



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. PETITION NO. 6 OF 2017

REV. HANNINGTON KYENGO MUNYAO.....1ST PETITIONER/RESPONDENT
JOEL MUTUKU MBITHI.....2ND PETITIONER/RESPONDENT
MARGARET KANINI KISILA3RD PETITIONER/RESPONDENT
DAVID MUEMA NGINDA4TH PETITIONER/RESPONDENT
STEPHEN MUTHWII KITONGA5TH PETITIONER/RESPONDENT
JIMMY NTHENGE MWAKA.....6TH PETITIONER/RESPONDENT
SAMUEL WAMBUA KITUNA.....7TH PETITIONER/RESPONDENT
AGNES SYOKAU MULWA.....8TH PETITIONER/RESPONDENT

(all petitioning on their behalf and on behalf of 206 others

as members of Africa Inland Church Muisuni)

VERSUS

BENARD NGUYO.....1ST RESPONDENT/APPLICANT
JAPHETH ITUMO.....2ND RESPONDENT/APPLICANT
JACOB MUSILA3RD RESPONDENT/APPLICANT
SHADRACK MUTHAMA.....4TH RESPONDENT/APPLICANT
PHILIP NGATA MUIA.....5TH RESPONDENT/APPLICANT
JACKSON KAINDE.....6TH RESPONDENT/APPLICANT
GEORGE MUTUNE.....7TH RESPONDENT/APPLICANT
JONATHAN MUTETI.....8TH RESPONDENT/APPLICANT
SILVANUS NZIOKA.....9TH RESPONDENT/APPLICANT
JOSEPH KIMANI KARIUKI.....10TH RESPONDENT/APPLICANT

JUDGMENT

The Petition:

1. In the Petition dated 14th March, 2017 and filed on 16th March, 2017, the Petitioners averred that they are Christians and adherents of African Inland Church, Muisuni in Kangundo, Machakos County (*hereafter referred to as 'the church'*) and that they have filed the Petition on their own behalf and on behalf of other 206 members of the church.

2. The Petitioners averred that the church is located and constructed on land parcels numbers Kangundo/Muisuni/945 (*the suit property*) which land was set aside for that purpose by the defunct Masaku County Council (*now Machakos County Government*) and that the church has been on the suit property since 1907.

3. It was averred by the Petitioners that the church has also sponsored and has a children's home (*hereafter referred to as 'the home'*) on land parcels Kangundo/Muisuni/1009 which was set aside for that purpose by the defunct Masaku County Council (*now Machakos County Government*) and that according to the Constitution of the African Inland Church Kenya (*hereinafter referred to as 'the mother church'*) which is the mother church of Africa Inland Church, Muisuni, the basic unit of the church structure is what is known as the Local Church Council (*hereafter referred to as 'the LCC'*) which is composed of leaders elected by the members of the particular church.

4. The Petitioners averred that the LCC is the custodian of the property of the local church and is mandated by the constitution of the mother church to protect the property on behalf of the entire membership; that in tandem with its mandate in the constitution, the LCC takes stock of the church's property, makes decisions on use and occupation and that with the consultation with the members of the church, it implements projects either directly or through committees.

5. According to the Petitioners, the LCC, with the consultation of the church members, set up a children's home on land reference number Kangundo/Muisuni/1009 as one of its mandate; that the project was the brain child of the church and has catered for destitute children since 1976 and that in October 2013, and in accordance with the mother church's constitution, the church held scheduled elections where the following were elected to the LCC and in effect became trustees of the church for a period of five (5) years;

a. Stephen Muthwii Kitonga (5th Petitioner)- Secretary

b. David Muema Nginda (4th Petitioner)- Assistant Secretary

c. Jimmy Nthenge Mwaka (6th Petitioner)- Treasurer

d. Samuel Wambua Kituna (7th Petitioner)

e. Benard Muisyo Mulwa

f. Peter Kikumu

g. Pastor Benson Wambua- Pastor in charge of the time.

6. It was averred that sometimes in December 2015, the 1st Respondent unceremoniously and unilaterally sacked David Kiio who was the manager of the children's home; that the 1st Respondent also unilaterally changed sponsors of the home from Chariots of Hope to Kenya's Kids and that these actions were done without approval, consultation or involvement of the church and the LCC.

7. It is the Petitioners' case that David Kiio was replaced with the 10th Respondent who has been working in cahoots with the 1st Respondent in order to take over the land which has been set aside for the children's home; that during the said period when the 10th Respondent was manager of the home, some surveyors were sent by the 1st Respondent to demarcate and sub-divide the land on which the children's home is constructed and that the 1st and 10th Respondents have placed beacons on the land where the children's home is constructed and have threatened to do the same on the land where the church is constructed.

8. The Petitioners averred that after 27th December, 2016, the 1st and 10th Respondents joined hands with the 2nd to 9th Respondents to kick out the LCC members and change the user of the land on which the church and the children's home are constructed. According to the Petitioners, the Respondents have been coming every Sunday and forcefully taken over programmes from those on duty; that they have been interrupting services by denying the congregation opportunity to give offerings and tithes and that they have attempted to lock out the LCC members from running the church programmes and opportunity to worship.

9. It was averred that none of the Respondents is a member of the church but they are using their ranking in the church to achieve selfish goals to the detriment of the church and that the Respondents hold the following positions in the mother church;

a. 1st Respondent – Bishop Machakos Area

b. 2nd Respondent- Chairman of Regional Church Council Kangundo Region

c. 3rd Respondent- Chairman District Church Council Kangundo

d. 4th Respondent- Administrative Secretary Machakos Area

e. 5th Respondent- Deputy Bishop Machakos Area

f. 6th Respondent- Secretary Kandundo Region Church Council

g. 7th Respondent- Vice Chairman Kangundo Region Church Council

hi. 8th Respondent- Treasurer Kangundo Region Church Council

i. 9th Respondent- Secretary Kangundo District Church Council

j. 10th Respondent- Employee of the Area Church Council.

10. The Petitioners averred that they have a right to occupy and use land parcels numbers Kangundo/Muisuni/1009 and Kangundo/Muisuni/945 without interference from the Respondents; that they have a right to be consulted before any change of user of the land is implemented and that the Respondents do not have a right to dictate who occupies or uses the land.

11. It was averred that the Petitioners have a legitimate interest and expectation on the suit land; that the land should not be taken away for purposes for which it was not intended without the consent and approval of the church members and the government and that the Respondents or any other church official of whatever rank holds all proprietary titles as trustees of the church members and cannot appropriate or allocate any property to themselves or any person without the consent of the church members.

12. According to the Petitioners, the church members' constitutional rights have been breached by the Respondent as follows: their freedom of conscience and religion has been infringed by being denied their rights to worship freely in the premises they have constructed and acquired since 1907; their right to protection of the church's property is on the verge of being violated by the way the Respondents have tried to alienate the church's property and that the Respondents' acts are prejudicial and harmful to the interests of the children who are beneficiaries of their efforts and programmes in the home and the church.

13. The Petitioners finally averred that the Respondents are out to stifle the church's efforts of goodwill by denying them the opportunity to raise funds for the programmes they have been running for many decades and that the Respondents' acts are a risk to the members of the church because the land risks being taken away from them.

14. The Petitioners have prayed for the following orders to issue:

a. An order of permanent injunction restraining the Respondents either by themselves or through their agents, servants, employees or principals from alienating, demarcating, placing beacons, subdividing and in any other way interfering with all those parcels of land known as Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 or any of the buildings, developments or structures thereon.

b. A permanent injunction restraining the Respondents either by themselves or through their agents, employees, servants or principal from evicting the Petitioners or any other members of Africa Inland Church Muisuni, from land parcels numbers Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 or in any other way preventing the Petitioners and other members of the church from using, occupying or carrying on activities on the aforesaid land.

c. A declaration that land parcel numbers Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 were set aside for purposes of church activities and no change of use thereof can proceed without approval of the members of the church and the government.

d. A declaration that the Respondents are trustees of the members of the Africa Inland Church and hold office or all proprietary titles and documents for and on behalf of members of Africa Inland Church Muisuni and cannot abrogate any of the assets to use not approved by members of the church.

e. A declaration that the Respondents have infringed the constitution rights of members of Africa Inland Church Muisuni by interrupting their services and activities and attempting to impose leaders on them and attempting to evict.

f. The Respondent do pay damages to the Petitioners as compensation of violating their constitutional rights. Such damages to be assessed by the court.

g. The Respondents do bear the costs of this petition.

The Response to the Petition:

15. In response, the 1st Respondent deponed that he is the Bishop of the African Inland Church (AIC) Kenya Machakos; that being the Bishop of AIC Machakos Area, he is also the head of AIC Machakos Area Church Council and also a member of the top-most decision making organ of the AIC, the Central Church Council (CCC) and that he is also a member of the Board of Trustees of the Africa Inland Church.

16. The 1st Respondent deponed that under the hierarchy/organizational structure of the AIC, he is in charge of the Church in Machakos Area, of which Kangundo is a branch and that the Petitioners may be members of the AIC but are not leaders or have ceased to be leaders of the church in Muisuni.

17. It was deponed by the 1st Respondent that the AIC is organized into five administrative councils: the Local Church Council (LCC); the District Church Council (DCC); the Regional Church Council (RCC); the Area Church Council (ACC) and; the Central Church Council (CCC) and that in the said hierarchy, the LCC is the lowest while the CCC is the top-most organ.

18. The 1st Respondent deponed that the Petitioners do not have any nor have they shown any evidence of proprietary interest in the parcels of land known as Kangundo/Muisuni/945 and Kangundo/Muisuni/ 1009; that the parcels of land in question belong to the Africa Inland Church, Kenya; that under the constitution of the AIC, all properties of the Church are held by its Board of Trustees, the Africa Inland Church Kenya Trustees Registered and that the trustees are 15 in number (*countrywide*) and the Petitioners are not among the said trustees of the church.

19. It was deponed by the 1st Respondent that it is untrue that the AIC Muisuni “owns and runs a children’s home on land reference number Kangundo/Muisuni/1009” and that through its top-most administrative organ - the Central Church Council (CCC) – the AIC runs several Children’s Homes caring for destitute children, one of them being AIC Kangundo Children’s Home which occupies parcel of land number Kangundo/Muisuni/1009.

20. It was deponed that under the AIC constitution (Article 7.11 (3)), children’s homes fall under the CCC, the top-most organ; that the CCC, under resolution, has mandated the ACCs countrywide to run the homes in their respective regions and that the ACCs in turn have been mandated (*by the CCC*) to enter into individual agreements with sponsors/donors to run the homes.

21. According to the 1st Respondent, the AIC Kangundo Children’s Home, through a legitimate and exclusive agreement signed in 2015, is run jointly by the AIC Machakos ACC and a third-party, the Kenya Kids organization; that the AIC Machakos ACC is headed by the 1st Respondent and that the Petitioners misled the court that they run the said institution.

22. It was deponed by the 1st Respondent that the Petitioners have misled the Court that the AIC constitution is the 1981 constitution; that while that constitution existed, it was amended and the constitution in use is the 2008 AIC constitution and that the persons named therein as officials of the AIC Muisuni have been suspended from the church as part of constitutionally guided disciplinary measures due to their insubordination and activities against the church doctrine and constitution.

23. It was deponed that the Petitioners and their followers have openly rebelled against the church leadership led by the 1st Respondent, Bishop Bernard Nguyo; that this rebellion and insubordination has led to several warning letters being issued to them and that the 1st Respondent, as the Bishop of AIC Machakos area (*under which the AIC Muisuni falls*) has the power to discipline errant members.

24. It was deponed that being bound by the constitution, the Petitioners have failed to disclose to this court that there exists a definite dispute resolution mechanisms provided under the 2015 by-laws that were adopted by the Church’s highest decision making organ, the CCC Executive Committee meeting held on 3rd February 2016; that this Petition is an abuse of the process as the Petitioners have not exhausted all (*or any of*) the provided avenues and that the By-Laws set out how a dispute shall be commenced through the church’s ranks and provides for an appeal by any aggrieved person to the next order of the church organs.

25. The 1st Respondent finally deponed that the Petition is defective for failure to cite with particularity any breach of the provisions of the Constitution of Kenya; that the reliefs sought by the Petitioners go against the constitution of the AIC to which the Petitioners allegedly profess their faith and that the courts cannot rewrite the constitution of the AIC.

Submissions:

26. The Petitioners’ advocate submitted that it is indisputable that the Petitioners are members of the church; that the church has for purposes of worship and catering for the welfare of members constructed a sanctuary and a children’s home on land parcels numbers Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 and that the church has been on the ground since 1907.

27. The Petitioners’ advocate submitted that the original and registered proprietor of the parcels of land in question is the County Government of Machakos which has not withdrawn its consent or licence to the church and that the County Government of Machakos still regard the Petitioners as the true users and occupiers of the two parcels.

28. It was submitted that the Certificate of Search for both parcels of land show the proprietor of the land as Masaku County Council and that there is a subsisting entry in the register showing that parcel number 945 is ‘reserved for Muisuni African Inland Church’ while for parcel number 1009 it shows ‘reserved for African Inland Mission Residential Ground’.

29. Counsel for the Petitioners submitted that that Masaku County Council is defunct and has been succeeded by the County Government of Machakos; that there is nowhere in the searches where Africa Inland Church Kenya, which the Respondents claim to represent, is shown or mentioned and that even if the said parcels were registered in the name of the Trustees of Africa Inland Church Kenya, there is no evidence to show that the Respondents are the trustees or officials of the said church.

30. Counsel submitted that the Respondents are total strangers to both the land, Muisuni Africa Inland Church and Africa Inland Church Kenya; that none of the Respondents has invested a single cent to the development of the church and the children’s home and that the leadership of AIC is not an issue in this Petition.

31. It was submitted that registration of land in the name of a person does not automatically give him absolute ownership; that titles are subject to overriding interests whether registered or not and that the question to be answered is who the real users and occupiers of the parcels of land in question are.

32. It was submitted by the Petitioners' counsel that the Petitioners have brought this Petition in order to protect their right to use and occupy the parcels of land in dispute; that Article 40(1) of the Constitution provides that every person has a right either individually or in association with others to acquire property anywhere in Kenya and that the Respondents have not demonstrated that the Petitioners have no right to worship in the church.

33. The Petitioners' counsel finally submitted that the Petitioners had legitimate expectations that the parcels of land in question belong to their church; that the Respondents cannot sit in an office in Machakos town and decide to evict or interfere with the Petitioners' use of the suit properties and that the Respondents have never been on the land neither are they the registered trustees of the church.

34. To that extent, it was submitted, the Respondents' acts and intentions of invading and interfering with the Petitioners' use and occupation of the land was an infringement of the Petitioners' right as enshrined under Article 40 (1) of the Constitution.

35. Counsel submitted that the acts of the Respondents were also an infringement of the Petitioners' rights to worship and freedom of conscience and belief as protected by Article 32 of the Constitution. It was submitted that the Petition has been brought on behalf of the members of the church and that Article 22(2)(b) and (d) of the Constitution allows any person acting as a member of or in the interest of, a group or class of persons and an association in the interest of one or more of its members to file a Petition.

36. This Petition, it was submitted, has been brought for the interest of members of Muisuni Africa Inland Church and that no member of the church has opposed the Petition or come to court to claim that the Petition was filed against their will.

37. Counsel submitted that this Petition is by the entire church and not a dispute amongst members; that in any event, the existence of such an alternative mechanism in the constitution of the church is not a bar to this court exercising its jurisdiction conferred to it by the Constitution and that the only bar would be if there was a statute providing for a special tribunal to deal with church disputes. Counsel relied on the case of *Dr. Julius Okello Kungu & Another vs. John Henry Tulu & Others* (2009) eKLR in which the court held that:

“However whereas this court would subscribe to the notion that internal or domestic disputes involving a church body or any other body would best and conveniently be left to the body’s dispute resolution mechanism, the court is not prepared to accept the notion that it lacks jurisdiction to handle such matters as this would be going contrary to Section 60 (1) of the Constitution of Kenya which grants the High Court unlimited jurisdiction to adjudicate on any matter arising for God’s good country of Kenya.”

38. It was submitted that the Petitioners have made specific references to their rights which the Respondents have violated; that there is no law stating the manner or specific narration of how one should show infringement of rights; that the court can discern from the Petition that the rights the Petitioners claim were being violated were the right to use and occupation of land and freedom of conscience and belief, otherwise known as freedom of worship and that the prayers sought in the Petition are in tandem with the claims made in the body of the Petition.

39. The Respondents' advocate submitted that the Petitioners are not members of the AIC but were rebels who associated themselves with a cabal led by one David Mbuvi who claimed to be the national leader of the AIC; that this group further claimed that AIC and AIC – Kenya were separate entities and that this claim was dismissed by Mwita J. in ***Petition 395 of 2012 (Nairobi): Bishop Silas Yego & others versus Minister of State for Provincial Administration and Internal Security & 8 others.***

40. It was submitted that the court held that AIC and AIC-Kenya is one church led by Bishop Silas Yego; that this is significant in the present suit because the Petitioners declared themselves to have *“seceded from the AIC Kenya system as led by (the 1st Respondent) and the Presiding Bishop Silas Yego”* and *“reverted to the original AIC as governed by the 1981 Constitution”* and that in essence, the Petitioners admit to belong to the Mbuvi-led group.

41. It was submitted that the AIC is a church set up and governed by rules embodied in its constitution and subsidiary legislation which includes its by-laws and that by their own admission, the Petitioners are no longer members of AIC; that the 1st Respondent is the Chairman of the AIC Machakos Area Church Council (“ACC”) and also the Bishop of Machakos and Kangundo and that Muisuni falls under his administrative control.

42. Counsel submitted that under the constitution of the AIC, one of the responsibilities if the ACC is *“to oversee the management of properties, schools and institutions within the Area Council”* and that it is within his mandate that the 1st Respondent exercises administrative control over AIC Muisuni.

43. Counsel submitted that under the AIC Constitution (*Article 7.11 (3)*), children's homes fall under the Central Church Council, the top-most organ; that the CCC has instituted the Childcare Department and has mandated the Area Church Councils (ACC) countrywide to run the homes in their respective regions and that the ACCs in turn have been mandated (*by the CCC*) to enter into individual agreements with sponsors/donors to run the homes.

44. The Respondents' counsel submitted that the Petitioners have no claim whatsoever over the AIC Kangundo Children's Home; that they have not shown any evidence of their funding of the Children's Home and that the responsibilities of the AIC Board of Trustees – Africa Inland Church Kenya Trustees Registered – include *“to receive and hold safely all properties belonging to the Africa Inland Church Kenya”*.

45. It was submitted that the suit property known as Kangundo/Muisuni/1009 was reserved by the defunct Masaku County Council for the Africa Inland Mission (*predecessor to AIC*) in 1978; that the nature of both titles is absolute and that the AIC has continued to use the land, for the reserved purpose, that is, for church activities for the benefit of the local populace.

46. It was submitted that the purported takeover of the suit land by the Petitioners is an infringement of the AIC's right to own property as provided under Article 40 of the Constitution; that the Petitioners have no right over the land and should therefore be ejected and that there exists no entity known as Muisuni Africa Inland Church that is registered under the Societies Act or any other law.

47. According to counsel, the Muisuni AIC is an administrative unit under the AIC Kenya; that the local church at Muisuni cannot therefore hold property as purported by the Petitioners and that the Petitioners have not shown any proprietary proof of ownership of the disputed parcels of land.

48. It was submitted that it would be wrong by dint of Article 24(1), (2) of the Constitution to allow the Petitioners to enjoy their right while impeding the rights of the Respondents. Counsel relied on the case of **Rev. Peter Gachara and others vs. Attorney General and others, Nairobi Petition No 299 of 2011 (unreported)** as cited by Mutende, J. in **Jacob Mbau Nyaa & 7 others vs. Anglican Church of Kenya - Diocese of Kitui & another, Petition No. 22 Of 2013**, where it was held as follows

“The (church) is a place of worship for members of the public, but a church, it functions within an organizational structure. In my view, therefore, that organization and the persons who serve in it are subject to internal rules and regulations which they agree to abide by when they agree to join that church. Freedom of worship or religions activity does not operate in a void or vacuum.”

49. Counsel submitted that the Petition should be dismissed with costs.

Analysis and findings:

50. This Petition was filed by the members of African Inland Church, Muisuni in Kangundo, Machakos County. According to the Petitioners, the church is located and constructed on land parcels numbers Kangundo/Muisuni/945 (*the suit property*) which land was set aside for that purpose by the defunct Masaku County Council (*now Machakos County Government*) and that the church has been on the suit property since 1907.

51. It is also the Petitioners' case that other than the church building, African Inland Church, Muisuni, has also sponsored and has a children's home (*hereafter referred to as 'the home'*) on land parcels Kangundo/Muisuni/1009 which was set aside for that purpose by the defunct Masaku County Council (*now Machakos County Government*).

52. It is the Petitioners' case that according to the constitution of the African Inland Church Kenya, the basic unit of the church structure is what is known as the Local Church Council (*hereafter referred to as 'the LCC'*) which is composed of leaders elected by the members of the particular church and that the LCC is the custodian of the property of the local church and is mandated by the constitution of the mother church to protect the property on behalf of the entire membership.

53. According to the Petitioners, the LCC, with the consultation of the church members, set up a children's home on land reference number Kangundo/Muisuni/1009 as one of its mandate; that the project was the brain child of the church which has catered for destitute children since 1976 and that in October 2013, and in accordance with the mother church's constitution, the church held scheduled elections where several people were elected to the LCC and in effect became trustees of the church for a period of five (5) years.

54. The Petitioners' complaint is that in December 2015, the 1st Respondent unceremoniously and unilaterally sacked David Kiio who was the manager of the children's home; that the 1st Respondent also unilaterally changed sponsors of the home from Chariots of Hope to Kenya's Kids and that these actions were done without approval, consultation or involvement of the church and the LCC.

55. It is the Petitioners position that they have a right to occupy and use land parcels numbers Kangundo/Muisuni/1009 and Kangundo/Muisuni/945 without interference from the Respondents; that they have a right to be consulted before any change of user of the land is implemented and that the Respondents do not have a right to dictate who occupies or uses the land.

56. The only issue for determination in this Petition therefore is who between the Petitioners and the Respondents have a say in the running of the Church and the Children's home standing on parcels of land number Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 respectively.

57. The Petitioners have admitted that African Inland Church is an affiliate of African Inland Church, Kenya. As was held in **Rev. Peter Gachara and others vs. Attorney General and others, Nairobi Petition No. 299 of 2011 (unreported)** as cited by Mutende, J. in **Jacob Mbau Nyaa & 7 others vs. Anglican Church of Kenya - Diocese of Kitui & another (2015) eKLR**,

“The (church) is a place of worship for members of the public, but a church, it functions within an organizational structure. In my view, therefore, that organization and the persons who serve in it are subject to internal rules and regulations which they agree to abide by when they agree to join that church. Freedom of worship or religions activity does not operate in a void or vacuum.”

58. That being so, the Petitioners are bound by the constitution of African Inland Church, Kenya wholly. Although the Petitioners placed reliance on the 1981 constitution of the African Inland Church (AIC) - their mother church, the Respondents have deponed that the said constitution was replaced by the 2008 AIC Kenya constitution. This assertion by the Respondents was not disputed by the Petitioners in their subsequent pleadings and submissions. The position is further supported by the Judgment of Mwita J. in **Silas Miso Yego & 2 others vs. Minister of State for Provincial Administration and Internal Security & 8 others [2018] eKLR** in which he held as follows:

“45. Further, there are letters from the Registrar of Societies dated 17th October 2008 to the Secretary, African Inland Church - Kenya acknowledging and informing the Church that amendments to its constitution had been approved and that the Registrar had

no objection to their implementation, a “**certificate of incorporation for African Inland Church Kenya Trustees Registered**”, dated 26th June 1971 and Gazette Notice No. 2877 of 19th March 2010 by the Senior Deputy Registrar of Societies cancelling the 4th respondent’s Licence to celebrate marriage showing the 1st respondent’s denomination as **African Inland Church – Kenya**, among many other documents are also on record.”

59. That being the case, it is the 2008 constitution of the African Inland Church –Kenya, which is the Petitioners’ mother church, together with its by-laws, that is applicable in this case. The said constitution has been attached on the 1st Respondent’s Affidavit.

60. The Petitioners have not denied the Respondents’ assertion that AIC Kenya is organized into five administrative councils: the Local Church Council (LCC), the District Church Council (DCC), the Regional Church Council (RCC), the Area Church Council (ACC) and the Central Church Council (CCC), with the LCC being the lowest with the CCC being the top-most organ. The Petitioners in this case, according to the Petition, are the duly elected LCC officials of the AIC, Muisuni.

61. Indeed, from their own pleadings, the Petitioners have stated that they are the elected LCC officials of the AIC, Muisuni. According to the 2008 constitution of the church, members of the LCC are elected from among the members of the local church after the DCC has authorized such a formation.

62. As regards management of the property of the church, the constitution of the church provides that each Local Church Council (LCC) ‘shall be responsible for the supervision of local church property.’ The only function that is reserved for the Area Church Council, in which the 1st Respondent is an official, through its Property Management Committee, in so far as the property of the church is concerned, is ensuring ‘the properties of the church are legally acquired and properly kept and utilized within the area.’

63. Although it is the Board of Trustees appointed by the Central Church Council (CCC) who are mandated to receive and hold safely all properties belonging to the church, it is the LCC which has the mandate of supervising the property of the church and not the ACC. The day to day management of the property of the church is in the hands of the LCC.

64. That being so, the 1st Respondent, who has described himself as the head of the Area Church Council and a member of the Central Church Council and a Board Trustee, cannot be involved in the day to day management of the local church’s property, including supervision of the church property. That is the function of the people that the Petitioners’ members elect.

65. Furthermore, the official search for parcel of land number Kangundo/Muisuni/945 on which the church stands shows that the said land is registered in favour of the defunct Masaku County Council on 18th March, 1977. The said land is still registered in favour of the said Council, which by operation of the law was succeeded by the County Government of Machakos.

66. Although the land is owned by the County Government of Machakos, the same was reserved for ‘Muisuni African Inland Church.’ That being the case, it follows that African Inland Church, Kenya cannot claim that it owns the land. The land is still owned by the County Government of Machakos, and its use is restricted to Muisuni African Inland Church.

67. The Respondents in this case cannot therefore exercise the powers conferred on a registered owner of land in respect to the suit land without reference to the County Government and the local church. Consequently, it is erroneous for the Respondents to claim that the suit land is held by the Board of Trustees of the church.

68. The 1st Respondent has denied that AIC Muisuni “owns and runs a children’s home on land reference number Kangundo/Muisuni/1009.” It was deponed that through its top-most administrative organ - the Central Church Council (CCC) – the AIC runs several Children’s Homes caring for destitute children, one of them being AIC Kangundo Children’s Home which occupies parcel of land number Kangundo/Muisuni/1009.

69. Indeed, under the AIC constitution (*Article 7.11 (3)*), children’s homes fall under the CCC, the top-most organ. The AIC Kangundo Children’s Home, through an agreement signed in 2015, is run jointly by the AIC Machakos ACC, which is headed by the 1st Respondent, and a third-party, the Kenya Kids organization.

70. The constitution of AIC Kenya has not given the Petitioners or the local church the mandate of running a Children’s Home. Indeed, there is no evidence before me to show that the Petitioners have the financial and human resources to run a sensitive institution like a Children’s home.

71. To the extent that it is only the CCC of the AIC Church that has been authorized to have a Children’s Home Department which is responsible for child care institutions and services of the AIC, it is my finding that the Petitioners role in the running of a children’s home on land reference number Kangundo/Muisuni/1009 is subject to the directions of the Respondents and the Central Church Council (*the CCC*).

72. However, considering that parcel of land reference number Kangundo/Muisuni/1009 is registered in favour of the Masaku County Council, the Respondents, or the Board of Trustees of the AIC Kenya cannot deal with the land in any other manner other than running the said Children’s Home or ‘for AIC Muisuni Residential Ground’ as indicated in the certificate of official search.

73. That being so, it is my finding that it is the elected officials of the Petitioners’ LCC who should be in charge of the supervision and management of the land on which Muisuni church stands on, that is Kangundo/Muisuni/945. However, the 1st Respondent and the Central Church Council are the ones that should run and manage the children’s home on land reference number Kangundo/Muisuni/1009.

74. For those reasons, I partially allow the Petitioners’ Petition as follows:

a) An order of permanent injunction be and is hereby issued restraining the Respondents either by themselves or through their agents, servants, employees or principals from alienating, demarcating, placing beacons, subdividing and in any other way interfering with all those parcels of land known as Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 or any of the buildings, developments or structures thereon.

b) A permanent injunction is hereby restraining the Respondents either by themselves or through their agents, employees, servants or principal from evicting the Petitioners or any other members of Africa Inland Church Muisuni, from land parcels numbers Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 or in any other way preventing the Petitioners and other members of the church from using, occupying or carrying on activities on the aforesaid land.

c) A declaration that land parcel numbers Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 were set aside for purposes of church activities and no change of use thereof can proceed without approval of the members of the church and the county government of Machakos.

d) An order be and is hereby issued that the 1st Respondent and the Central Church Council (CCC) are the ones that should run and manage the children's home, in corroboration with other third parties, on parcel of land number Kangundo/Muisuni/1009.

e) Each party to bear his or her own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19TH DAY OF FEBRUARY, 2021.

O.A. ANGOTE

JUDGE