



**Mbita v Barasa & 2 others & 12 others; Laborde & 10 others (Intended Defendant)  
(Environment & Land Case E004 of 2023) [2024] KEELC 1691 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1691 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE E004 OF 2023  
FO NYAGAKA, J  
APRIL 4, 2024**

**BETWEEN**

**REUBEN FWAMBA MBITA ..... PLAINTIFF**

**AND**

**HENRY SHIKUKU BARASA & 2 OTHERS & 12 OTHERS ..... DEFENDANT**

**AND**

**JEREMY LABORDE & 10 OTHERS ..... INTENDED DEFENDANT**

**RULING**

1. The Notice of Motion before me is dated 24th May 2023. It was brought by eleven (11) Intended Defendants. It was brought under sections 1, 1A and 3A of the *Civil Procedure Act*, Order 1 Rule 3, Order 10 Rules 2 & 4, (and) 14 and 25 of the *Civil Procedure Rules*, 2010 and all other enabling professions of law. It is sought the following orders.
  1. ...Spent.
  2. That the honorable court be pleased to rent leave for the 4th to 14th Proposed Defendants/Applicants to be enjoined in this suit as defendants.
  3. ...Spent.
  4. The honourable Court be pleased to set aside, the consent order and subject to prayer two above schedule the case for hearing on merit.
  5. The decree issued by the Honourable court on 14th February 2023 be vacated and or set aside.
  6. The matter be set down for hearing of the suit on merit.



2. The application was based on eleven (11) grounds summarized hereafter. First, that the plaintiff had commenced execution and issued a notice for them to vacate from the suit land which was the property of Kenya Good News Outreach Church, which it had occupied since 1982. The property hosted the headquarters of the Church and Mission and on it was a church sanctuary which had been improved over the years with extensive buildings. That the suit property did not belong to the Plaintiff and the defendants had no absolute say over it, or even for them to unilaterally sign it off without notifying the persons in the physical occupation, and who had used resources to develop it. That the notice issued was very short to the persons who had been in occupation since the 1980s.
3. That the 4th to 14th Interested Defendants wish to be enjoined in the proceedings over land parcel number Kiminini/Kinyoro Block 3 (Matisi) 19 which was mysteriously and erroneously registered as Matisi Outreach Church, yet the parcel belongs to Kenya Good News Outreach Church and the worship Center is locally called Matisi Outreach Church. That 1<sup>st</sup> – 3<sup>rd</sup> Defendants were officials of the Kenya Good News Outreach Churches, and they were in the process of being removed but they had colluded to fraudulently give away the Church land to the Plaintiff/respondent who had been sued in Kitale, ELC No 33 of 2015. That there was non-disclosure to the court of the earlier suit filed being ELC No 33 of 2015 and a criminal case number 692 of 2023, wherein the first defendant had been charged of threatening to kill the Missionary currently serving in the Mission in Matisi.
4. That there is a school established by the missionaries next to the suit property, which is an expansion of the community work undertaken by the missionaries of the Kenya Good News Church. Further, that the 2nd defendant/respondent had terminated by the Kenya Good News Mission as a Bishop due to misconduct and had joined a scheme that began in 2014 to dispossess the Kenya Good News Outreach Church. That ex- Bishop is fighting the missionaries and is hellbent to destroy all church developments done by the missionaries at the suit property. That the suit property was the subject of ELC No 33 of 2015 where the plaintiff herein was the defendant and the 1<sup>st</sup> 3<sup>rd</sup> third defendants/respondents herein were plaintiffs.
5. A further ground was that the powers of the office bearers were not absolute and they could not pass unilateral decisions affecting the Church, especially the current decision over big magnitude involving giving away. The property of great value in which the missionaries had invested in.
6. The applicants gave a number of what they described as disturbing chronicle of events as follows. That the plaintiff/respondent is said to have refunded Kenya Shillings six hundred (Kshs 600/=). to the Kenya Assemblies of God, missionaries without anyone's prompting. The property later got registered to a non-existing entity, Matisi Outreach Church and not the Kenya Good News Outreach Church, Matisi which was an occupation and to whom the initial church had assisted in purchasing. The defendants sued the plaintiffs in Kitale ELC No 33 of 2015, using the wrong title deed supported by genuine registration certificate of KGNOC produced in court and the case was dismissed on a preliminary point based on registration hitch. A bill of costs was filed and taxed unopposed, giving rise to a Notice to Show Cause for committal to civil jail for failure to pay legal fees. The 4<sup>th</sup> proposed Defendant, the missionary paid the taxed sum of Kshs 847,000/= after a negotiated consent on a payment plan with the firm of M/S Karanigrey and Co. Advocates so that the Bishop was not jailed.
7. That immediately upon the payment, the Bishop went rogue on the missionaries and he and some church members formed a rebel group, causing his termination. The Bishop with the rebels commenced threats to harm the missionaries and Apostle of the work, a fact which led to the arrests of the Bishop and arraignment in criminal case number 692 of 2023. That learned counsel defending the Bishop in the criminal case is the same as the one to whom the 4th Intended Defendant had paid the taxed costs are awarded in Kitale ELC No 33 of 2015. Further, that while the case was ongoing, the



- eviction notice was served on Kenya Good News Church following the consent between the estranged church officials and the defendant in Kitale ELC No 33 of 2015 and now the plaintiff in this suit. That the powers of the officials were not absolute and could not make unilateral decisions on behalf of the church.
8. The application was supported by the Affidavit of one Francis Mutimbia, sworn on the 4th of May, 2023. He reiterated the contents of the grounds in support of the Application. But he added that he had authority and permission of the other intended defendants who were pastors of the Kenya Good News Church is to act on their behalf. He annexed and marked FM 1 a copy of the authority to act. He deposed further that the 5th to 14<sup>th</sup> Intended Defendants were pastors and members of the Kenya Good News Outreach Church. He annexed and marked as FM 2 a copy of the decree of the Court issued herein following the consent impugned. That he was appointed and recognized Apostle and head of the mission and who had sent Pastor Steve Claude and his wife to work in the mission.
  9. He deposed further that the Kenya Good News Outreach Church had been in occupation of the land since 1982 and the property was at the church headquarters. Further, that the suit land did not belong to the Plaintiff. That the Intended Defendants had been given a very short notice to quit. He annexed as FM 3 a copy of that notice to vacate, FM 4 a copy of the title deed which he alleged was registered erroneously, FM 5 a confirmation from the Registrar of Societies that the 1st to 3<sup>rd</sup> Defendants were officials of the Kenya Good News Outreach Churches, but who were in the process of being removed and were colluding to fraudulently give away the church land to the Plaintiff, FM 6 (a) and (b) the 2<sup>nd</sup> Defendant termination letter as a Bishop of the Kenya Good News Church, FM 7(a) and (b) a copy of the judgment in Kitale ELC No 33 of 2015 and the charge sheet in Kitale Criminal Case No 692 of 2023, FM 8 photographs of the school buildings which were on the land, FM 9 a copy of this certificate of registration of Kenya News as a society and the title deed in question, FM 10 a copy of the Bill of Costs in respect of Kitale ELC No 33 of 2015, and FM 11, a copy of the notice to show cause following the assessment of the Bill of costs, and FM 12 a copy of the consent recorded subsequent there too.
  10. Then he deposed further that the powers of the office bearers were not absolute and could not unilaterally pass a decision. He prayed that the consent order of 15th January 2021 (sic) set aside and or vacated.
  11. The application was opposed through the affidavit sworn by Reuben Fwamba Mbita, the plaintiff. He swore it on 5th June 2023. He deposed that the Application was misconceived, devoid of merit, frivolous, vexatious, bad in law and incurably defective and an abuse of the process of the court. He admitted that he had commenced execution against the defendants and members of the church to vacate his property, through the decree issued on 14th February 2023. That the allegations that the notice to vacate was too short was not correct, given that the decree was issued on 14th February 2023, after which the Defendants sought time to move out of the land and he agreed that they do so in three months.
  12. That the proposed intended defendants' allegation that the suit land belonged to Kenya Good News Church had no basis. That the 4th Intended Defendant, being a missionary, had no capacity to claim ownership of the land neither did he disclose the kind of interest the applicants had in the suit land. That he was not aware of the fact of them having a church sanctuary on the land that had been improved over the years with the extensive buildings. That even if they did, that did not confirm ownership of the suit land by the applicants.
  13. Further, that Kitale ELC No 33 of 2015, which the applicants had referred to, was filed by the 1<sup>st</sup> – 3<sup>rd</sup> defendants with the full knowledge and authority of the Kenya Good News Outreach Church, whose worship Centre was locally known as Matisi Outreach Church. That at the time of filing ELC No 33



of 2015 the three plaintiffs, now defendants, were officials of the church and had capacity to contract on its behalf and they transacted on its behalf. That that was they filed their suit. The judgment was delivered in that case and the plaintiff's case was dismissed for being incompetent. That the defendant took it upon himself to settle the costs, as explained by the Affidavit of Jane Nyabiage Odiya. That the payment of costs by the 4th defendant was an obligation on the part of the Church through its appointed and duly authorized agents who are the Plaintiffs over a valid court order and this cannot be construed to mean that the suit land belonged to the Kenya Good News Outreach Church. That after the delivery of the Judgment in 33 of 2015, in 2019, the plaintiffs did not appeal against it, and neither did the applicants move the court in a different suit rectify what they referred to as mysterious and erroneous registration of suit land. That it is on the basis of their judgment that the (Plaintiff) filed the instant case suing the 1st to 3rd defendants in their capacity as representatives of the Kenya Good News Outreach Church, and the applicants never filed any application to be enjoined as interested parties if, indeed, they had an interest in the suit property.

14. That all communications and any notifications to the Kenya Good news, Outreach Church was being done through the 1<sup>st</sup> – 3<sup>rd</sup> defendants who are authorized officials of the church and were held as such by the 4th to 14th Intended Defendants.
15. That from the instant application it was clear that there was a fallout between the 4th to 14th Intended Defendants and the 1<sup>st</sup> – 3<sup>rd</sup> Defendants as stated that they were in the process of being removed from the leadership of the Church. That it was therefore clear that the first two Defendants were still legitimate officials of the Kenya Good News Outreach Church and the orders made on the 14th of February 2023, now sought to be set aside, were validly made. That all parties concerned were legally represented. That the wrangles of the officials of the Kenya Good News Outreach Church had nothing to do with the Plaintiff neither could it form the basis upon which valid order of the Court would be set aside, with the intention of taking away the respondent's property.
16. That the application was an afterthought and made in bad faith with the intention to frustrate and deny the respondent opportunity to take possession of the suit land, notwithstanding his old age.
17. The respondent filed a Further Affidavit which he swore on the 5th of June 2023. To it he annexed photographs of the Church and added that the photos were on a different parcel of land and not the suit land. Further, that the only building on the suit land was the church whose photograph he had annexed as FM 1. He deposed further that the decision by the applicants to annex photographs of this school were only intended to mislead the court given that the school was on a different parcel of land to which he had no claim over.
18. The 5<sup>th</sup> Intended Defendant swore a Supplementary Affidavit on 13th of June 2023 by which he made a response to the Respondent's Replying and Further affidavit as follows. That the application was properly before the court and beckoned for justice for the applicants who were not notified of the actions of the three defendants. That it was misleading to bring the suit in the personal capacity of the defendants knowing well that they were in the matter as registered officials of the Kenya Good News Church and had no powers to sign off the property that did not belong either to them or the plaintiff in this suit.
19. Further, that the respondent were guilty of non-disclosure when they failed to inform the court that he used to work as a Bishop of the Kenyan Good News Outreach Church and was now working with the 1<sup>st</sup> Defendant who had been terminated as a Bishop to defraud the Church of the property upon which the Mission House and the physical church is built, and the ownership of the property had not been established. That it would be of great assistance to the court to visit the suit land and confirm that that the missionaries had invested on the portion of land that the outgoing leadership had signed off.



He reiterated that the property had developments on it right from the entrance, with the House of the Bishop, the main sanctuary and the mission house that accommodates foreign missionaries whenever they are in the country. He marked as FM 1 photographs to show the developments.

20. Further, that by the plaintiff's own admission, there was a church on the property and contrary to his assertion, he did not build the church and had never built save that he had served in the church leadership. He deposed that the parties involved in the consent decree did not serve the significant part of the people who would be significantly affected by the decree, and indeed the defendants were not in occupation of the suit land, and therefore the decree was bound to affect the third parties who are lawfully in occupation who ought to be given chance to be heard in the matter. The decree was discreetly issued to the defendants in their personal capacity and since they were working in collusion with the plaintiff to dispossess the Church of the land it had occupied for years they kept the same secret from the church members.
21. That 4th intended defendant was the head of the Apostolic Team and who had mobilized the improvement of the property of the Church and had put up a Mission House for the missionaries who were recognized in the history of the Church by laws. He had demonstrative interest in the property. He deposed further that the suit had clearly hid the aspect of the Church being involved and in occupation of the land and it was unfortunate that the leaders had worked in collusion to cause loss of money from the missionary of goodwill and continue to defraud the Church of its land. That at all material times the deponent believed that the elected leaders were acting at their best interest of the Church only for him to be shocked to find that they had colluded with their foe (enemy) to take that which belonged to the church membership.
22. He prayed that the consent judgment be set aside.
23. The Application was disposed of by way of written submissions. I have considered the application, the law and the rival submissions of the parties. I will take into account the submissions of the parties as I do the analysis and determination of the issues that I identify for consideration.

### **Analysis and Determination**

24. I am of the view that only three issues lie before me for determination. They are whether the consent judgment herein merits being set aside, whether the applicants had demonstrated that they merit being added as Defendants, and who to bear costs of the application.

#### **a. Whether the consent judgment herein merits being set aside**

25. The Respondent deposed at paragraph 10 of the affidavit sworn on 05/06/2023 that he had noted the contents of the Affidavit sworn by Jane Nyabiage Odiya Advocate. This Court did not see and confirms that the learned counsel did not swear an affidavit in relation to the instant application. Thus, the deposition was misplaced.
26. The first issue for determination is whether the consent judgment entered into on 13/02/2023 and the decree thereto merit being set aside. But before doing so, this Court begins this analysis with the note that the application was brought under Order 1 Rule 3 and Order 10 Rules 2 and 4 of the [\*Civil Procedure Rules\*](#). In brief, Order 1 Rule 3 is in regard to persons who may be joined as defendants while Order 10 Rules 2 and 4 are on liquidated demands against defendants.
27. Order 1 Rule 3 provides as follows.

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist,



whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

28. Order 10 Rule 2 refers to where a defendant fails to appear and the Plaintiff wishes to proceed in his absence. In such a case the plaintiff will be required to file an affidavit of service of the summons to enter appearance and proceed. Regarding Order 10 Rule 4, it is about situations where there is a liquidated demand against the defendants who do not appear. From the above it goes without saying that the two provisions immediate above as cited by the Applicants are irrelevant to the instant application. The circumstances of this application are, as alleged, that the applicants had never been served with summons to enter appearance as they claim in the affidavit in support of the application, nor is the claim against them a liquidated one.
29. This Court wishes not to comment on the other provisions cited because some do not exist. Needless to say, that in the interest of justice and as obligated under Article 159(2)(d) of the *Constitution* of Kenya 2010 the Court will proceed to determine the application on merits and not on the technicalities of failure to cite the right provisions or citing of wrong ones. In any event Order 51 Rule 10 (1) and (2) of the *Civil Procedure Rules* provide that an application should not be defeated on such a technicality.
30. Only under certain specific and special circumstances can a consent judgment or order be set aside. It is not open for any party to a consent or indeed any other person to move the court successfully to set aside such a consent. It has been stated by the learned author, Henry Wilmot Seton on *Forms of decrees, Judgments and Orders* 7<sup>th</sup> Edition Vol. 1 page 124 states as follows:
- “Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or by any agreement contrary to the policy of the court ... or if the consent was given without sufficient material facts, or in misapprehension or ignorance of material facts, or in general for a reason which would enable a court to set aside an agreement.”
31. Thus, a consent judgment can only be set aside under the grounds such as those on which a contract of parties may be set aside. The grounds include fraud, collusion, common mistake, misconception and/ or the like. Thus, the Court of Appeal has restated recently the principles upon which a court may interfere with a consent order or judgment. In *SMN v ZMS & 3 others* [2017] eKLR the Court stated:
- “Generally, a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. The factors touted for impeaching the consent in this matter were fraud and collusion. It is also alleged that counsel had no authority to enter into the consent. The onus of proving those assertions to the required standard was on the appellant. They are serious imputations bordering on crime and therefore the burden of proof is of necessity slightly higher than on a balance of probability but perhaps not beyond reasonable doubt.”
32. Additionally, in *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd* [1982] KLR 485, Harris, J held, inter alia, that:
- “1. A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or



in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.”

33. Similarly, much earlier, in *Flora N. Wasike v Destimo Wamboko* [1988] eKLR, the same Court of Appeal held as follows:

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out: see the decision of this Court in *J M Mwakio v Kenya Commercial Bank Ltd* Civil Appeals 28 of 1982 and 69 of 1983.”

34. Applying the principles in the authorities above to the facts herein, this Court sees nothing more telling about a consent judgment entered into through a carefully planned and executed fraud and collusion than the impugned one. I state so for a number of reasons. First, it is clear that the consent judgment entered into by parties who were protagonists in Kitale ELC No 33 of 2015 wherein the Defendants had clearly stated in evidence that the parcel of land belonged to a church – the Kenya Good New Outreach Church on whose behalf they purported to act then, but in the instant matter the three were sued in individual capacities yet they accepted through the consent that they were owners.
35. This Court has deeply and carefully looked at the annexures to the affidavit sworn by Francis Mutimba on 24th May 2023, particularly annexures FM 4, FM 5, FM 6(a) and (b), and FM 7(a) and (b). What is plainly demonstrated from them is the Plaintiff herein and the Defendants, particularly, one Henry Shikuku have something in common to hide about the ownership of the suit land because at one time they are adverse to each other and at other times, especially in regard to the consent herein, they have a unity of mind. For instance, from annexure FM7(a) which is the judgment delivered on 31/01/2019 in Kitale ELC No 33 of 2015, the 1<sup>st</sup> – 3<sup>rd</sup> Defendants were acting on behalf of the Church but in instant suit the plaintiff sued the three defendants in their personal capacity claiming that the Plaintiff herein interfered with their ownership and quiet use of the parcel of land he alleged to be his. The suit land, the subject was, Kiminini/Kinyoro Block 3 (Maitisi)19. On his part, in the instant suit, he alleged in the pleadings that he was the proprietor of that parcel of land and that the entity by the name Maitisi Outreach Church lacked legal basis to own the land. He prayed for an order of their eviction, injunction and mean profits, against the defendants. Upon serving them with the summons to enter appearance, they entered appearance and before filing either a Defence or Statement of Admission, they entered into the consent now impugned. At paragraph 13 of the Plaintiff pleaded that the defendants purported to be officials of the Kenya Good News Church when they were not and had colluded with Lands Office to obtain title to the land in issue. When pleads so, he does not in any way include the Church he alleges that it finally got registered as the owner of the parcel, yet the three persons he alleges to be masqueraders sign off the parcel of land in the consent judgment. What happened with the Church’s interest then? One needs not to have rocket science to discern collusion in the agreement and consent reached by the four (the Plaintiff and three defendants).
36. Needless to say, that the instant application was supported by an affidavit and a Supplementary affidavit and it was opposed by through two affidavits all which contain or depose to too many facts which, if this matter were to proceed to hearing, would be evidentiary in regard to the relationship between the defendants inter se, the Kenya Good News Church and the Maitisi Outreach Church over the suit land. The Intended defendants further deposed that he 1<sup>st</sup> – 3<sup>rd</sup> defendants had been officials of the Kenya Good News Church, but due to wrangles between them and the Church they had been disfellowshipped and the removal of their names was in progress. He deposed further that the defendants had no capacity to be sued in their personal names or capacity in relation to the suit land, while the same was the property of the Church, namely. The Kenya Good News Church. Again, he



deponed that the defendant had colluded with the plaintiff to give away the church property contrary to the Church's ownership rights.

37. On his part of the plaintiff stated that he had sued the defendants because they had sued him in Kitale ELC No 33 of 2015 but the lost the case and had not appealed against the judgment or applied to set it aside and that the issue of wrangles between the defendants and the intended defendants was not an issue that would affect his proprietary right over the suit land. The questions that then linger in the mind of the court are why, if the rights of the Plaintiff against the three Defendants were determined in the said suit, he had to file another suit. It would mean that the instant suit would be res judicata. But what this Court notes from annexure FM 7(a) is that the suit was struck out, not dismissed: there is a difference between the two. The other question is whether, when the consent signed on 13/02/2023 was entered into, it was intended to be directed to the Defendants, or the Intended Defendants or the Kenya Good News Church. Meaning, whether there was need for the other parties now affected by the consent judgment to be informed of the existence of this suit herein.
38. It is not lost to me as annexure FM4 and FM7(a) of the supporting affidavit show, the suit land is registered in the name of Matisi Outreach Church and not in the names of the defendants. The plaintiff sued the defendants in their individual capacity and did not in any way plead to and disclose the relationship between the three defendants and the owner of this suit land, yet the defendants entered into a consent that the Plaintiff evicts them and not Matisi Outreach Church from the land.
39. Additionally, from annexure FM 5, the letter from the Registrar of Societies, it is shown that the three defendants used to be or were officials of the Kenya Good News Outreach church as at 2015. Additionally, that as at 20th April 2022 there was a letter, marked as annexure FM 6(a), written by Jeremy LaBorde Apostle to the Kenya Good News Outreach churches to the effect that Henry Baraza, the 1<sup>st</sup> Plaintiff herein, had been terminated from office of Chairman (Bishop) vide a decision. It means that until that date, he was a Bishop of the Kenya Good News Outreach churches, to which he has now turned to sign off their property as an individual. Again, annexure FM 7(a) which is the judgment of the Court in Kitale IELC 33, of 2015 shows that the same land, which is the subject herein was the same subject in the previous case.
40. In the matter, it was Henry Shikuku Barasa himself who testified that we subject matter was the property of the Kenya Good News Outreach churches. How then did the same parcel of land become the property of the plaintiff as consented into in this matter? Did the Bishop lie on oath in that matter? Or he is acting in trickery in this matter, so much so that he and the other two defendants herein willingly and readily enter into a consent that the land is the plaintiff's and not of either the Kenya Good News Outreach Church or Matisi Outreach Church? This is a mystery that can only be answered by a finding that there is collusion between the Plaintiff and the three defendants herein in that consent judgment.
41. Furthermore, annexure 7(a), the judgment in Kitale ELC No 33 of 2015 when compared with annexure FM 7(b) shows that Henry Shikuku was the 1<sup>st</sup> Plaintiff in the 2015 suit and the accused in the criminal case Kitale CMC 692 of 2023. His Advocate in the criminal case is Mr. Karanigrey yet he is the same advocate who now acts for the Plaintiff in this matter where the Plaintiff has sued Henry Shikuku and others. It is plainly unprofessional and unethical for learned counsel to so act in matters which are over the same subject, leave alone parties who are adverse. It shows that there is either conflict of interest or intentional collusion aimed at achieving a certain goal. This can only come out during inter partes herein of this suit.
42. The totality of my analysis is that the consent judgment entered into on the 13th of February 2022 was wrought with fraud and collusion and/ or misrepresentation of the facts as ought to be as between



the plaintiff and the three defendants herein. It fits the classic case referred to in the authorities I have and the have considered above and must be set aside. b) Whether the prayer for addition as Defendants merits

43. The 4<sup>th</sup> to 14<sup>th</sup> Intended Defendants contend that they are the rightful owners of the suit land, having been in occupation thereof since the 1980s. They argue that they are pastors of the Kenya Good News Outreach Church which has not only heavily invested on the land but has been on occupation of the same to date. They argue further that the defendants used to be a Bishop and other officials of the church but have since been removed from the communion of the body (of Christ) and have no capacity to be sued in their individual capacity.
44. The Plaintiff, on his part argues that he sued the Defendants who were purporting to act as officials of the Kenya Good News Outreach Church and that they had sued him in Kitale ELC No 33 of 2015 in their capacity as officials of the said Church but they lost the case.
45. The totality of the arguments above is that there is a real issue in controversy which, in terms of Order 1 Rule 10 of the Civil Procedure Rules, must be determined as between the Plaintiff and the eleven Intended Defendants besides the 1<sup>st</sup> to 3<sup>rd</sup>. Therefore, it would be in the interest of justice that the applicants be added as Defendants in this matter.
46. In the circumstances I order that the 4<sup>th</sup> to 14<sup>th</sup> Intended Defendants be and are hereby added as the 4<sup>th</sup> to 14<sup>th</sup> Defendants respectively. The Plaintiff is hereby directed to amend his Plaintiff by adding the said eleven Defendants as such, and pleading his claim against them either individually and/or as officials of the Kenya Good News Outreach Church(es). Further, he is directed to add the Matisi Outreach Church (or its officials), which appears to be the registered owner of the suit land, as the 15<sup>th</sup> Defendant(s) onwards. He is directed to extract and serve within the next fifteen (15) days summons to enter appearance and the Amended Plaintiff on all the parties added. The parties are directed to strictly file their pleadings, the lists of Documents together with copies documents and the lists of Witnesses together with written witnesses' statements as required under Order 3 Rule 5 and Order 7 Rule 5 of the Civil Procedure Rules.

#### **c) Who to bear costs**

47. Regarding who to bear the costs, Section 27 of the *Civil Procedure Act* is instructive: costs follow the event. The event herein is that the application has wholly succeeded. Therefore, the Plaintiff who opposed the same is to pay the costs of the application.

#### **d) Final Deposition**

48. The application dated 24/05/2023 is hereby allowed on the terms stated in paragraphs 45 and 46 above. This matter will be mentioned on 15/05/2023 to confirm the closure of pleadings and taking of directions under Order 11.
49. The order of inhibition given on 18/07/2023 and issued on 02/08/2023 to remain in force until the determination of this suit, as directed then.
50. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 4<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. DR. IUR FRED NYAGAKA**

**JUDGE, ELC, KITALE.**

