



Board of Trustee New Life Covenant Church (Kimilili Gospel Church) v Mwaniki (Environment & Land Case 70 of 2015) [2023] KEELC 640 (KLR) (7 February 2023) (Judgment)

Neutral citation: [2023] KEELC 640 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 70 OF 2015**

**BN OLAO, J
FEBRUARY 7, 2023**

BETWEEN

**THE BOARD OF TRUSTEE NEW LIFE COVENANT CHURCH (KIMILILI
GOSPEL CHURCH) PLAINTIFF**

AND

JOHN KIMANI MWANIKI DEFENDANT

JUDGMENT

1. In the Book of Mathews 18: 15-20, it is written

“If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every word may be confirmed by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the Church; and if he refuses to listen even to the Church, let him be to you as a Gentile and a tax collector. Truly I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven. Again I say to you, if two of you agree on earth about anything they ask, it will be done for them by my father in heaven. For where two or three are gathered in my name, there am I in the midst of them.”

2. Rev. Peter Kiboi Maina A Pastor and one of the Members Of The Board Of Trustees of the New Covenant Church Kimilili Gospel (the plaintiff herein) and John Kimani Mwaniki (the defendant herein and who is also a Church elder and founder of the Kimilili Gospel Centre) are both men of the cloth. They are therefore very familiar with the above verse and other similar verses. They are acutely aware that conflicts can happen between Churchgoers, staff and even the clergy themselves because they are human beings. Power struggles are not therefore un-usual even in Churches. However,



a conflict-ridden Church is sure to lose members. A Church conflict resolution mechanism is therefore important.

3. To the credit of the two protagonists in this case, on 28th September 2015 they subjected themselves to an arbitration process led by Bishop James Murunga who filed his award in Court. However, and with the consent of the parties, that award was set aside on 10th March 2016. This Court therefore has the unenviable duty of resolving the parties dispute over the ownership of land parcels No Kimilili / Kimilili /1079, 1084, 1083 and 1085 (the suit land).
4. By a plaint filed herein on 2nd June 2015, the plaintiff sought judgment against the defendant in the following terms:
 1. A permanent injunction restraining the defendant either in person or through his relatives, agents or followers from trespassing onto the plaintiff's land parcels No Kimilili / Kimilili /1079, 1084, 1083 and 1085 and interfering in any manner whatsoever with the affairs of the plaintiff Church.
 2. Costs.
 3. Any such further or other relief the Honourable Court deems fit to grant.
5. The basis of the plaintiff's case is that it is the owner of the suit land and has a Church and office on parcel No Kimilili /Kimilili /1084 and the Pastor 's home and Sunday School hall on parcel No Kimilili /Kimilili /1085 where the Church has been operating since 1996. The defendant has however started interfering with the affairs of the Church by, in particular:
 1. Violently attacking officials and faithfuls of the Church.
 2. Locking up the Church premises.
 3. Attempting to evict the Church.
 4. Defacing the Church signposts and preparing to launch his own Church on the premises.
 5. Creating a disturbance at the Church on 31st May 2015.The above incidences have been reported to the police thus necessitating this suit.
6. The plaintiff filed statements of the following witnesses who testified in support of their case:
 1. Jonathan Gitau Kibuku (PW1).
 2. Peter Kiboi Maina (PW2).
 3. John Ndichu (PW3)
7. In this statement dated 13th November 2017, Jonathan Gitau Kibuku (PW1) states that he is a member of the plaintiff's council of Bishops which he joined in 1996 at Kakamega where it was known as Ushirika Wa Christo Africa before it converted to New Life Covenant Fellowship in 1997 and thereafter to New Life Covenant Church in the year 2013. That at the request of the defendant, he agreed to take up the running of the Church which had only one parcel of land being parcel No Kimilili/Kimilili /1084 and which the defendant had voluntarily donated to the Church. Subsequently, Kimilili Gospel Centre became a branch of the New Life Covenant Church from 15th June 2002 and was issued with a certificate. Thereafter, the Resident Pastor Peter Kiboi Maina led the Church in a fundraising and land parcel No Kimilili /Kimilili /1085 was purchased from one James Masungu Wekesa. Through similar initiatives, land parcels No Kimilili /Kimilili /1083 and 1079 were



- also purchased by the Church. In October 2006, the defendant quit the Church following differences with the Resident Pastor but returned in 2010. In 2012, a house was constructed for the Resident Pastor on parcel No Kimilili /Kimilili /1085 but following differences with the defendant, the Pastor moved out of the house which has been rented to a tenant who pays rent to the defendant.
8. That at one time the defendant destroyed Church property including the pulpit and the matter was reported to the Police and the defendant was arrested and released on bond. Following the intervention of Bishop James Murunga and the witness, the Church leadership met to resolve the issue, the defendant asked for forgiveness and decided to step down as a Church elder on his own volition and the complaint lodged at the Kimilili POLICE STATION was withdrawn.
 9. Two weeks later, however, the defendant stood up during a Sunday service at the Church and said that he had not stepped down and was the one in charge and since then, there has been instability in the Church. As a result, the defendant was excommunicated vide a letter dated 1st June 2015 and this suit was filed.
 10. At the request of the Court, the parties attempted an out of court settlement and the dispute was arbitrated under the leadership of Bishop James Murunga who filed an award. The award was however set aside on the application of the defendant. The defendant cannot give to the Church and at the same time withdraw what he had lawfully given and seek to have it back. That the defendant is keen to frustrate the peace and quiet of the plaintiff and the orders sought should be granted with costs.
 11. Pastor Peter Kiboi Maina (PW2) states in his statement also dated 13th November 2017 that he joined the plaintiff in 1990 at Kakamega when it was still known as Ushirika Wa Christo Africa before it became the New Life Covenant Church in 2013. At that time, it had only one parcel of land being parcel No Kimilili /Kimilili /1084 which the defendant had voluntarily donated to the plaintiff. Subsequently, the witness organized a fundraiser as a result of which the plaintiff purchased the land parcels No Kimilili /Kimilili /1085, 1083 and 1079 from MR James Masungu Wekesa, and MR FRED BARASA. The defendant made little or No effort towards the acquisition of the last three parcels of land and infact during one of the fundraisers, he issued a cheque of Kshs.20,000 which he later countermanded.
 12. In October 2006 the defendant became hostile to him and so he quit his duties as the Resident Pastor leaving the Church to Bishop Jonathan Gitau . In 2010, the defendant called him for reconciliation and after a meeting in Nairobi, he agreed to resume his duties as Pastor At Kimilili As Bishop Jonathan Gitau had left.
 13. In 2012, the Church made plans to build a house for the Pastor on parcel No Kimilili /Kimilili /1085 which the witness started using in 2014 and in 2015, the defendant called him demanding to receive Church offerings and tithe claiming that he could not plant a tree and fail to reap the fruits thereof. The witness refused to yield to the defendant's demand who then threatened him saying "you can defeat me in preaching but not in politicking." The defendant proceeded to insult the witness and also destroyed property in the Church including the pulpit and the matter was reported to the police who arrested and later released him on bond.
 14. On 12th April 2015, the Bishop James Murunga and Bishop Jonathan Gitau arrived in Kimilili from Nairobi to address the issue after which the defendant asked for forgiveness and demanded to step down as a Church elder on his own volition. The Church BISHOPS then held a meeting with the Officer Commanding Kimilili Police Station (OCS) and the charges against the defendant were withdrawn.



15. Two weeks later, the defendant addressed the Church during a Sunday service and stated that he had not stepped down as a Church elder. He added that he was the one in charge of the Church being the founder and since then, there has been No stability in the Church. At one time, he locked the Church with padlocks to prevent members from having mass. As a result, the defendant was excommunicated from the Church before the Apostolic Council through a letter dated 1st June 2015 and this suit was filed.
16. The parties tried a settlement out of court which was presided over by Bishop James Murunga and among the findings made were that the defendant would retain parcels No Kimilili /Kimilili /1084 and 1085 and the plaintiff parcels No Kimilili /Kimilili /1079 and 1083 and thereafter dispose them and relocate to another location away from the defendant. And although the defendant was agreeable with those findings, he later applied to the Court to set aside the arbitral award. The witness adds that the defendant gave the Church the land parcels No Kimilili /Kimilili /1084 as a gift and he cannot demand it back as it is registered in the plaintiff's name.
17. John Ndichu (PW3) is a worshipper at the plaintiff Church which he joined in 2001 when he was baptized by Pastor Kiboi Maina (PW2) and also had his marriage solemnized by Bishop Jonathan Gitatu Kibuku (PW1). He therefore knows both parties well and has seen the Church grow steadily under the stewardship of Pastor Kiboi and he also participated in the fund raisers that led to the acquisition of the land parcels No Kimilili /Kimilili /1079, 1083 and 1085. That he is aware that the defendant has been interfering with the smooth running of the Church and at one time locked the worship hall with padlocks so as to prevent Church members from having mass therein. The incident was reported to the police and the defendant was excommunicated in 2015 and this suit was filed. In order to have the dispute settled amicably, the parties went to arbitration under the leadership of Bishop James Murunga who made an award agreeable to all the parties but the defendant later moved to court to have the award set aside. It is therefore clear that the defendant is keen to frustrate the peace and quiet of the plaintiff and this court should therefore grant the orders sought in this plaint.
18. The plaintiff filed the following documents in support of it's case:
 1. Copies of title deeds for the land parcels No Kimilili/Kimilili /1079, 1083, 1084 and 1085 all of them in the name of New Life Covenant Church (Kimilili Gospel Centre).
 2. Receipt for Kshs.10,300 dated 4th December 2012 being building plan approval receipt issued to the plaintiff by Kimilili Municipal Council.
 3. Notification for approval development.
 4. Letter dated 4th December 2007
 5. Certificate of registration of New Life Covenant Fellowship .
 6. Certificate of registration of New Life Covenant Church .
 7. Certificate of branch registration of NLCC Kimilili Gospel Centre Kimilili .
19. The defendant filed a defence dated 19th June 2015 in which he pleaded that although the suit land is registered in the name of the plaintiff, it actually belongs to the members of Kimilili Gospel Centre . That the suit land was only registered in the name of New Life Covenant Church due to its co-operation with the Kimilili Gospel Centre . Further, that there is No entity known as New Life Covenant Church and the plaintiff would be put to start proof thereof. That this suit has been filed at the instigation of REV Peter Kiboi Maina whose sole desire is to kick out the founder members of Kimilili Gospel Centre for his own selfish interests. That at all material times, the defendant was and is



a founder and member of the Board of Trustees of the Church. He denied having interfered with the affairs of the Church adding that Rev. Peer Kiboi wants to change the ownership of the Church. He urged the Court to dismiss the plaintiff's suit with costs.

20. The defendant filed statements of the following witnesses who also testified in support of his case:
 1. Vitalis Khisa Masinde (DW1).
 2. Janeth Nasimiyu (DW2).
 3. John Kimani.
21. In his statement dated 7th February 2018, Vitalis Khisa Masinde (DW1) states that he is a Church elder of the Kimilili Gospel Centre Church which he joined in 1999. That it stands on the land parcel No Kimilili /Kimilili /1084 donated to it by the defendant. That in 2002, it entered into a fellowship arrangement with the New Life Covenant Church ES but at No time did the Kimilili Gospel Centre become a branch of the New Life Covenant Church but instead, it retained its sovereignty.
22. In the year 2000, they engaged Pastor Maina Kiboi to minister in their Church but he deserted in the year 2006 and founded his own Church the Harvest Christian Church International but in 2008 following political clashes, he fled to Kagio until 2011 and returned in 2014. He then started accusing the defendant of embezzling tithes and funds raised for building the Pastor 's house. In April 2015, Pastor Kiboi set up an altar within the Church which annoyed the Church elders who demolished it. Following differences among the Church members and elders, they left and established a relationship with the entity known as Sanctuary Of Nations (S.O.N.S). Pastor Kiboi was then relieved of his duties.
23. That the sign of the Church's gate reads Gospel Centre Church Kimilili and it has three (3) other parcels of land all purchased using funds raised by it's members and other contributions. After he was expelled, Pastor Kiboi and his friends changed the name of the Church to read New Life Covenant Church Kimilili . He was then excommunicated and filed this case in bad faith.
24. Janeth Nasimiyu also filed her statement dated 7th February 2018 in which she states that she has been the Treasurer of the Kimilili Gospel Centre since the ear 2000 having joined it in 1996 when it was known as Ushirika To Kristo Africa. That the Church stands on the land parcel No Kimilili / Kimilili /1084 which was a donation from the defendant.
25. That *the Constitution* of the Kimilili Gospel Centre allows it to enter into a co-operative fellowship with other Churches without losing it's inherent right to sovereignty. In the year 2002, the Church entered into such arrangement with the New Life Covenant Church to allow it operate under their licence but it never lost its sovereignty.
26. In the year 2000, the Church engaged the services of Pastor Maina Kiboi to minister it's members but in 2008, he fled to Kagio until mid 2011. He returned in 2014 and started alleging that the defendant had embezzled tithes and funds meant for building the Pastor 'S house. He then set up an altar within the Church premises from where he worships but the Church elders and members decided to break it. He started inciting members and the Church decided to terminate their relationships and joined S.O.N.S. That the Kimilili Gospel Centre Church has three (3) parcels of land but after he was expelled, Pastor Kiboi changed the name to New Life Covenant Church Kimilili . After he was excommunicated, the Pastor filed this suit which is in bad faith.
27. The defendant also filed a statement dated 7th February 2018 in which he stated that he is the founder and chairman of Kimilili Gospel Centre which he founded on 1st January 1995 and operated under the license of Church Of Restoration Church and crafted *the Constitution* to guide it.



28. That he donated the land parcel No Kimilili /Kimilili /1084 on which the Church stands. That in 1997, the Church shifted and started operating under the license of another organization called Ushirika Wa Kristo Africa. That there is another organization which operates under the name of New Life Covenant Church which operates under it's own Constitution Article XVII of which allows it to enter into voluntary co-operative followership with other Churches while maintaining its sovereignty. A similar provision is found in Article 17 of *the Constitution* of the Kimilili Gospel Centre . It is because of the above two Constitutions that in the year 2002 the Kimilili Gospel Centre and the New Life Covenant Church entered into a co-operation arrangement and at No time did Kimilili Gospel Centre become a branch of the New Life Covenant Church .
29. In the year 2000, the Church engaged the services of Pastor Maina Kiboi to be ministering therein but in 2006, he deserted and started his own Church being the Harvest Christian Church International. However, in 2008, Pastor Maina Kiboi fled to KAGIO following the clashes but returned in 2011, sought forgiveness and returned to the Church. In 2014, he started making wild unsubstantiated allegations that the defendant had embezzled funds and tithe meant for building the Pastor 's house. He started inciting the worshippers against the Church elders and leaders and so the Church started operating under the cover of S.O.N.S and became Kimilili Gospel Centre (S.O.N.S) and excommunicated Pastor Peter Kiboi. It was that expulsion that led him to file this suit. That the New Life Covenant Church did not contribute towards the purchase of the suit land and even the gate of the Church reads Gospel Centre Church Kimilili which has never been a branch of any organization. That it is the intention of Pastor Peter Kiboi to forcefully administer the Church using the police and to take over the suit land by hook and crook using the New Life Covenant Church . That the Trustees of Kimilili Gospel Centre are Pastor Kiboi, Mr. Vitalis Masinde while he is the chairman. That this suit has been prompted by malafides.
30. The defendant filed the following documents.
1. Constitution of Kimilili Gospel Centre Fellowship.
 2. Constitution of Kimilili Gospel Centre .
 3. Certificate of official Search for the land parcel No Kimilili /Kimilili /1084.
 4. Certificate of registration of Ushirika Wa Kristo Africa.
 5. Minutes of Kimilili Gospel Centre leaders meeting held on 20th May 1997.
 6. Letter by Ushirika Wa Kristo Africa dated 22nd May 1997.
 7. Bank Deposit slips dated 22nd March 2007 and 9th October 2007.
 8. Payment Voucher.
 9. Letter dated 1st June 2015 addressed to Pastor Peter Kiboi from Kimilili Gospel Centre (S.O.N.S.)
 10. Letter from New Life Covenant Church dated 1st June 2015 excommunicating the defendant.
 11. Letter dated 2nd June 2015 addressed to Secretary General New Life Covenant Church from Kimilili Gospel Cente (S.O.N.S).
 12. Fund raising cards.
 13. Photographs.



14. Land sale agreement for land parcel No Kimilili /Kimilili /1083.
15. Copy of Marriage certificate.
16. Certificate of official search and title deed for land parcel No Kimilili /Kimilili /1085 in the name of New Life Covenant Church (Kimilili Gospel Centre).
31. The hearing commenced on 14th June 2018 and the parties and their witnesses adopted as their evidence the contents of the statements already referred to above. They also produced the list of documents filed as their documentary evidence.
32. Submissions were thereafter filed both by Mr Murunga instructed by the firm of J. O. MAkali & Company Advocates for the plaintiff and by MS Ratemo instructed by the firm of K. RAtemo & Associates Advocates for the defendant.
33. I have considered the evidence by the parties as well as the submissions by counsel.
34. The starting point, in my view, should be the submission by counsel for the defendant that this suit offends the provisions of Order 1 Rule 13(1) of the Civil Procedure Rules because the replying affidavit is only signed by Reverend Peter Maina Kiboi yet the plaintiff has three (3) Trustees and the others did not authorize Reverend Peter Maina Kiboi to do so. Counsel has cited the provisions of the above Order which states:

“Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.”

Counsel has also cited a violation of Order 4 Rule 4 of the Civil Procedure Rules which requires that a plaintiff suing in a representative capacity must state the capacity in which he sues.

And citing the cases of Kahindi Katana Mwangi & Another -v- Cannon Assurance (K) LTD 2013 eKLR and also Pius Watene D. Maina (suing on behalf of the Baptist Convention Of Kenya -v- Director General Kenya Urban Roads Authority & Others 2020 eKLR, counsel made the following submissions at paragraph 11:

- 11: “My Lord, *the Constitution* of New Life Covenant Fellowship filed and produced as an exhibit; Article XII paragraph (a) Clearly indicates the number of trustees not to be less than 3 members. My Lord, we therefore submit that in the absence of three trustees signing the verifying affidavit or authority to sign granted to REV. Peter Kiboi, we submit that this suit is an exercise in futility. Further, No evidence was tendered that shows indeed the Church or the Board of trustees had deliberated and decided on the filing of this suit.”
35. To begin with, there is only one plaintiff in this case namely The Board Of Trustees New Covenant Church (Kimilili Gospel Centre as per the plaint herein. There is also only one defendant namely John Kimani Mwaniki. If there is a second or third plaintiff, the court has not been given their names. It is therefore not correct for the defendant’s counsel to submit, as she has done, that this suit offends the provisions of Order1 Rule 13(1) of the Civil Procedure Rules.



36. Secondly, it is clear from the Certificate of Registration that the plaintiff is registered under the [Societies Act](#) and applicable rules. It can sue or be sued through its office holders. Section 2 of the [Societies Act](#) defines an officer to mean:

“The President, Vice President, Chairman, Deputy Chairman, Secretary or treasurer thereof or any member of the Committee, Council or governing body thereof or any person who holds in the society any office or position analogous to the foregoing but does not include a trustee, auditor, a patron who takes No part in the management of the society.”

In his verifying affidavit Reverend Peter Kiboi Maina describes himself as follows:

“That I am the Pastor , Church chairman and one of the members of trustees of the plaintiff’s Church Kimilili Branch hence duly authorized and competent to swear this affidavit.”

Therefore as chairman and also a Trustee, the Reverend Peter Kiboi Maina takes part in the management of the plaintiff’s affairs. It follows that Reverend Peter Kiboi Maina has authority to file this suit on behalf of the plaintiff in his capacity as chairman.

37. As to whether Reverend Peter Kiboi Maina required authority from the Board of Trustees to file this suit, I have looked at [the Constitution](#) of the plaintiff. There is No requirement that the plaintiff’s Board of Trustees must authorize Reverend Peter Kiboi Maina to file this suit on behalf of the plaintiff. In any event, No Trustee of the plaintiff has complained that Reverend Peter Kiboi Maina had No authority to file this suit on behalf of the plaintiff or even execute the verifying affidavit.

38. Even assuming that there were lapses with the verifying affidavit signed by Reverend Peter Kiboi MAINA, I would be guided by ruling of Ouko J A (as he then was) in the majority decision in Nicholas Kiptoo Arap Korir Salat -V- IEBC & Others C.A. Civil Application No 228 of 2013 [2013 eKLR] where he said:

“Deviations from and lapses in form and proceedings which do not go to the jurisdiction of the Court, or to the root of the dispute or which do not at all occasion prejudice or miscarriage of justice to the opposite party ought not to be elevated to the level of a criminal offence attracting such heavy punishment of the offending party who may in many cases be innocent since the rules of procedure are coupled and technical. Instead, in such instances the Court should rise to its highest calling to do justice by sparing the parties the draconian approach of striking out pleadings.”

The judge went on to add that:

“The general trend, following the enactment of Section 1A and 1B of the [Civil Procedure Act](#), Section 3A and 3B of the Appellant Jurisdiction Act and Article 159 of [the Constitution](#), is that courts today strive to sustain rather than to strike out pleadings on purely technical grounds ...”

In the circumstances of this case, I will also be guided by the provisions of Section 1a (1) of the Environment and [Land Act](#) which provides that:

“In any proceedings, to which this act applies, the Court shall act expeditiously, without undue regard to technicalities of procedure.”



39. Having considered all the above, I am persuaded that the plaintiff is properly before this Court suing through its trustees represented by Reverend Peter Kiboi Maina.
40. I shall now consider the merits or otherwise of the plaintiff's case having dispensed with those procedural issues.
41. It is not disputed that the suit land is registered in the name of the plaintiff. The dispute before me has nothing to do with any leadership disputes involving the plaintiff Church. That is not within my jurisdiction. There are only two issues for me to determine in this case;
1. Whether the defendant should be enjoined from interfering with the suit land.
 2. Who bears the costs of the suit.

As already stated above, the suit land is registered in the name of the plaintiff. The title deeds thereto have been produced as part of the plaintiff's documentary evidence. It has not been suggested that the plaintiff obtained the registration of the suit land through fraud, misrepresentation, illegally, unprocedurally or through any corrupt scheme. The plaintiff is therefore "the absolute and indefeasible owner" of the suit land as provided under Section 26(1) of the *Land Registration Act*. That ownership is therefore deserving of the protection guaranteed by Article 40(1) of *the Constitution*. The plaintiff has the right to permanently restrain other persons from interfering with the suit land.

42. The defendant's case is that he is the chairman of the Kimilili Gospel Centre while Reverend Peter Kiboi Maina and Vitalis Masinde are the trustees. A letter dated 1st June 2015 has been produced by the defendant removing Reverend Peter Kiboi Maina from being a Pastor of Kimilili Gospel Centre (S.O.N.S). Another letter dated 2nd June 2015 has also been produced by the defendant addressed to the SECRETARY GENERAL of New Life Covenant Church expressing the desire of Kimilili Gospel Centre to pull out of New Life Covenant Church . There is also another letter dated 1st June 2015 from the New Life Covenant Church and addressed to the defendant by one Bishop Titus K. Ndrangu excommunicating the defendant from the New Life Covenant Church . And although the defendant has stated in paragraph 14 of his statement that " Kimilili Gospel Centre has never been a branch of the organization," and which organisation, as is clear from paragraph 8 of the same statement, "operates in the names and style of "New Life Covenant Church ," the fact that the title deeds and the certificates of search of the suit land reads that the proprietor is "New Life Covenant Church – Kimilili Gospel Church," the inevitable conclusion is that Kimilili Gospel Church or Centre (whichever is applicable) can only be a branch of New Life Covenant Church . Indeed when he was cross-examined by MR. MUSUMBA then acting for the plaintiff, this is what the defendant said:

"In 2002, the Kimilili Gospel Centre and New Life Covenant Church became affiliated. I have No documents. Kimilili Gospel Centre was not registered."

This Court was also not shown any certificate of registration in the name of Kimilili Gospel Centre . In deed in paragraph 24 of his statement, the defendant states:

24. "That since the organisation (New Life Covenant Church) had failed to arbitrate over this matter, the Church elders felt that we should shift and start operating under the cover of S.O.N.S our Church consequently becoming Kimilili GOSPTEL Centre (S.O.N.S)."

By his own admission therefore, the defendant decided to move the Kimilili Gospel Centre out of its affiliate with the New Life Covenant Church into another outfit known as S.O.N.S. Therefore, other



than being excommunicated from the New Life Covenant Church , the defendant voluntarily moved to another organisation.

43. It is clear from the evidence herein that notwithstanding the fact that the defendant voluntarily donated the land parcel No Kimilili /Kimilili /1084 to the plaintiff, he does not want to let go. That is the genesis of his problem with the plaintiff. In paragraph 6 of his statement, he makes his attachment to the land parcel No Kimilili /Kimilili /1084 very clear in the following terms:

6. “That it is imperative to note that the parcel of land on which the Church stands was donated by me to wit land title number Kimilili /Kimilili /1084.”

An in paragraph 34 he says:

34. “That desire of MR Kiboi and New Life Covenant Church is to take over our Church and property by hook and crook.”

The prime property must of course be the land parcel No Kimilili /Kimilili /1084. The other parcels of land forming the suit land i.e. Kimilili /Kimilili /1083, 1079 and 1085 were of course purchased by the plaintiff from other parties. It must be made clear to the defendant that when, as is shown on the Green Card, he voluntarily gifted the land parcel No Kimilili /Kimilili 1084 to the plaintiff on 4th October 2004 and it obtained the title deed thereto on 5th October 2004, that marked the end of his relationship with that parcel of land. And whereas the defendant must be commended for his very kind gesture of donating the land parcel No Kimilili /Kimilili /1084 for the noble services of spreading the word of God, he must be informed in No uncertain terms that he has No right, equitable or otherwise, to demolish any property on the suit land or interfere with the peace and quiet of the worshippers during Church services or any other event including the Pastor ’s house or any other buildings thereon. That is the reality.

44. If the defendant still harbours any interest in the land parcel No Kimilili /Kimilili /1084, he must be reminded that his donation thereof to the plaintiff became complete the moment the title thereto was registered in the name of the plaintiff. It cannot be recalled. In the case of *Twalib Hatayan & Another -v- Said Saggah Ahmed Al-heidy & 5 Others C.a. Civil Appeal No 51 of 2014 [2015 eKLR]*, some philanthropists provided funds for trustees to purchase land to put up a mosque, a social hall and madrasa for use by the local Muslim Community. Later, they discovered that the trustee intended to sell the land to some company which wanted to conduct mining operations and so they moved to court seeking inter alia, to recover the land. Their suit was dismissed and so too was their appeal and the Court of Appeal held as follows:

“When a person donates to another any gift to perform a public spirited function as was in this case can such a person micro manage such donation? We do not think so?”

As stated earlier in this judgment, the defendant’s quarrel with Reverend Peter Kiboi Maina is that the latter wants to “take over our Church and property by hook and crook.” As is now clear, the only parcel of land out of the suit land which previously belonged to the defendant is the parcel No Kimilili / Kimilili /1084 which he gave out as a donation to the plaintiff in 2004 some 11 years before the filing of this suit. There is nothing in that land which can now be taken from him by “hook or crook.” The most he can do is visit the suit land as any other worshipper or, if he and his brethren can surmount their differences, as a leader in the Church. But when, as the plaintiff’s witnesses have testified, the defendant has been known to destroy the Church property including the pulpit, that is infact desecration against the Church for which an order of injunction is well merited. For now, if I may borrow the words of the song by Julie Gold, the defendant will have to be contented with observing the Church “From A Distance.”



45. Ultimately therefore and having considered the evidence by all the parties herein, there shall be judgment from the plaintiff against the defendant in the following terms:

1. A permanent injunction restraining the defendant either in person or through his relatives, agents or followers from trespassing onto the plaintiff's land parcels No Kimilili / Kimilili /1079, 1083, 1084 and 1085 and interfering with the plaintiff Church's affairs in any manner whatsoever.
2. The defendant shall meet the plaintiff's costs of this suit.

BOAZ N. OLAO

JUDGE

7TH FEBRUARY 2023

JUDGMENT DATED, SIGNED AND DELIVERED AT BUSIA ON THIS 7TH DAY OF FEBRUARY 2023 BY WAY OF ELECTRONIC MAIL AS ADVISED TO THE PARTIES ON 27TH JULY 2022. NOTICES TO ISSUE.

BOAZ N. OLAO

JUDGE

7TH FEBRUARY 2023

Explanation Notes:

This judgment was first due on 6th July 2022 but had to be put off as I was engaged elsewhere. Then it was listed for 6th October 2022 but I was transferred to BUSIA ELC on 3rd October 2022 and so it was disrupted. The delay is however regretted.

BOAZ N. OLAO

JUDGE

7TH FEBRUARY 2023

