



REPUBLIC OF KENYA



Ajuoga & 3 others (Suing as officials of the Church of Christ in Africa) v Tulu & 11 others (Civil Case 121 of 2005) [2023] KEHC 2362 (KLR) (17 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2362 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE 121 OF 2005
RE ABURILI, J
MARCH 17, 2023**

BETWEEN

**THE ARCHBISHOP DR. ABEDNEGO MATHEW AJUOGA 1ST PLAINTIFF
WILLIAM OPOT 2ND PLAINTIFF
DICK OCHIENG 3RD PLAINTIFF
BISHOP HABAKKUK O ABONGO 4TH PLAINTIFF
SUING AS OFFICIALS OF THE CHURCH OF CHRIST IN AFRICA**

AND

**JOHN HENRY TULU 1ST DEFENDANT
ISAYA ADAGI AWINO 2ND DEFENDANT
CLARKSON ODHONG 3RD DEFENDANT
NELSON OCHIENG 4TH DEFENDANT
MESHACK MBASA 5TH DEFENDANT
ROSALIA ANYUMBA 6TH DEFENDANT
JESCA OUKO 7TH DEFENDANT
SAMUEL NGURE 8TH DEFENDANT
JOSHUA OLOO 9TH DEFENDANT
WASHINGTON OBAT 10TH DEFENDANT
WILKISTA OGOLA 11TH DEFENDANT
WELLINGTON LWEYA ACHAPA 12TH DEFENDANT**



JUDGMENT

1. The plaintiffs herein vide their plaint dated 24/10/2005, filed before the promulgation of the 2010 Constitution sought the following reliefs against the defendants:
 - a. A declaration that the defendants whether by themselves their agents, servants and or other persons claiming through them having ceased to be members of the plaintiff church, have no right to use any of the plaintiff's facilities and property.
 - b. A permanent injunction restraining the defendants whether by themselves, their agents or servants from interfering with the property and activities of members of the plaintiff church.
 - c. Costs of the suit and interest.
2. The plaintiffs pleaded that the defendants as individuals were initially members of the plaintiff Church of Christ in Africa (CCA) before breaking away in the year 2005 to form the Evangelical Church of Christ in Africa (ECCA) defendant herein which was duly registered with the Registrar of Societies. That after breaking away, the defendants (breakaway) members of the latter EACCA Church started interfering with the plaintiff's (parent Church) Church activities and their properties by disrupting their worship. The plaintiff thus instituted this suit.
3. The defendants filed their defence contending inter alia that they had delinked themselves from the plaintiff parent Church. They denied allegations of interfering with the plaintiff's Church operations.
4. At the oral hearing, Habbakuk Onyango Abongo the plaintiff's Archbishop testified as PW-1. He stated that the plaintiff Church was registered as a society on 6th January 1958. He stated that the defendants herein used to be the plaintiff's Church members before defecting around September 2005 and launching their own Church, ECCA.
5. That they wrote to the authorities to assist since the defendants started interfering with the plaintiff's Churches and buildings, disrupted their Church services by entering and praying from there by force. That the plaintiff wrote to the Provincial Commissioner in Nyanza and that in some places they were assisted but not in all places.
6. PW1 testified that the plaintiff Church properties were acquired in 3 different ways: voluntary donation by members, allocation by the government and through the adjudication process. That the funds for building the Church structures were through fund raisers by members and well-wishers.
7. On being cross-examined by Mr. Aboge counsel for the defendants, PW1 stated that the Church of Christ in Africa- CCA Maseno is the same as Church of Christ in Africa as the said Church has its Headquarters situate at Maseno.
8. He stated that the defendants invaded the plaintiff's Churches illegally. He stated that Kigoche Church is one of the Churches that was invaded. He stated that one Mathew Tulu Odongo sold the land to the plaintiffs who built their church therein. That there is plenty of land which belongs to the plaintiff, not the splinter group and already developed.



9. Cross-examined by Maroro, PW1 stated that most parcels of land were donated by the members of the Plaintiff CCA Church. That some of the members of ECCA were their members before they defected and that they participated in construction of those churches before they defected.
10. PW1 stated that Henry Tulu was a Bishop in Church of Christ in Africa CCA before he split to form ECCA and that he retired after attaining the age of retirement.
11. The defendants called Meshack Mbaso who testified as DW1 and stated that the defendant ECCA Church delinked itself from the plaintiff CCA Church due to the latter's violation of the Constitution and nepotism. He denied moving into the plaintiff's Churches insisting that they were visiting their members in their Churches. He stated that they never created confusion since Churches have their identities.
12. Cross-examined by Mr. Otieno Counsel for the plaintiffs, DW1 stated that they ceased being the plaintiff's Church members in 2007 and 2009. That he had been the defendants' Bishop since 2017. That they left the plaintiff Church in 2005 because of disagreements with the Church officials who violated the Church Constitution. TDW1 stated that the defendant Church was registered 21st August 2006. That the defendants acquired the land upon which Churches were built through donations by members and communities where the Churches operated. DW1 stated that where the Church did not hold title to land, the same was deemed community land as members had donated the land for purposes of worship. He stated that the churches were built and maintained by the communities and that it was the communities which built the structures which they then controlled in the name of Church of Christ in Africa (CCA).
13. DW1 further stated that it was illegal to operate and that after quitting the plaintiff Church, they started operations under Ngong Pentecostal Church. He stated that the land on which the plaintiff Church put up church buildings was donated to the community for purposes of worship and not the plaintiff.
14. The parties were directed to file written submissions but only the plaintiffs' counsel complied. Their submissions are dated 4/2/2022.
15. On behalf of the plaintiff's it was submitted that the issue of the locus of the plaintiffs to bring forth the suit on behalf of the CCA must fail in that the CCA is society registered as Church of Christ in Africa, Maseno and that the positions occupied by the plaintiff is provided for under their constitution. That in any event, their remedy lies in Article 159 of the Constitution and section 1A of the Civil Procedure Act.
16. On whether prayer one in the plaint is available to the plaintiffs, it was submitted that there is no doubt that the defendants were members of ECCA, a splinter group which broke away from the plaintiff after which they continued using the plaintiff's Church facilities. That in light of this, the defendants have no right over the use of such facilities. That the contention that these facilities were donated and or put up by members affiliated to the ECCA was not proved as the defendants did not adduce evidence as required under section 112 of the Evidence Act. Reliance was placed on the case of Re Estate of Mwangi Kuria (deceased) [2020] eKLR. It was submitted that in the absence of evidence of the individuals who donated the properties, the court must infer that the position of the unnamed land owners did not change.
17. The plaintiffs' counsel further submitted that the admission by DW-1 that they congregated at Lions High School and members' homes shows that they had no right over the facilities that they were using. That since ECCA was nonexistent at the time, they were operating illegally and this court ought not to uphold their position as doing so could be a propagation of an illegality as stated in National Bank



of Kenya Ltd v Wilson Ndolo Ayah [2009] eKLR and *Odhiambo Owiti & Company Advocates v CFC Stanbic Bank Limited* [2015] eKLR. That the question here therefore is not about ownership of the properties but also the use of such facilities. That the right to property is protected by Article 40 of the *Constitution* and Section 26 of the *Land Registration Act* and buttressed in the decision in *Jama Musa Hussein v Registrar of Lands & 2 Others* [2019] eKLR.

18. That even if the defendants had acquired rights over the properties, they had no right to simply storm the properties and purport to take them over from the plaintiffs. They were bound to follow the law by filing suit for a determination of who was the owner of the property. In this regard, the authority in *Johannes Akello Omboto & another v Kenya Railways Corporation & 4 others* [2020] eKLR has been cited.
19. It was further submitted that the defendants adduced no evidence showing that the Churches now occupied by the defendants was built by members who had crossed over to ECCA. That even if the Church properties or land was donated by members who have since crossed over to ECCA, the properties remain as belonging to CCA and not ECCA. That in some instances, the properties are registered with the plaintiff for example Lweya and Rageng'ni Churches.

Analysis and Determination.

20. I have considered the pleadings, evidence and submissions. The issue is whether the plaintiffs proved their case against the defendants on a balance of probabilities to warrant the grant of the orders sought in the plaint.
21. The dispute herein revolves around the ownership and the use of certain facilities by the members of the 2 rival factions of the Church. Each group has claimed ownership of the properties in dispute. Having considered the pleadings, the evidence and written submissions, there is no doubt the factions are both religious group initially one group before splitting in the year 2005 to form the defendant and later registered as such.
22. The plaintiff in their evidence testified that they acquired their properties in the following ways; the members donated voluntarily land for the church to be built, they applied to the government where probable to be allocated, and, through the adjudication process. The defendants on their part asserted that their properties were obtained through donations by members and communities where the churches operated.
23. The issues to be resolved are in my view, two. The first one is on jurisdiction of this court to hear and determine this dispute which was initiated in 2005 before the promulgation of the 2010 Constitution on 27th August, 2010 and secondly, which between the two parties has adduced evidence on a balance of probabilities to demonstrate ownership of and the right to use the church facilities or amenities.
24. It is now trite law that jurisdiction is everything without which, a court of law acts in vain. See *Owners of Motor Vessel Lilian S v Caltex Oil Kenya Limited*. A similar question arose in a matter involving church factions in *Paul Etemesi & 11 others (suing of their own behalf and on behalf of the members of the Local Congregation of Buruburu Community Centre Church of God in East Africa (Kenya) v Executive Council Church of God in East Africa (Kenya) & 2 others* [2017] eKLR and this court had the opportunity to pronounce itself on the issue as follows:

“

- “ 43. On the first issue of whether this court has jurisdiction to hear and determine disputes relating to title to land or occupation of land, the *Constitution*



of Kenya 2010 in Article 162(2) (b) contemplates the establishment of the specialized court, which is the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.

44. Sub Article 3 thereof empowers Parliament to determine the jurisdiction and functions of the courts contemplated in Article 162(2) (a) and (b).
45. In 2011, Parliament enacted the *Environment and Land Court Act* and Section 13(1) therefore confers jurisdiction on the court to hear disputes referred to in Article 162(2) (b) of the *Constitution*.
46. In addition, Article 165(5) of the *Constitution* expressly bars the High Court from hearing and determining disputes relating to matters falling within the jurisdiction of the courts contemplated in Article 162(2).
47. With the above clear provisions of the law, it is trite that the High Court has no jurisdiction, with effect from 27th August 2010, to hear and determine disputes reserved for the courts contemplated in Article 162(2) of the *Constitution* and these are the Employment and Labour Relations Court and the Environment and Land Court.
48. The other issue is whether this court has jurisdiction to hear and determine this application. To answer that issue, there are ancillary questions. But first, I must revert to the application as framed. The application dated 23rd October 2014 seeks the orders that:
 1. This Honourable court may be pleased to issue an order that property to wit, LR Nairobi/Block 79/820 Church of God in East Africa (K) registered Trustees decreed to the defendants/ applicants be delivered to them and any person bound by the decree herein who refuses to vacate the property be removed/ evicted.
 2. That Geomatic Services Ltd, a licensed Surveyor be offered to carry out survey work and establish the boundaries and or beacons defining property on LR Nairobi/Block 79/820 (Church of God in East Africa (K) registered trustees) and confirm that the same exists and are in place as indicated in the original survey plan for the area.
 3. That the Commanding Officer Buruburu Police Station does supervise and provide ample security for the two (2) exercises.
 4. That costs of this application be provided for.
49. No doubt, the prayer No. 1 presupposes that there is a decree issued by this court to the defendants/applicants to be delivered to them the suit property and that any person bound by the decree herein who refuses to vacate the property be removed/evicted.
50. And if there is any decree issued by this court, nothing prevents this court from executing its own decree since where there is a decree, then the issues in the



dispute are settled and therefore there would be no issue for determination relating to title to land or occupation of land.

45. I say so without hesitating and I am fortified by the transitional provisions of the *Constitution* as stipulated in Schedule six pursuant to Article 262 of the *Constitution*. The relevant provisions of the Transitional and consequential provisions are Section 22 on judicial proceedings and pending matters which stipulates:
- “ All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this constitution or as directed by the Chief Justice or the Registrar of the High Court.”
51. Section 30 of the *Environment and Land Court Act*, 2011 also echoes the above for Constitutional transitional and consequential provisions relating to administration of justice.
52. This court observes that this case was instituted in court in the year 2000 before the effective date of the *Constitution*. The suit was not instituted post 27th August 2010. That being the case, and the matters being litigated upon being those that arose prior to the promulgation of Articles 162(2) (b) and 165(5) b of the *Constitution* and therefore this court was under a constitutional duty to conclude any pending matter in order to ensure effective administration of justice as contemplated by the principles espoused in Articles 159 of the Constitution as well as Article 10 of the *Constitution* among others, that in exercising judicial authority, the courts and tribunals shall be guided by the following principles.
- a. Justice shall be done to all, irrespective of status;
 - b. Justice shall not be delayed.
 - c.
 - d. Justice shall be administered without undue regard to procedural technicalities.
 - e. The purpose and principles of this Constitution shall be protected and promoted.
53. Under Article 10 of the *Constitution*, the National Values and principles of governance which include the rule of law, human rights among others bind the courts as a state organ and all persons whenever any of them applies or interprets any law, or makes or implements public policy decisions.
54. Access to justice is one of the fundamental human rights and freedoms; as stipulated in Article 48 of the *Constitution*; and as contemplated by Article 159 of the *Constitution*, justice shall not be delayed. It is for that reason that the transitional and consequential provisions of the *Constitution* as contemplated in the Sixth Schedule Section 22 on proceedings pending before court, does permit continuance and conclusion of those proceedings so as not to delay or obstruct access to justice.
55. Those transitional and consequential provisions of the *Constitution* are not subsidiary provisions to the *Constitution*. They were enacted together with the



substantive Articles of Constitution and with full knowledge of Articles 162(2) and 165(5) (b) of the *Constitution* that vests in different court's jurisdiction to hear and determine disputes relating to Employment and Labour Relations and material to this matter, Environment and the use of and occupation of land and title of land.

56. Therefore, noting that this application is part of the suit that arose prior to 27th August 2010, I have no doubt in my mind that this court retained the residual jurisdiction by dint of the transitional and consequential provisions of the *Constitution* to conclude any pending issues, if at all, between the parties.”
25. Applying the above constitutional principles to this suit, albeit no party raised the issue of jurisdiction of the court, I find that the suit herein having been initiated long before 27th August 2010, before the high Court which had jurisdiction to hear and determine the suit, it will impede access to justice if this court was to down its tools in a matter that has been before it for 18 years, noting that the parties could have been caught up by the statute of limitations if they are directed to file fresh suits before another court. As clearly stated in the above cited case, the Transitional and Consequential provisions of the *Constitution* were enacted as part of the *Constitution* and are not inferior provisions. They were enacted conscious of the provisions of Articles 162 (2) (a) and (b) and 165(5) (b) of the *Constitution*.
26. Furthermore, the issues being determined in this suit are not just ownership of and use of land but also the claims by the defendants that they have to worship from the church which they broke away from.
27. Before I delve into the second issue, I must also resolve the question of locus standi of the plaintiffs and defendants herein. It is not in dispute that the plaintiffs and defendants Churches are registered with the Registrar of Societies as per the Certificates of Registration produced as exhibits. That being the case, the law is clear that Societies can only sue or be sued in their name through the registered officials. In this case, there is no doubt that the persons named are the duly registered officials of the plaintiff Church CCA and Defendant Church ECCA. In the premises, I find no reason to dismiss the plaintiff's suit on account of locus standi of the plaintiffs or even the defendants in this matter.
28. On the second issue, it is trite law that he who alleges must prove. This is the dictates of section 107-109 of the *Evidence Act* which provide:
- “ 107.
- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”



29. I have perused the plaintiff's revised constitution 1997 which provides that:
- all land, buildings and other unmovable property and all investments and securities which shall be acquired by the church shall be vested in names of trustees who shall be the members of this church and shall be appointed at annual archdiocesan synod conference for a period of four years.
30. The implication of the above provision is that any property that may be held by the plaintiff Church shall vest in the names of the plaintiff's trustees. Thus, the Plaintiff Church can own property.
31. On the part of the defendants, they produced as an exhibit the *constitution* of their Church as an exhibit. The defendant asserts that its members broke away from the plaintiff Church and carried along members who had donated property to the plaintiff church.
32. I have examined the documents produced by each party in support of their respective cases. The plaintiff produced various correspondences between the plaintiff and the Registrar of Societies complaining about the registration of the defendant church in the manner it did claiming that such registration would confuse the plaintiff's members. There are also correspondences to the then Provincial Commissioner by the plaintiffs complaining about the invasion of their churches by the defendants' church members and other correspondences on the subject. The plaintiffs also produced proceedings in various criminal cases showing the arrest and arraignment of their alleged members.
33. The plaintiffs also produced the following documents of ownership of the church properties:
- a. Letter dated 29th November, 2005 from the Ministry of Lands and Settlement over land parcel West/Yimbo/Usenge/1001 which is indicated as belonging to Siaya County Council reserved for Chunga Church of Christ in Africa.
 - b. Official search for Kisumu/Kapuonja/1560 showing the land is registered in the name of Kisumu County Council and reserved for use as Gee Church of Christ in Africa.
 - c. Green card for Kisumu/Kanyadwera/911 showing the proprietor as Kisumu County Council and reserved for Church of Christ in Africa.
 - d. Official search for Uyoma /Katwenga/1224 which shows the land is registered in the name of County Council of Siaya and reserved for Lweya Church of Christ in Africa.
 - e. Letter dated 12th April, 2006 which confirms that land parcel number Nyando/Kamagaga/61 belongs to Kisumu County Council and reserved for church of Christ in Africa.
 - f. Official search for Uyoma/Ragengni/588 showing the registered owner is Siaya County Council and reserved for Ragengni Church of Christ in Africa.
 - g. Lastly, a sale agreement in favour of Kigoche Kanisa from Mathew Tolo Odongo over land parcel Kamagaga/1140.
34. From the documents produced in evidence, I am satisfied that in the absence of evidence to the contrary, the properties stated in this suit belong to the plaintiffs and no other interpretation is necessary as the documents speak for themselves.
35. On the defendant's church part, they produced *inter alia*, the certificate of registration of the ECCA Church issued on 21st August, 2006. They also produced a letter from the land adjudication and settlement department over land parcel 1140 Kamagaga showing the owner as Mathius Tolo Odongo. According to their documents, this parcel was sold to Kigoche Kanisa. They also produced Copy of



title deed for parcel number Kisumu/Muhoroni 64/571 showing the registered owner as Charles F. Ochogo.

36. My attention has been drawn to the ownership of land parcel number 1140 owned by Mathews Tolo Odongo. Both parties produced a sale agreement from the same person but different as relates to the purchaser's details. The plaintiff's copy shows that the said land was sold to Kigoche Church-Church of Christ in Africa while the defendants' version only bears the name Stephen Otieno Oyeke as the purchaser.
37. None of the parties called into this court the evidence of the said Mathews Tolo Odongo to confirm who between the 2 parties is the right purchaser.
38. In the circumstances, I am unable to conclusively Say who between the plaintiff and the defendant is the owner of the subject parcel of land. All the same, none of the parties could show that the parcel has been transferred to either of them. My finding is that this particular parcel of land belongs to Mathews Tolo Odongo until it is transferred to either party to this case.
39. From the record, there is also no evidence adduced or any link established between the defendant and the registered owner of the above named parcel of land. It is trite that ownership of land as provided for under section 26 of the [Land Registration Act](#) 2012 is by way of certificate of title. The section provides that:

1. The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge..”

40. Having assessed the evidence in is mater, I am of the considered view that the evidence of ownership of the properties produced by the plaintiff entitles them to the ownership of the subject properties and that the plaintiffs are entitled to an order of injunction over the said properties as they are the absolute owners thereof with the appertaining rights. The defendants on the other hand have no business whatsoever over the properties or facilities of the plaintiffs.
41. A similar dispute arose in the case of [The Apostolic Faith Mission Of Portland Oregon \(southern African Headquarters\) Versus Rev. Richard John Sibanda And Jonah Munondo And Rev L.d Mateza And Julius T Matope](#) - High Court Of Zimbabwe Dube J Harare, 9 March, 19 April 2015 and 20 May 2015. Dube J stated as follows:

“The respondents tried to wrestle control of the local church from the Parent Church through the constitutional amendments. The first respondent wanted to make himself the ultimate authority in Southern Africa. The first respondent led this revolt notwithstanding that he was on suspension from membership of the church. The first respondent was appointed into the position of overseer by the Parent Church. Once he repudiated the authority of the Parent Church, he repudiated his own position as overseer with the applicant. The respondents resigned from the Parent Church, they cannot not remain part of a branch led and guided by the Parent Church, the applicant. By resigning from the Parent Church, the respondents in effect seceded and withdrew from the applicant as well. No relationship exists between the Parent Church applicant and the respondents.



The respondents severed ties with the Parent Church. Once the respondents resigned from the Parent Church, on the basis of differences in doctrines, they effectively resigned from the applicant church. The same doctrines applicable in the local church are the same as those of the Parent Church. It is not realistic that the respondents would secede from the Parent Church and remain in the local church and still remain under the control of the Parent Church. The departure from the doctrinal basis of the church amounts to repudiation. The respondents have caused such a schism to the extent that it is impossible to say that they remain part of the church.

The respondents no longer subscribe to the doctrines and canons of the Parent Church. They have no right to continue to use the applicant's name. The respondents conceded that should the court find that the respondents seceded from the church, they are not entitled to use and control of applicant's property. That concession was well made. The respondents undertook to cut ties with the church leadership and yet purport to be still part of the church leading the applicant, a branch of the parent church and controlling church assets and buildings. In *The Church of the Province of Central Africa* @ p 35 the Supreme Court relied on the principle laid down in *Ethiopian Church Trustees v Sonjica* 1926 EDL 107 at pp 115-116 that after a withdrawal of membership from a church organization, the property of the church must fall under the control and use of those who adhere to the fundamental principles of the church. The court held that a person, who leaves the church, leaves behind church property. The court remarked as follows;

“The property could not be applied to purposes which are alien to the purposes of the Trust and for the benefit of persons who have no title to call themselves members and office bearers of the church.”

See also *Chong v Lee* (1981) BCLR 13.”

The court went on to remark at p 36 that:

“Related to this is the principle that a member of a voluntary association who leaves the organization whilst others remain must leave the property with those who have not resigned membership. When one leaves a club one does not take its property with him or hermit has long been established as a statutory principle of law in this area of property ownership that when one or more people secede from an existing church, they have no right to claim church property even those who remain members of the congregation are in the minority.”

The court concluded that the property which was subject of the dispute belongs to the church and it has a right to vindication of the property against possessors who have no rights over it and that such persons had no right to continue possessing the congregation buildings when they had departed from the fundamental principles and standards on which the church is founded.

Any branch or chapter of the Apostolic Faith Mission of Oregon wherever found forms an integral part of the Church as a whole. Its property belongs to the denomination. Should any member resign or be deemed to have parted ways with the church, he ceases to be a member of the church as a whole. He leaves behind the property of the church. He cannot use the property unsanctioned by the church. Once the respondents severed ties with the Parent Church they ceased to have any right of access over the property. The respondents lost the right to use the applicant's name, possession and use of the church's property. The property remains for the loyal members of the church. The applicant is entitled to the order sought.

The application is allowed.



In the result is ordered as follows;

It Is Declared That,

1. 1st, 2nd, 3rd and 4th Respondents are no longer members of Applicant and have lost all rights to fellowship under Applicant or make use of any of its properties or amenities as well as its name.
 2. 1st, 2nd, 3rd and 4th Respondents shall immediately stop and shall at all times desist from making use of Applicant's name or any such name which may reasonably be confused with Applicant's name and which may give the impression that they have any association with Applicant.
 3. 1st, 2nd, 3rd and 4th Respondents shall immediately relinquish possession and use of all of Applicant's properties both movable and immovable whether held by them directly or by those claiming the right of any use of occupation through them and which are set out in "3.1" below and shall concede such use and possession to Applicant.
42. The above long citation in the case which was in pari materia with this case answers the 2nd prayer that a permanent injunction be issued against the defendant restraining the defendants from interfering with the properties listed and or owned by the plaintiff as stated above.
43. The declaratory prayer sought by the plaintiffs is answered in the affirmative. This is because, the plaintiff alleged that the defendants and their followers broke away from the plaintiff CCA Church and formed their own church known as Evangelical Christ Church of Africa ECCA and a certificate duly issued to them by the Registrar of Societies. ECCA is therefore an entity completely different from the plaintiff CCA Church, each with their own following and followers. The defendant and its members have no right to use any of the plaintiff's facilities and properties or amenities for worship or for any other purpose.
44. The upshot is that I find and hold that the plaintiff has proved its case against the defendants on a balance of probabilities and is entitled to the following reliefs:
- a. A permanent injunction is hereby issued against the defendants herein restraining the defendants whether by themselves, their agents or servants or followers of ECCA Church from interfering with the plaintiff's properties and activities of its members of the CCA Church.
 - b. A declaration is hereby issued that the defendants ECCA Church and its members having ceased to be members of the plaintiff's CCA church, have no right to use any of the plaintiff's facilities and properties or amenities.
 - c. Costs follow the event and to the successful party. However, in this case, as both parties though fighting over church properties and facilities, are nonetheless people of the same Christian faith. I order that each party bear their own costs of this suit which has been before this court for unnecessarily too long.
 - d. This file is hereby closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 17TH DAY OF MARCH, 2023

R.E. ABURILI

JUDGE

