



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. E 022 OF 2021**

**JAMES MAINA NGANGA.....1<sup>ST</sup> PLAINTIFF**

**LOISE MURUNGI MAINA.....2<sup>ND</sup> PLAINTIFF**

**BERNARD OTIENO OLUOCH.....3<sup>RD</sup> PLAINTIFF**

**(Suing in their capacity as Chairman, Secretary and Treasurer of Neno Evangelism Centre)**

**VERSUS**

**SAMUEL MUNENE MURIITHI.....DEFENDANT**

**RULING**

The Application before Court for determination is the Plaintiffs' Notice of Motion dated the 13<sup>th</sup> April, 2021 where they seek the following orders:

1. Spent

2. That a temporary injunction restraining the Respondent whether by himself, his agents, servants or any other person working with him from interfering, trespassing into and using in any manner, conducting, controlling, transacting over any business at NENO EVANGELISM CHURCH KITENGELA pending hearing and determination of this application.

3. That a temporary injunction restraining the Respondent whether by himself, his agents, servants or any other person working with him from interfering, trespassing into and using in any manner, conducting, controlling, transacting over any business at NENO EVANGELISM CHURCH KITENGELA pending hearing and determination of this suit.

4. That a temporary injunction to issue restraining the Respondent from stepping into the premises of the NENO EVANGELISM CHURCH KITENGELA situated on KJD/ KITENGELA 8240 and KJD/ KITENGELA 8241 or disrupting the activities of the church in any manner whatsoever pending hearing and determination of this application.

5. That a temporary injunction to issue restraining the Respondent from stepping into the premises of the NENO EVANGELISM CHURCH KITENGELA situated on KJD/ KITENGELA 8240 and KJD/ KITENGELA 8241 or disrupting the activities of the church in any manner whatsoever pending hearing and determination of this suit.

6. That a temporary injunction to issue restraining the Respondent, his agents, servants, or any other person working with him from changing the name of the church pending hearing and determination of this application.

7. That a temporary injunction to issue restraining the Respondent, his agents, servants, or any other person working with him from changing the name of the church pending hearing and determination of this suit.

8. That the OCS Kitengela Police Station to enforce and ensure compliance of the order while safeguarding the premises peace.

9. That cost of this application be provided for.

The application is premised on the grounds on the face of it and the supporting affidavit of JAMES MAINA NGANGA who is one of the Applicants where he deposes that he is the Chairman of NENO EVANGELISM Centre and one of the trustees. He confirms NENO

EVANGELISM Centre is a duly registered church with branches all over Kenya. He explains that the church has one of its branches in Kitengela namely NENO EVANGELISM CENTRE KITENGELA situated on KJD/ KITENGELA 8240 and KJD/ KITENGELA 8241. He contends that the Respondent was posted at Kitengela Branch as a pastor and it is the Church that bought the land where the said branch is constructed. He reiterates that the Church took a loan to buy land and construct the said Church.

The Defendant SAMUEL MUNENE MURIITHI opposed the application and filed a replying affidavit where he deposes that he is the Head Pastor at Gods Love Assembly Church in Kitengela formerly known as Neno Evangelism Centre Kitengela. Further, that he has been pastoring the said Church since he found it in the year 2008. He explains that he visited the 1<sup>st</sup> Applicant and requested him to allow him operate a branch in Kitengela under cover of his church Neno Evangelism Centre but the church would remain independent as well as autonomous for all intents and purposes. He contends that he has built Neno Evangelism Centre Kitengela from scratch. Further, on 14<sup>th</sup> May, 2009, he signed a Lease Agreement on behalf of the Church to lease a piece of land adjacent to the old church. He claims the Lessor agreed to sell them two ¼ acre plots at the cost of Kshs. 6 million and on 5<sup>th</sup> May, 2011 he entered into a Sale Agreement on behalf of Neno Evangelism Centre Kitengela to purchase the said plots. He insists the titles to the said land is registered under the Registered Trustees , Neno Evangelism Centre on Behalf of Neno Evangelism Centre- Kitengela to affirm the need to fully recognize the autonomy of Kitengela Church. He reiterates that in 2016 there was a mass exodus of members from the church as a result of teachings including pronouncements from the 1<sup>st</sup> Applicant which was contrary to their spiritual beliefs culminating in the leadership of the church resolving to explore options of registering its own entity. He confirms that on 7<sup>th</sup> February, 2021, they succeeded to find a registered church that was not functional and they agreed to release the Certificate to them

The Plaintiffs filed a further affidavit sworn by JAMES MAINA NGANGA where they have reiterated their claim and insist the Defendant does not work independently as he is directed and guided by Neno Evangelism Centre. He denies that members are uncomfortable with teachings of the church. He contends that the Defendant has indeed admitted that NENO EVANGELISM CHURCH KITENGELA is actually NENO and has attached evidence of title transmission to the head office. Further, the Defendant has not denied that the properties are registered under NENO EVANGELISM CENTRE. He reiterates that the Defendant has admitted having changed the name of the church without any lawful authority.

The Plaintiffs' and Defendant's Counsel made oral submissions in respect to the instant application.

### **Analysis and Determination**

Upon consideration of the application dated the Plaintiffs' Notice of Motion dated the 13<sup>th</sup> April, 2021 including the rivalling affidavits and oral submissions, the only issue for determination is whether the Plaintiffs are entitled to order of temporary injunction as against the Defendant pending the determination of this suit.

The Applicants' counsel while submitting abandoned various prayers in the instant application relating to membership of the church confirming that this Court did not have jurisdiction to deal with the same. The Respondent's Counsel was emphatic that this Court was devoid of jurisdiction to deal with this matter as a whole.

In line with the principles for consideration in determining whether temporary injunction can be granted or not as in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, the Court will proceed to interrogate whether the applicants have made out a prima facie case with a probability of success at the trial. The Applicants claim the Defendant is interfering with the running of the church and has transferred the suit lands to a different entity. They contend that the suit lands were purchased by the Church. The Defendant in response disputes these facts and explained how the said suit lands were acquired. The Applicants in their averments did not furnish court with any proof that the suit lands had indeed changed hands from the initial registered owner. They claim the suit lands were purchased through a loan but did not furnish court with the said details from the financier nor any financial statements.

From the facts presented by the Applicants, I note the dispute herein actually revolves around management of the church. I wish to refer to section 13 of the Environment and Land Court Act which confers jurisdiction to this Court and stipulates thus: **(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.**

**Section 13 (2) (c) & (d) further stipulates that ' in exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes - (c) relating to land administration and management;**

**(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land'**

From a reading of these provisions, this court is actually devoid of jurisdiction to deal with a dispute revolving around management of a church. Further, I note from the oral submissions, when the issue of jurisdiction was raised by the Defendant's Counsel , the Applicants' Counsel actually admitted that this Court did not have jurisdiction to handle the same but insisted the Court should proceed to deal with the prayers touching on the suit lands. Be that as it may, from the facts before court, noting that there is no proof that the Defendant transferred the suit lands where the church is situated to a third party. Further, noting that the Defendant is also a pastor of the said church, and having observed that the dispute herein actually revolves around management of a church, it is my considered view that with the facts as presented, the Plaintiffs have failed to establish a prima facie case to warrant the orders sought.

Since the Plaintiffs have failed to establish a prima facie case to warrant the orders sought while relying on the **Case of Nguruman Ltd. Vs. Jan Bonde Nielsen CA No. 77 of 2012**, where the Court observed that in instances where a party has failed to establish the first limb on injunctions, the court need not proceed to make a determination of the other two limbs and I will hence decline to do so.

It is against the foregoing that I find the Notice of Motion application dated the 13<sup>th</sup> April, 2021 unmerited and will proceed to dismiss it.

Costs will be in the cause

**DATED SIGNED AND DELIVERED IN VIRTUALLY AT KAJIADO THIS 28TH DAY OF JULY, 2021**

**CHRISTINE OCHIENG**

**JUDGE**