



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 49 OF 2021

REV LABAN KAMAU KINUTHIA.....1ST PLAINTIFF

REV JOSEPH GICHUHI WAMENI.....2ND PLAINTIFF

(Suing on behalf of and as officials of AMBASSADOR FOR

CHRIST FELLOWSHIP)

AMBASSADORS FOR CHRIST FELLOWSHIP.....3RD PLAINTIFF

=VERSUS=

BISHOP MARGARET WANGARI NGUGI1ST DEFENDANT

REV PETER MUNYUA KANGETHE.....2ND DEFENDANT

GRACE WANDITHIA.....3RD DEFENDANT

EMMANUEL NGUGI KAMAU..... 4TH DEFENDANT

VICTOR JAMES MBURU.....5TH DEFENDANT

ANNOINTED CHRISTIAN FELLOWSHIP.....6TH DEFENDANT

RULING

1. The plaintiffs initiated this suit through a plaint dated 4/5/2021. They sought the following reliefs against the defendants: (i) a declaration that the 3rd plaintiff is the lawful proprietor of Land Parcel Numbers Kiambaa/Muchatha/T.575; Kiambaa/Kihara/2733; Kiambaa/ Waguthu/ 1320; Kiambaa/Ruaka/1042; Kiambaa/Ruaka/339 and Ngong/ Ngong/ 18649 and that the titles that were acquired by the defendants and currently held in the name of the 6th defendant are fraudulent, null and void; (ii) an order directing the land registrars to rectify the respective land registers to restore the suit properties to the 3rd defendant; (iii) an order directing the defendants to hand over to the plaintiffs the original instruments of title relating to Parcel Numbers Kabete/Gikuni/T202 and Kabete/Lower Kabete/1332; (iv) a permanent injunction restraining the “plaintiffs” [sic] against trespassing on or interfering with the plaintiffs’ quiet possession of the suit properties; and costs of the suit.

2. Contemporaneous with the plaint, the plaintiffs brought a notice of motion of even date, seeking an interlocutory injunction, restraining the defendants against transferring the eight properties pending the hearing and determination of this suit. The said application dated 4/5/2021 is the subject of this ruling. The application was supported by an affidavit sworn on 4/5/2021 by **Rev Laban Kamau Kinuthia** and a supplementary affidavit sworn by the same deponent on 26/7/2021. The application was canvassed through written submissions dated 18/10/2021, filed through the firm of *Kirimi Mbobua & Co. Advocates*.

3. The case of the plaintiffs is that the 3rd plaintiff is the owner of the eight properties. The 3rd plaintiff has developed some of the properties. The 3rd plaintiff has all a long been and is in possession of the eight properties. At all material times, the 1st, 2nd and 3rd defendants were members and served as officials of the 3rd plaintiff and played critical roles in the management and operations of the 3rd plaintiff. By virtue of their fiduciary positions, they were in custody of title instruments relating to the eight properties.

4. The plaintiffs further contend that in December 2007, the 1st, 2nd and 3rd defendants unceremoniously abandoned their membership of

the 3rd defendant and went to establish a church by the name **Annointed Christian Fellowship** [the 6th defendant]. The 1st, 4th and 5th defendants are currently the Chairperson, Secretary and Treasurer, respectively, of the 6th defendant.

5. The plaintiffs add that subsequent to the departure of the three defendants, they requested the three defendants to surrender the title instruments that were in their custody but their request was not acceded to. Subsequently, they established that on diverse dates in March 2008, the 1st, 2nd and 3rd defendants fraudulently transferred the six out of the eight properties into the name of the 6th defendant. Titles relating to **Kabete/Gikuni/T202** and **Kabete/Lower Kabete/1332**, which were similarly in the custody of the 1st, 2nd and 3rd defendants, were not transferred but the said defendants have declined to hand over the two titles to the plaintiffs. The plaintiffs have set out in the plaint particulars of the alleged fraud on part of the defendants.

6. Canvassing the application through written submissions, counsel for the plaintiffs identified the following as the two issues falling for determination in the application: **(i) Whether the applicants have met the threshold for grant of an injunction; and (ii) Whether the applicants are entitled to the reliefs sought.** On the first identified issue, counsel submitted that the 1st, 2nd and 3rd defendants having left the 3rd plaintiff, the 3rd plaintiff duly demanded that the 1st, 2nd and 3rd defendants do surrender the title instruments which they were holding. Counsel contended that the actions of the 1st, 2nd and 3rd defendants was an infringement on the property rights of the 3rd defendant. Counsel added that the applicants had proved that they were in possession of the suit properties and had developed some of them and if the defendants were left to dispose them, they would stand to suffer irreparable harm. Counsel added that the balance of convenience tilted in favour of the applicants. Counsel urged the court to grant the interlocutory reliefs sought on the above grounds.

7. The 1st, 4th, 5th and 6th defendants responded to the suit through a statement of defence dated 1/6/2021. They responded to the application through a replying affidavit sworn on 6/7/2021 by **Bishop Margaret Wangari Ngugi** [1st defendant] and written submissions dated 28/10/2021. Their case is that the 6th defendant is the rightful owner of Parcel Numbers Kiambaa/Muchatha/T.575, Kiambaa/Kihara/2733; Kiambaa/ Waguthu/ 1320; Kiambaa/Ruaka/1042; Kiambaa/Ruaka/339; and Ngong/ Ngong/ 18649. They contend that the six parcels of land were rightfully and legally transferred to the 6th defendant by duly recognized officials and/or trustees of **Ambassadors for Christ Fellowship** [the 3rd plaintiff] which morphed into **Annointed Christian Fellowship** [the 6th defendant]. They further contend that the 1st and 2nd plaintiffs have no capacity to sue and/or lodge any claim on behalf of the 3rd plaintiff because they are not officials or trustees of the 3rd plaintiff. They aver that the 1st and 2nd plaintiffs are busy bodies. They deny any fraud in the transfer of the six properties to the 6th defendant and contend that the transfer was effected by the then recognized officials and/or trustees of the 3rd plaintiff.

8. The defendants add that the congregations which use the six suit properties belong to the 6th defendant and therefore the plaintiffs are trying to grab properties of the 6th defendant. It is their case that transfer of the suit properties was anticipated way back in the year 1990 when **Ambassadors For Christ Fellowship “B”** was created as “a ministry transition vehicle” pursuant to an agreement of “transition and/or transfer of property acquired by Ambassadors For Christ Fellowship “B”.

9. The defendants further contend that there is a serious misjoinder issue in that the registered proprietors of **Kiambaa/Ruaka/T. 339** and **Ngong/ Ngong/ 18649** have not been joined as parties to this suit. They add that because Ngong/Ngong/18649 is situated in Kajiado County, this court lacks jurisdiction to entertain a dispute relating to the said title.

10. I have considered the application; the response to the application; and the parties’ respective submissions on the application. I have also considered the relevant legal framework alongside the existing jurisprudence on the key issues in the application. The first issue is whether this court has jurisdiction to hear and determine the dispute in this suit. The second issue is whether the plaintiffs have satisfied the criteria upon which our trial courts exercise jurisdiction to grant an interlocutory injunctive relief. I will make brief sequential pronouncements on the two issues.

11. The defendants challenged the jurisdiction of this court on the ground that one of the properties which the plaintiffs allege were transferred fraudulently, Ngong/Ngong/18649, is located in Kajiado Country, hence a suit relating to the said property should have been filed at Kajiado ELC. I have considered the gist of the objection. The broad jurisdiction of this court is set out in Article 162(2) (b) of the Constitution which provides as follows:-

“(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.”

12. Parliament established this court by enacting the **Environment and Land Court Act, No. 19 of 2011**. Detailed jurisdiction of the court is elaborated in Section 13 of the Act. Section 26 of the Act grants the court power to hold its sittings at such places and at such times as the court may deem necessary for the expedient and proper discharge of its functions. The jurisdiction of the court is not or limited in terms of geographical/ administrative/ devolved units.

13. Secondly, Section 13 of the Civil Procedure Act provides a clear guideline on where a suit relating to immovable properties should be instituted in a scenario where the immovable properties are located outside the local limit of the court. Section 13 of the Civil Procedure Act provides thus:-

“Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court.”

14. In the present suit, seven out of the eight parcels of land forming the subject matters of this suit are located in Kiambu County. One is located in Ngong, Kajiado County. The alleged cause of action is attributed to the same series of transactions. The parties to the suit are the same. In the circumstances, it will save the court and the parties time and resources if one court were to adjudicate the dispute. It is therefore my finding that the jurisdiction of this court has not been ousted by dint of the fact that one out of the eight properties which are the subject matters of this suit is situated in Ngong, Kajiado County.

15. The second issue is whether the plaintiffs have satisfied the criteria upon which our courts exercise jurisdiction to grant interlocutory injunctive relief. The relevant criteria for grant of an interlocutory injunction was outlined in **Giella v Cassman Brown & Co. Ltd (1975) EA 358**. First, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that if the plea for interlocutory injunctive relief is declined, he would stand to suffer damage/injury that may not be adequately indemnified through an award of damages. Third, if the court is in doubt on either or both of the above requirements, the application is to be decided based on the balance of convenience. Last, at this stage of interlocutory proceedings, the court does not make conclusive or definitive pronouncements on the key issues in the suit. Definitive pronouncements are reserved for the final determination of the suit.

16. Other than pleading that they are officials of the 3rd plaintiff, the 1st and 2nd plaintiffs did not categorically state whether they were bringing this suit on behalf of the 3rd plaintiff – a society that lacks capacity to sue or be sued in its own name. The defendants challenged the capacity of the plaintiffs. Consequently, prima facie, the plaintiffs had an obligation to demonstrate that they have the capacity to bring this suit.

17. First, as a society registered under the Societies Act, the 3rd plaintiff does not have capacity to initiate a suit in its own name. It was therefore a grave error to make the church a substantive party to this suit. Designating the church as a 3rd plaintiff is therefore an error which the 1st and 2nd plaintiffs should cure through appropriate amendments.

18. Secondly, I have looked at the materials presented to the court in support of the plea for interlocutory injunctive relief. Upon their *locus standi* being challenged, the plaintiffs filed a further affidavit sworn by Rev Laban Kamau Kinuthia. The only exhibit attached to the supporting affidavit is **Form 1** which relates to annual returns of a society registered under the Societies Act. There is no confirmation from the Registrar of Societies that the said returns were filed. Further, Rev Laban K. Kinuthia appears in the returns as organising secretary cum pastor of **Ambassadors for Christ Fellowship**. Rev Joseph Gichuki Wameni does not appear anywhere as an official of the Church. He nonetheless seeks injunctive orders in this suit.

19. I have looked at the constitution of the church, which was filed as part of the plaintiffs' evidence. The national church council is the supreme organ of the church, vested with the mandate to make decisions relating to funds and properties of the church. The board of trustees is the organ vested with the mandate to hold all the properties belonging to the church. At this stage the 1st and 2nd plaintiffs have not exhibited any authority from either of the two organs of the church, authorizing them to recover the eight properties or to bring this suit.

20. In the above circumstances, it cannot be said that the two plaintiffs have, at this point, demonstrated a right in the suit properties which require protection through an order of injunction.

21. Lastly, some of the properties in respect of which the plaintiffs seek injunctive orders are said to be registered in the names of persons who are not parties to this suit. Indeed, the official search exhibited in relation to Kiambaa/Ruaka/T339 reveals that the property is registered in the name of Kariuki Mweha Thuo, who has not been joined as a defendant in this suit.

22. The totality of the foregoing is that the plaintiffs have at this stage failed to demonstrate a prima facie case with a probability of success. They have similarly failed to demonstrate that they stand to suffer irreparable damage that cannot be indemnified through an award of damages. Consequently, the court finds that the plaintiffs have failed to satisfy the criteria upon which our courts exercise jurisdiction to grant interlocutory injunctive relief. The result is that the plaintiffs' application dated 4/5/2021 is rejected for lack of merit. The plaintiffs shall bear costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 7TH DAY OF FEBRUARY 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Mogire for the Applicants

Mr Mugo for the Defendants

Court Assistant: Lucy Muthoni