

- a) **the defendants are trespassers with no colour of right to the property, and despite not having paid mesne profits legally due from them, have threatened to erect structures on the plaintiff's property and alter the structures already existing and constructed by the Plaintiff/Applicants.**
- b) **The Plaintiff purchased all the parcels of land for valuable consideration, and is the owner of ther parcels of land.**

c) The Defendants have, despite repeated and continuous consultations with the Provincial Administration and their being told that the land belongs to the Plaintiff, delayed their release of the properties to the Plaintiffs.

I have perused through the pleadings and the submissions by Counsel for both parties. To get a proper grasp of the issues, I have also closely looked at the Plaintiff, not to deal with the merits of the case at this interlocutory stage, but to harmonize the claims and prayers therein vis-à-vis the prayers in this application.

The gist of the entire case is the ownership of the three parcels of land herein. On this proprietary right, turns all the other sub-issues.

I have no doubt from the pleadings and the annexures thereto, that the fact of employee/employer relationship between the 1st Defendant and the Plaintiff is not disputed, nor is there any dispute on the leeway given to the 1st Defendant to act as agent of the Plaintiff in the management and even administration of the Plaintiff's affairs.

Naturally there seems to be such close relationship between the land and its ownership with the various institutions thereon, such as the school and the church that a decision on either of them would tend to dispose of the suit. That cannot be done at the interlocutory stage. There is need for full trial and calling of evidence, before such weighty matters can be determined.

Accordingly, and in light of the above observations, this court cannot grant some of the prayers in this Chamber summons without pre-empting the outcome of the suit.

I therefore grant the following orders in order to preserve the substance of the suit until the hearing and determination of the suit.

- 1. Grant prayer No. 3 in the application.**
- 2. Costs of this application to be in the cause.**
- 3. Parties to move with speed and fix the hearing of the suit herein within the next 21 days from today's date.**

DATED and delivered in Nairobi this 7th day of June, 2005.

O.K. MUTUNGI

JUDGE