



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NOL 1416 OF 1995

JAMES K. MU RIUKI & OTHERS PLAINTIFFS

VERSUS

GOODNEWS CHURCH OF AFRICA & OTHERS ... DEFENDANTS

JUDGMENT

This case involves a church. In order to understand the dispute, I require to out line how the said church operates.

1. HISTORY

A group of Americans from the United States run a church in America known as the Gospel Futhering fellowship. Their mission is to plant more churches, exalt God, evangelizing the lost, edifying the believers, educating them, establishing local churches and extending ministries.

The American organization was known as the Gospel Futhering Fellowship International. It had the ultimate authority in all matters pertaining to the church world wide.

A constitution was drawn up whereby the Kenya church consisted of Board of directors, advisory council and missionaries. The organization had made it a requirement that anyone who serves as a trustee, missionary and all “national” pastors and evangelists were to adhere strictly to:-

“The doctrinal position of the mission as pertaining them, signing a statement to that effect once a year.”

If a member failed to do so or “deviated from the doctrinal position of the constitution, by-laws and policy or had a serious and proven violation of biblical, ethical or moral standards,” they would be removed from the church.

The church has a director of overseas ministry who has powers to appoint a director of African ministries.

This director is automatically a member of the Trustee. A Field secretary is elected but must be confirmed by the American body. He is the Chief director of African Ministries.

Members to the council formed are restricted to the missionaries both foreign and local.

Within the organization are Trustees. They are five in number of which three are elected by the Field conference and approved by the Board of Directors. They are to act according to the formal instructions

issued.

The Gospel Futhering Fellowship expressly state that they are not a denominational mission. They therefore do NOT start churches but rather bring about independent churches on its field with as much congregational involvement in local decision making as possible. It nonetheless does not recognize groups meeting for bible study, Bible conference or casual meetings of believers as a church.

What the organization recognizes is the:-

“Independence and autonomy of the national churches”

It therefore means that once a church is planted, then it becomes independent and has its own autonomy with little interference from the original organizers. The only thing asked of the churches is to emphasize the spiritual. All the churches must adhere to the main organizers biblical and spiritual stand. If they do not the:-

“Gospel Futhering fellowship will . . . withdraw its recognition of any national church which deviates from the doctrinal statement, refuses to sign the doctrinal statement or refuses to maintain the biblical position of the fellowship.”

The churches are encouraged to meet quarterly with each other.

In Kenya, the American Organization established several churches independent of each other and having different names. These are:-

- i) The Gospel Futhering church (based at Eastleigh)
- ii) Good News Church of Africa
- iii) Gospel Futhering Bible church.

And other based in other parts of Kenya and Tanzania. The church in Kenya was exempted from registration under section 10 of the Societies act on 4.9.68 (No.1890).

2. THE DISPUTE

Sometime in the 1930's the American organization was allocated land by the Government in the Eastleigh Area. The organization established a body corporate under the provisions of the Land (perpetual succession) Act Cap.286 known as the Gospel Futhering Fellowship registered Trustees. This body corporate held the land in trust of the churches. The trustees were governed by a trust deed which controlled who the trustee would be.

This was first granted by the colonial government on the 29th of March 1939. The Trustees changed on 18.1.1963, and again on 21.5.75. In 1963 Taita Toweet, the then Minister of lands, Survey and Town planning varied the terms of trustees. Part of the variation was:_

“Any trustee may be removed from office by a majority vote of members present at any regular [or] special meeting of the representative council.”

Up to now the trustees were all foreigners. As their goal was to make the Africans run their own affairs and be in control they appointed James Karani Muriuki as trustee in 1977. On the 9th of March 1994 George Kanyuiria Chege, Mark Ngaira and John Asete Ndhiwa were appointed as trustees.

James K. Muriuki is plaintiff No.1. John Asete Ndhiwa is plaintiff No.2. Pastor George K. chege is plaintiff No.3.

The three claim that they have brought this suit on their own behalf and that of 38 others, the East Leigh church nursery school and the Gospel Futhering fellowship of Kenya, Eastleigh church.

This church is based on the land in which the tilte deed held by the trustees is situated.

The field secretary a missionary known as Norman K. Helfers fell out with the plaintiffs. Bruce P. Busch took over from him as a Field secretary. He too fell out with the plaintiffs. He went further and withdrew his membership from that particular church.

The missionaries from America met and removed the plaintiffs as trustees. They cancelled their intention of transferring the property to the plaintiff's church.

The reasons they gave was that the plaintiffs did not adhered to the doctrinal statements that they uphold. One of these being that the church did not believe in a Pentecostal movement of speaking in tongues and being emotionally changed. The plaintiffs would lead their congregation into this act of worship which was contrary to the doctrinal stand that the church was to uphold. Further P. Chege refused to sign the document that requires each member to sign once a year that they would adhere to the doctrinal statement.

The missionaries took it upon themselves to remove the plaintiffs, which they duly did. I note that this they did through their constitution and para 8 of the deed 9.3.94. They then transferred the same to the:-

- 1 Good news church of Kenya – Defendant No.1 whose Bishop is Gitari.
- 2 Gospel Futhering Bible church whose Bishop is Kinyua – Defendants No.2.
- 3 Joseph Mutio – trustee – defendant No.5
- 4 Philip Langat – defendant No.6.

Norman Helfers was sued as defendant No.3 but was not able to give evidence as he was out of the country.

Bruce P. Busch is the 4th defendant and gave evidence De Benesse under order 17 r 11 CPR.

It is as a result of this that plaintiff sued the defendants in Hccc 730/94 whereby they sought orders of injunction that he defendants do not evict them and or remove their entitlement to property LR 36/VI/586, which they have been in possession of for over 30 years.

They withdrew he said suit as the land had by then beene transferred and filed the present suit. They amended the plaint to include the Attorney General in these proceeding.

The defendants 1 – 6 in principle were saying that they were within their rights to remove and replace the plaintiffs on the simple ground that they failed to adhere to the doctrinal principles of the church.

The 7th defendant and Attorney General stated through its witness that he registration was done according to the awl. In its defence it claimed that he suit against the Attorney General was in fact time barred. The plaintiffs major contention is that the whole removal as trustee was fraudulent. As such this court should reverse any action taken by the defendant missionaries and return the land to them to hold in trust.

3. ISSUES

The parties agreed on issues which I would answer as follows.

Plot 36/VII/586 Eastleigh Nairobi was not the property of the Gospel Futhering Fellowship of Kenya

before it was transferred to the 1st and 2nd defendant.

The property was registered under the “Gospel Futhering Fellowship Registered Ttrustee”. There was an intention of making the plaintiffs trustees which infact was duly done of the latter organization. A further intention was to be made to transfer the whole property to the church at Eastleigh where the plaintiffs are situated. This was cancelled at a later stage.

The transfer of the property was not irregular or fraudulent. It was according to the constitution as laid down.

From the Plaint before me both the original and amended plaint the plaintiff failed to particularize the particulars of fraud as required by law. This would have been thereafter strictly proved.

I hold that the defendants were entitled to transfer the suit premises to the 1st and 2nd defendants. This they did at a “fee simple”.

The 5th and 6th defendants are the new trustees appointed. They are not members of the Gospel Futhering Fellowship Easteligh church. They are members of Good News Church in Africa at Nairobi and Eldoret respectively.

I have earlier explained he structure of the church. It forms independent churches with different names. The Eastleigh church is the one having a similar name as the parent church.

The two are members of the mission brought by the American but belong to the other churches established by the Americans which is similar to the Eastleigh church. The trustees who are sons of the plaintiffs were legally removed from office. The way the constitution was worded in indeed not to the advantage of the plaintiff.

The third plaintiff was NOT a trustee, he admitted he was never a trustee.

It is not a pre requisite that the 5th and 6th defendant be members of the 1st and 2nd defendants. Nonetheless have heard evidence whereby they claim to be staunch members of the church.

As to the nursery school, it was not disputed that this existed. The defendants claim that this can be moved out. The plaintiffs mentioned nothing of the nursery school except plaintiff No.3. He stated they were in the process of registering a primary school. No further proof was given to this court as to whether the said nursery school should continue to remain on the compound or not. Perhaps a contract with the church to run such a school may be entered.

There was no proof by the plaintiffs that they would suffer irreparable damage and loss.

I hold that the defendant are entitled to the suit premises. The plaintiffs are not entitled to any loss or damages as they have not succeeded in this suit.

As to the case against the attorney General (7th defendant), the plaint was amended on the 14th of November, 1996 to include them. This amendment was made without leave by the plaintiff to file the suit against the attorney General out of time. The effect is of course the suit is time barred. There are various authorities on this point.

On the merits, the attorney General was doing its duties in registering the required instruments through the Ministry of Lands.

The plaintiff brought this suit on behalf of 38 others. They were not named and were never disclosed nor gave their authorities to the three plaintiffs. The other two parties namely the Eastleigh church nursery school and the Gospel Futhering fellowship of Kenya Eastleigh church cannot sue in its name. They were never described in the main body of the plaint as to their relationship with the plaintiffs.

I hold that the plaintiffs have failed to make a case against all the defendants. This suit be and is hereby dismissed with costs to the defendants.

Dated this 20th day of November, 2000 at Nairobi.

M.A. ANG'AWA

JUDGE