



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**Civil Suit 883 of 2005**

**KENYA AFRICAN NATIONAL UNION**

**MATHARE SUB BRANCH .....1ST PLAINTIFF**

**SAMSON MBURU HUHO.....2ND PLAINTIFF**

**ZAKARIA MAINA.....3RD PLAINTIFF**

**JOHN MAINA.....4TH PLAINTIFF**

**VERSUS**

**GERISHON KIRIMA.....1ST DEFENDANT**

**STEPHEN KIRIMA KAMAU.....2ND DEFENDANT**

**MOSES AKAMA.....3RD DEFENDANT**

**WARIO AGAL.....4TH DEFENDANT**

**JOSEPH KAMAU MWAURA.....5TH DEFENDANT**

**RULING**

By their application of the 14th July 2005, the Applicants seek an injunction in the following terms:

2 **THAT** there be an injunction against the five Respondents, their servants, agents. And or assigns restraining them from forcefully destroying a church and taking over/ alienating the Plaintiff’s parcel of land L.R 219/35, settling or interfering with it, pending the hearing and final determination of the suit.

The application is supported by the affidavit of the Second Plaintiff and is based on the allegation that the 1st Plaintiff is the registered proprietor of the suit premises. The 1st Plaintiff is not a legal person but the suit premises are registered in the names of Zakarai Maina, Samson Mburu and John Maina as trustees for Kenya National Union (Mathare Sub Branch). The Plaintiff and Chamber Summons was amended to include the names of the trustees in the suit as trustees for the 1st Plaintiff. The suit should properly has been entitled. Samuel Mburu Huho, Zakaria Maina and John Maina as Trustees of the Kenya African National Union (Mathare Sub Branch) Plaintiff.

To the Supporting Affidavit of Samson Mburu Huho is annexed a copy of the title deed to the suit premises in the name of the Plaintiff. He depones that a structure was constructed on the suit premises and rented out to a church at a monthly rent of Kshs 5,000. It is further alleged that the five Respondents have stormed the suit premises and have threatened to destroy the church.

A Replying Affidavit was sworn by the 1st Respondent. He depones that he is the Chairman of the Starehe Branch of KANU and that elections took place on the 18th January 2005 to elect a Chairman and other officials for the Mathare Ward of KANU. At those elections Samson Mburu Huho was replaced as the Chairman by one Joseph Kamau Mwaura. Annexed as GK2 is a copy of the results. The other two trustees who have brought this suit do not appear to have been elected as officials of the ward. It is alleged that Samson Mburu has refused to hand over the documents for the Sub Branch to the new officers elected.

The Applicant filed a Reply to the Replying Affidavit in which it was disclosed that John Gitau died in 1997 and that one Samuel Gicura was elected to replace him although no evidence of this change is produced. In this matter it appears that Samson Mburu Huho is the instigator of this suit. John Gitau has been made a party to this suit and Samson Mburu Huho states in the supporting affidavit that he has been authorized to swear the affidavit. It is not stated who authorized him do so, however. Clearly it could not have been by John Gitau who was deceased before the suit was filed.

As I pointed out before, the heading to this suit is not correct doubly so as John Gitau cannot be included as a party. Nothing has been shown to me as to the manner in which the Trustees were appointed. If it was by deed then a further deed should be executed to appoint any new trustees in accordance with the wishes of the settlor or beneficiary in this case I presume KANU. A lot was said about the roles of the KANU sub branch and Starehe Branch. However, it appears that the Sub branch is under the control of the Starehe Branch. The statement in paragraph 5 of the Replying Affidavit is not refuted in the reply to the Replying Affidavit.

The parties should put their house in order. I therefore stand over this matter for 2 months to enable the parties to regularize the appointment and position of the trustees. In the meanwhile, I do not grant an injunction as in my view it is uncertain who has the right to the suit premises. Costs are reserved.

**Dated and Delivered on 30th day of September, 2005**

**P.J RANSLEY**

**JUDGE**