



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC PETITION NO. 16 OF 2018**

**IN THE MATTER OF ARTICLE 162(2) (b) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE PROVISIONS OF SECTIONS 13(2) (a) & (b) 13(7) OF THE ENVIRONMENT AND LAND COURT  
ACT NO. 11 OF 2011**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF AN ALLEGED INFRINGEMENT OF THE RIGHT TO FREEDOM OF CONSCIENCE, RELIGION  
BELIEVE AND OPINION UNDER ARTICLE 32 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF AN ALLEGED INFRINGEMENT OF THE RIGHT TO PROPERTY UNDER ARTICLE 40(1) OF THE  
CONSTITUTION OF KENYA 2010**

**BETWEEN**

**NICHOLAS NJUGUNA KARANJA (*As a member of and in***

***the interest of a group of persons gong by the name***

***CREYENTES PRAISE CENTRE formerly***

***BELIEVERS PRAISE AND WORSHIP CENTRE).....PETITIONER***

**AND**

**FREDRICK NGUGI MWANGI.....1<sup>ST</sup> RESPONDENT**

**ANTHONY KAMAU MBUGUA (*The Chief Cianda***

***Location Kiambaa District).....2<sup>ND</sup> RESPONDENT***

**THE LAND REGISTRAR KIAMBU.....3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**AND**

**BISHOP KEPHA OMAE, DR. STEPHEN KANYIA&**

BISHOP NELSON NGUTU BEING SUED AS CHAIRMAN ,

GENERAL SECRETARY AND TREASURER

OF REDEEMED GOSPEL CHURCH INC.....INTERESTED PARTY

JUDGEMENT

By an Amended Petition dated 4<sup>th</sup> January 2019 , the Petitioner herein filed this suit against the Respondents and sought for orders that;-

*a) A Declaration do issue that land Parcel No. Tigoni/Tigoni/ Block 1/ 403 is the property of the group of persons currently known as Creyentes Praise Centre which has sought registration as a society under the provisions of the Societies Act Cap 108 Laws of Kenya and which group of persons was formerly known as Believers Praise and Worship Centre.*

*b) A Declaration do issue that Fredrick Ngugi Mwangi having defected from Creyentes Praise Centre formerly Believers Parise and Worship Centre to the Redeemed Gospel Church Inc. as no stake in the properties of Creyentes Praise Centre.*

*c) A mandatory Injunction do issue compelling land Registrar Kiambu to rectify the register of the land parcel No. Tigoni/ Tigoni/ Block 1/403 by way of replacing the names of Fredrick Ngugi Mwangi with the names of Hellen Wambui Njuguna as the registered joint proprietors with Nicholas Njuguna Karanja who will hold the title in trust for the group of persons currently known as Creyentes Praise Centre formerly known as Believers Praise and Worship Centre.*

*d) An order of Permanent Injunction restraining the Respondent, and/ or the Interested Party herein, their agents, servants, employees or any other person claiming from and/or under any of them from interfering in whatsoever manner with the quiet enjoyment of possession/occupation by the group of persons currently known as Creyentes Praise Centre formerly known as Believers Praise and Worship Centre of all that parcel of land known as Tigoni/Tigoni/Block 1/403.*

*e) An order of an award of aggravated damages included in General Damages to be paid by the Respondents jointly or in the alternative to the group of the Petitioner herein for infringing on the rights to property of the group of persons currently known as Creyentes Praise Centre formerly known as Believers Praise and Worship Centre.*

*f) An order of an award of aggravated Damages included in General Damages to be paid by the Respondents jointly or in the alternative to the group of persons of the Petitioner for the infringement of the fundamental freedoms of Conscience, religion, belief and opinion of the group of persons currently known as Creyentes Praise Centre formerly known as Believers Praise and Worship Centre.*

*g) An order of award of Damages included in General Damages to be paid by the Respondent jointly or in the alternative to the group of persons of the Petitioner for the infringement of their freedom of Association through the making of unilateral, arbitrary, ultra vires, unlawful and unconstitutional Chiefs order.*

*h) An order of Exemplary damages to be paid by the Respondent jointly or in the alternative to the group of persons of the Petitioner to vindicate the strength of the Law.*

*i) Any other or further orders that the Court may deem fit to grant.*

*j) The Cost of the Petition and Interest at Court rates of prayers (d) , (e) (f) (g) & (h) hereinabove .*

In their Petition, the Petitioners averred that in the year 2014, the Petitioners consisting of less than 10 members and therefore not having attained a membership of ten or more persons to qualify for registration as a Society resolved to buy the suit property with the objective of starting up a church in exercise of their Constitutional Rights under **Article 32, 36 and 40** of the Constitution. That the suit property was registered in the name of the Petitioners and the 1<sup>st</sup> Respondent to hold in trust for Believers Praise and Worship Centre which has since transited to Creyentes Praise Centre. That on **28<sup>th</sup> June 2016**, the Petitioner and the 1<sup>st</sup> Respondent swore an Affidavit to the effect that although the 2 are the registered owners, the suit property belonged to the Petitioners.

Further that the 1<sup>st</sup> & 2<sup>nd</sup> Respondents have conspired against the members of the Petitioners to deny them their Constitutional freedom of Conscience, religion, believe and opinion under **Article 32**, of the Constitution by denying them their freedom of worship within their believes in the place of their choice as the 1<sup>st</sup> & 2<sup>nd</sup> Respondents have arrogated themselves the powers to designate the suit property as a worship Centre for Redeemed Gospel Church Inc. That the 2<sup>nd</sup> Respondent in collusion with 1<sup>st</sup> Respondent overstepped his mandate as the area Chief and made orders barring the Petitioners from setting foot on the suit property where they associate and worship with other persons.

Further that the 1<sup>st</sup> & 2<sup>nd</sup> Respondents purported to have had a hearing relating to a dispute on the title to the suit property after which the 2<sup>nd</sup> Respondent made orders denying the Petitioners access to their property which action is **ultra vires**. Further that neither the Petitioners nor the 1<sup>st</sup> Respondent is the registered trustee of **Redeemed Gospel Church Inc** and no one can lawfully or factually claim the suit property is registered in their two names as trustee of the Redeemed Gospel Church Inc.

In his supporting Affidavit, **Nicholas Njuguna** averred that the Chief unilaterally made a decision that the suit property belongs to

**Redeemed Gospel Church Inc**, though the said Church has not claimed to own the suit property and they are being used as a decoy to camouflage the actions of the 1<sup>st</sup> & 2<sup>nd</sup> Respondents of grabbing and taking possession of the private property. That it is only just that the orders sought in the Petition are granted.

The Petition is contested and the 1<sup>st</sup> Respondent **Fredrick Ngugi Mwangi**, swore a Replying Affidavit on **2<sup>nd</sup> January 2020**, and averred that he is a Pastor under the Interested Party ministering at its **Kawaida** branch. That he is a co-owner of the suit property together with Petitioner and that the **Redeemed Gospel Church-Kawaida** goes by the name of **Redeemed Gospel Church –Believers Praise and Worship Centre**. That the suit property was registered in his name and that of the Petitioner as there was the need to secure the Petitioner who had loaned the church members **Kshs. 75,000,000/=** after he had borrowed a sum of **Kshs. 800,000/=** from Equity Bank Limited and it was therefore necessary for him to be registered as a co-owner, pending payment of the loan amount.

He averred that the actual amount was paid from contributions from more than one hundred church members of **Redeemed Gospel Church – Kawaida** plus other outsiders and the Petitioner furnished them with a bank account for full payment and the allegations that the suit property was owned by **9 members** is an attempt to rob the Interested Party of its property.

That on **28<sup>th</sup> October, 2018**, he convened a church meeting and based on the church account records, members confirmed that they had contributed a sum of **Kshs. 1,577, 500 /=** towards purchase of the suit property and reaffirmed that the suit property should be registered in the name of the Interested Party. Further that as per the church records it was confirmed that the Petitioner and his group only contributed **Kshs.147,000/=** and the Petitioner was refunded his contribution with interest and given that he had contributed **Kshs. 40,000/=** he was refunded **Kshs. 72,000/=** as a token of appreciation. Further that out of the 11 members the Petitioner purports to represent 5 members and one was not a member of the church at any given time. Further that as per the resolutions of the Church Board meetings of **23<sup>rd</sup> March 2014** and **21<sup>st</sup> February 2016**, the suit property was to be registered in the Interested Party's name and the church is aggrieved by the Petitioner's decision to retain the title to the suit property. That he was tasked by the Interested Party with demanding the title to the suit property so that it can be registered in its name.

He averred that he swore the Affidavit after he got frustrated with the failure by the Petitioner to surrender the title deed and sign transfer and he was apprehensive that the Petitioner would allege that he is not a trustee of **Redeemed Gospel Church Believers Praise and Worship Centre**. That the suit property can only be registered in the names of their mother church and the Petitioner has always been a member of **Redeemed Gospel Church – Kawaida**, since the year **2009**. That on **7<sup>th</sup> October 2018**, the Petitioner, his wife and their two children caused disturbance at the church and the matter was reported to the 2<sup>nd</sup> Respondent who summoned the Petitioner and his wife and they failed to attend the meeting and the 2<sup>nd</sup> Respondent, made a lawful decision. He urged the Court to dismiss the Petition and declare that the suit property be registered in the name of the Interested party.

**Francis Ngugi**, swore an Affidavit on **21<sup>st</sup> September 2020**, and averred that he is a member of **Redeemed Gospel Church Inc** and he has never been a member of **Creyentes Praise Centre**, and that the same has never been known as **Believers Praise and Worship Center**. He averred that he did not participate in the meeting held on **30<sup>th</sup> September 2018**, and any signature in the minutes of the said meeting was forged and consequently he did not grant the Petitioner authority to sue the Respondents on his behalf. That he contributed in the purchase of the suit property and the same was held in trust by the Petitioner and the 1<sup>st</sup> Respondent so that it would later be registered in the Interested Party's name.

The Petition was canvassed by way of written submissions which the Court has carefully read and considered. The Court has also read and considered the Petition, the Affidavits and the annexures thereto. It is the Court's considered view that the issues for determination are;

**1. Who is the rightful owner of the suit property**

**2. Whether the Petition is merited**

**3. Who should bear the costs of the suit**

**1. Who is the rightful owner of the suit property**

The 1<sup>st</sup> Respondent has submitted that the Petitioner has not produced in evidence any authorization to file the suit. However, the Court notes that the instant suit was filed by way of Petition on the enforcement of the Bill of rights and or issue of locus standi the Constitution under **Article 22** states that :-

**(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.**

**(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—**

- a) a person acting on behalf of another person who cannot act in their own name;**
- b) a person acting as a member of, or in the interest of, a group or class of persons;**
- c) a person acting in the public interest; or**
- d) an association acting in the interest of one or more of its members.”**

Further under *Article 258 of the Constitution* on enforcement of the Constitution it is stated:-

*(1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.*

*(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—*

*(a) a person acting on behalf of another person who cannot act in their own name;*

*(b) a person acting as a member of, or in the interest of, a group or class of persons;*

*(c) a person acting in the public interest; or*

*(d) an association acting in the interest of one or more of its members.”*

The Court notes that the Petitioner has filed the instant Petition on behalf of the **Creயentes Group**. As the Constitution allows any person to file a Petition claiming that their rights have been violated, it therefore follows that there is no need of any written authorization as any person has the requisite **locus standi** to file a Petition claiming that a right has been infringed as long as the same is relevant and reasonable. In this instant, the Petitioner having claimed to be a member of **Creயentes** required no written authorization.

Having found that the Petition is proper, the Court must then determine who is the rightful owner of the suit property. Though, the suit property has been registered in both the Petitioner and the 1<sup>st</sup> Respondent's names, they both claim to have been registered as trustees for different groups. It is trite that whoever alleges must prove. It is therefore incumbent upon the parties to prove their allegations.

It is not in doubt that as per the Affidavit sworn on **25<sup>th</sup> June 2016**, by both the Petitioner and the 1<sup>st</sup> Respondent that the suit property is held in trust for **Believers Praise Worship Center - Kawaida**. While the Petitioner contends that the said **Believers Praise Worship Center Kawaida**, consists of around 11 members and that the said group is the one that transitioned to be known as **Creயentes Praise Centre**, no documentation has been produced in Court to show that the said **Believers Praise Centre** was transitioned to **Creயentes Praise Centre**. Further, the allegations by the Petitioner that the said **Creயentes members** are the persons who contributed towards the purchase of the suit property, have also not been substantiated in any form. What the Petitioner has annexed in his Amended Petition, is an Application for registration for the said **Creயentes Praise Centre** dated **29<sup>th</sup> October 2018**, and registration documents, title deed, an Affidavit sworn by the Petitioner and the 1<sup>st</sup> Respondent. The process for registration of **Creயentes Praise Centre** was commenced in **2018**. There has been no nexus to show the relationship between the same and **Believers Praise Centre** and therefore the Court is not satisfied that the **Creயentes Praise Centre** is the same as **Believers Praise Centre**.

In his Replying Affidavit, the 1<sup>st</sup> Respondent has annexed an Application for church membership dated **11<sup>th</sup> January 2009**. The said Application has been signed by the Petitioner and it is titled **Redeemed Gospel Church Inc Kawaida Believers Worship Centre**. The Court has also seen various minutes of meetings from the said church, in which it is titled **Redeemed Gospel Church Believers Praise and Worship Centre Kawaida**. The Court notes that the title deed was issued on **21<sup>st</sup> February 2014**, and the Affidavit was sworn on **28<sup>th</sup> June 2016**. If in **2009**, the Petitioner was Applying to be member of an organization known as **Redeemed Gospel Church Kawaida Believers Worship Centre** and in **2016** he as signing an Affidavit that state that the suit property belonged to **Believers Praise Worship Centre**, then there is no doubt in the Court's mind that the two organization are one and the same. The 1<sup>st</sup> Respondent having produced in evidence how the acquisition of the suit property was funded by the members of **Redeemed Gospel Church Believers Praise and Worship Centre Kawaida** and the repayment of the loan by the Petitioner, the Court is thus satisfied that **Redeemed Gospel Church Believers Praise and Worship Centre Kawaida** and **Believers Praise and Worship Centre Kawaida** are one and the same and therefore the property is held in trust for **Redeemed Gospel Church Believers Praise and Worship Centre Kawaida** and being that the **1<sup>st</sup> Respondent** has contended that in accordance with their rules, the same ought to be registered in the name of the interested party, then the Court finds and holds that the Interested Party is the rightful owner of the suit property.

## **2. Whether the Petition is merited**

The Petitioner had sought for various Declarations having alleged that their rights of conscience, religion believe and opinion had been violated. Further that their rights to associate and to own property had also been violated. The Court has already held and found that the suit property does not belong to **Creயentes Praise Centre** and therefore, the said group does not have any rights toward the suit property and thus their rights to own the same could not have been violated.

The Court has also seen the Chief's letter dated **12<sup>th</sup> October 2010**. In the said letter, the Chief, the 2<sup>nd</sup> Respondent herein notes that the Petitioner and his family members caused disturbance in **Redeemed Gospel Church** and though they were summoned, the Petitioner and his family members did not honour the summons. The 2<sup>nd</sup> Respondent therefore barred them from stepping into the Church until the matter has been resolved. **Article 24 of the Constitution** provides for Limitations of rights and fundamental freedoms.

*A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—.....*

Further **Article 25** provides for the rights that cannot be limited. Looking at the circumstances of this case, the Court notes that the rights that were limited by the 2<sup>nd</sup> Respondent are not amongst the rights that could not be limited. Further the Court notes that the rights that were indeed limited by the Chief in his letter were reasonable and justifiable and therefore did not violate the Petitioner's rights as the same

were done in order to avoid disturbance and to protect the rights of other members of the church.

Having held that the Petitioner do not have any right to the suit property and that their rights were not violated, the Court finds and holds that the Petition is not merited.

**3. Who should bear the costs of the suit**

It is not in doubt that costs usually follow the events, unless special circumstances present themselves. In this case there are no special circumstances and therefore the Court having held that the Petition is not merited, the 1<sup>st</sup> Respondent is entitled to the costs of the suit.

Having carefully read and considered the Petition, the Affidavits and the annexures thereto together with the written submission and the relevant provisions of the law, the Court finds and holds that the Petitioner herein has failed to prove his case to the required standard of balance of probabilities and consequently finds the Petition is **not merited**. The said Petition is thus dismissed entirely with costs to the 1<sup>st</sup> Respondent herein.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THIS 15TH DAY OF JULY 2021.**

**L. GACHERU**

**JUDGE**

**15/7/2021**

**Court Assistant – Lucy**

**ORDER**

In view of the declaration of measures restricting Court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15<sup>th</sup> March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

**With Consent of and virtual appearance via video conference – Microsoft Teams Platform**

**Mr. Osiemo for the Petitioner**

**Mr. Kaburu holding brief for Mr. Ngari for the 1<sup>st</sup> Respondent**

**No appearance for the 2<sup>nd</sup> Respondent**

**No appearance for the 3<sup>rd</sup> Respondent**

**No appearance for the 4<sup>th</sup> Respondent**

**Mr. Kaburu holding brief for Mr. Ngari for the Interested Party**

**L. GACHERU**

**JUDGE**

**15/7/2021**