



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 250 OF 2001

BAPTIST BIBLE MISSION OF EAST AFRICA

REGISTERED TRUSTEES.....PLAINTIFF

-versus-

RONALD WANYAMA.....DEFENDANT

J U D G M E N T

By a Plaint dated and filed on the 15th February 2001, the Plaintiff claims against the Defendant:-

- 1) An injunction restraining the Defendant, his servants and/or agents from entering, and/or constructing on L.R. No. 209/11444 pending the hearing and determination of this suit.**
- 2) A permanent injunction restraining the Defendant, his servants and/or agents from constructing on L. R. No. 209/11444.**
- 3) The Defendant be ordered to deliver vacant possession of L. R No. 209/11444 in South "C" forthwith. 4) General damages for trespass and interest thereon. 5) Costs of this suit and interest thereon.**
- 6) Such further or other relief as this Honourable Court may deem fit.**

An Interlocutory Judgment having been entered and recorded against the Defendant on the 10th January 2002 in default of filing appearance and/or defence upon service of summons to enter appearance, the Defendant took out a Chamber Summons application dated the 16th August 2002 seeking to set aside such Judgment, which application was dismissed on the 29th July 2003. In the absence of a Defence, the suit proceeded by way of formal proof on the 12th February 2004.

In his evidence, the Revered Jerry Piercey, a Missionary Priest and a Trustee of the Plaintiff to whom I shall hereinafter refer to as "Piercey", produced Grant Number I. R. 54654 dated the 14th January 1992 (Exh. 1) (in the agreed bundle of documents) as proof of the Plaintiff's ownership of the suit property, namely L.R. No. 209/11444. He testified that he has known and worked with the Defendant for a number of years in his Church and further that such working relationship was terminated by mutual agreement in December 1999 upon and subject to the terms and conditions set forth in an agreement dated the 11th December 1999 (Exh.2). Piercey stated that in part performance of such agreement the Defendant received payment from the Plaintiff of the sum of Kshs. 25,000/- in accordance with paragraph 2 thereof for which the Defendant signed a receipt dated 14th December 1999 (Exh. 3) in acknowledgment of the said sum and in which the Defendant

also undertook to vacate the suit premises on the 17th December 1999. Piercey further testified that the Plaintiff had been obliged to terminate its working relationship with the Defendant by reasons including that the Defendant had caused building materials to be deposited on the suit premises and construction of a permanent Church to commence thereon without the Plaintiff's knowledge, consent or authority.

In response to Cross – Examination by counsel for the Defendant, Piercey said that the Defendant had never been a trustee of the Plaintiff. He also stated that the sum of Kshs. 90,000/- referred to in paragraph 3 of the agreement dated the 11th December 1999 has not been paid to the Defendant because the Defendant has not to date fulfilled the express conditions thereof requiring the Defendant (amongst other things) to obtain the consent of the relevant Land Control Board once the Defendant had identified the land to purchase in his home District. Piercey further stated that the Plaintiff has always been and continues to be willing to pay such sum since the Defendant met his side of the agreement.

As to whether or not the Plaintiff assisted the Defendant in moving his family and household to his home District in accordance with paragraph 1 of the said agreement, Piercey stated that the Defendant was informed at the material time that a truck had been made available for that purpose; it was then the responsibility of the Defendant to advise the Plaintiff when he wished to travel which he had not done. Finally, Piercey testified that there are several Trustees of the Plaintiff and that he did not consult any of them before signing the agreement of the 11th December 1999 as he was not required to do so having been entrusted with all matters relating to the Defendant who worked under Piercey's supervision and direction.

Having reviewed the evidence, I find in favour of the Plaintiff and against the Defendant. It is quite clear that the Plaintiff is and has at all material times been the registered proprietor of the suit property namely L. R. No. 209/11444 under and by virtue of the said Grant No. I. R. 54654 which is not disputed. It is also clear that the Defendant gave his written agreement to vacate the suit premises on the 17th December 1999 and that he is subsequent and prolonged occupancy thereof has been entirely wrongful, trespassory and unlawful. The Court will and cannot allow such delictual violation of property rights to be perpetuated and sustained and condemns the Defendant's persistent denial of the Plaintiff's property rights, by making the following orders:-

1. A permanent injunction be and is hereby granted restraining the Defendant, its servants and/or agents from constructing on the Plaintiff's said land namely, L. R. No. 209/11444, South "C", Nairobi.
2. The Defendant shall forthwith vacate and deliver vacant possession of L. R. No. 209/11444 aforesaid to the Plaintiff.
3. An Eviction Order shall forthwith issue to remove the Defendant from the suit land namely' L. R. No. 209/11444, South "C", Nairobi.
4. The Assistant Chief, the Chief and the Provincial Administration responsible for good governance in the locality where the suit property namely, L. R. No. 209/11444, South "C", Nairobi is situate as well as the Officer Commanding the Police Division and in charge of the said area shall ensure that this Order is fully implemented and complied with.
5. The Defendant shall pay to the Plaintiff nominal damages for trespass which are assessed in the sum of Kshs. 10,000/=
6. The costs of this suit together with interest thereon at Court rates shall be paid by the Defendant.

Dated and delivered at Nairobi 5th day of March 2004.

P. Kihara Kariuki

Ag. Judge