



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 134 OF 2017

PENTECOSTAL ASSEMBLIES OF GOD KENYA

(Through its Registered Trustees).....1ST PLAINTIFF

BERNARD AYEKA.....2ND PLAINTIFF

ALLAN LIDAMBITSA.....3RD PLAINTIFF

JOHN JUMA.....4TH PLAINTIFF

VERSUS

JOSEPHAT OGOLE ELEGWA.....1ST DEFENDANT

MICHAEL WAMALWA NALWELISIE.....2ND DEFENDANT

RUTH SIKOLIA MAKONJO.....3RD DEFENDANT

MARGARET MASITSA MUHALIA.....4TH DEFENDANT

HUMPHREY MWOLE EGOSANGWA.....5TH DEFENDANT

RULING

The Application

1. By a Chamber Summons dated 18/2/2021 brought under Section 3A of the Civil Procedure Act, Order 1 Rule 3, 10(2) & 14 of the Civil Procedure Rules 2010 and Article 62 of the Constitution, the defendants sought the following orders:-

(a) ...spent

(b) That honourable court be pleased to join the Chief Land Registrar, as an interested party to this suit.

(c) That upon the Chief Land Registrar being so enjoined, he be served with all the pleadings herein and be at liberty to file a response, if any, to the plaintiff suit as he may deem fit.

(d) That costs of this application in the cause.

2. The grounds in which the application is based upon are set out on the face of the application.

3. The application is supported by the affidavit of Michael Wamalwa Nalwelisie, the 2nd defendant, sworn on 18/2/2021 on his behalf and on behalf of 1st, 3rd and 4th defendants.

The Response

4. The application is opposed by the plaintiffs by way of grounds of opposition dated 9/4/2021; he prays that the same be dismissed with

costs on the following grounds:-

1. The Chief Land Registrar is not a necessary party to this suit because:

(a) The Chief Land Registrar does not have knowledge of the fact disputed in this suit as:

(i) It is not disputed that in the year 1976 the suit land was allotted by the Commissioner of Lands to the Pentecostal Assemblies of God (K) Church which was, and still is, a registered society;

(ii) It is not disputed that the Pentecostal Assemblies of God (K) Church wrote to the Commissioner of Lands in the year 1997 and requested the Commissioner of Lands to register the suit land in the names of Bernard Ayeka, Shem Luyai and John Juma as Trustees for Kitale Pentecostal Church which was, and still is, an unregistered church of the Pentecostal Assemblies of God (K) Church;

(iii) It is also not disputed that pursuant to the said request the suit land was on 7/8/1997 registered in the names of “Bernard Ayeka, Shem Luyai and John Juma (As Trustees for Kitale Pentecostal Church)” and that it is so registered to date; and

(iv) What is disputed is whether the said Bernard Ayeka, Shem Luyai and John Juma and holding title to the suit land in trust for:

· **The original Kitale Pentecostal Church, and by extension the Pentecostal Assemblies of God (K) Church which is the mother church; or**

· **The faction by the defendant which broke away from the original Kitale Pentecostal Church in or about the year 2021, dissociated itself from the Pentecostal Assemblies of God (K) Church, and registered itself as a society on 3/6/2013 using the same name “Kitale Pentecostal Church”, a fact which cannot be in the knowledge of the Chief Land Registrar.**

(b) No relief is sought against the Chief Land Registrar in this suit.

(c) If the Chief Land Registrar had knowledge of the disputed fact, nothing would have stopped the defendants from calling him as their witness.

2. The application is a dilatory tactic solely intended to delay the disposal of this suit and lengthen the defendants.

Submissions

5. The application was disposed of by way of oral submissions of counsel on behalf of their respective clients.

Determination

6. The main issue that arises in the instant application is whether the Land Registrar should be enjoined as a necessary party to the suit.

7. The proper legal position according to **Order 10 Rule (2)** of the **Civil Procedure Rules** is that a necessary party can be enjoined at any stage in the proceedings at the application of any of the parties or at the instance of the court.

8. I have perused the entire file record and found that the dispute at hand is purely between the parties and there is no intimation of any wrongdoing on the part of the office of the Chief Land Registrar.

9. The ground that the applicant relies on in the joinder application is that the Commissioner of Lands’ office was abolished with the repeal of the Government Lands Act and replaced with the office of the Chief Lands Registrar. In my view that is not the accurate position because both offices co-existed before the repeal.

10. Further the applicants concede that the Commissioner of Lands acted on the instructions of the plaintiff to issue a certificate of title to an entity different from the original allottee, the Kitale Pentecostal church. The applicants assert that the Chief Land Registrar is a necessary party as he would tell the court why the Commissioner of Lands issued the title to another entity.

11. With respect, the reason advanced by the applicants to support the plea for joinder of the Chief Land Registrar is not in this court’s view sound. The Chief Land Registrar may be summoned by court at the applicants’ instance as a witness in the matter, and it is not necessary to order his joinder in this suit.

12. For the foregoing reasons, I find that the application dated **18/2/2021** lacks merit and the same is hereby dismissed with costs to the respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 28TH DAY OF APRIL, 2021.

MWANGI NJORGE

JUDGE, ELC KITALE.