



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 138 OF 2013

ANNE NALIAKA & 3 OTHERS.....PLAINTIFFS

VERSUS

**BENSON NYONGESA WAMALWA Trustee COVENANT OF HOLINESS
MINISTRIES.....DEFENDANT**

RULING

1. The applicant Benson Nyongesa Wamalwa is a trustee of Covenant of Holiness ministries. He brought a notice of motion dated 13th January, 2014 in which he seeks to have the Plaintiff/Respondents suit struck out and an injunction issued restraining the plaintiff/respondents from wasting or damaging or in any other way interfering with the land comprised in title Number Kwanza/Namanjalala Block 5/655.
2. Three of the four Plaintiff/Respondents are pastors with various churches. The respondents had filed a suit against the applicant in which they prayed for among other orders that the applicant is holding two acres in trust for Kitale family House of Hope. The defendant/Applicant filed a counter-claim in which he has sought an eviction order against the Plaintiff/Respondents.
3. Title Number Kwanza/Namanjalala Block 5/655 is registered in the name of Covenant of Holiness Ministries where the applicant is trustee and Pastor. The applicant contends that the land in issue has on it an orphanage and a school. The applicant further contends that the respondents are burning bricks on the property and are thus wasting it. He therefore seeks for an injunction against the respondents from committing further waste.
4. The application is opposed by the respondents through a replying affidavit sworn by Edward Khaoya on 4/2/2014. The respondents contend that Covenant of Holiness Ministries is registered as a community based organization whose project is Kitale House of Hope. The Community based organization was founded by the deponent and others who included the applicant.
5. The respondents further contend that an Australian Organization known as Neighbours Aid Community Stores Inc. Partnered with the project. The Australian Organization fully funded the purchase of the land on which the project was to put up charitable institutions for the care and education of orphaned and other vulnerable children.
6. The respondents deny that they are in any way wasting the suit land and that the bricks are for the construction of the institutions.
7. I have considered the applicant's application as well as the opposition to the same by the respondents. I have now to decide whether or not the respondent's suit discloses a reasonable cause of action or not and secondly whether an injunction should issue restraining the respondents in the manner prayed for.

8. A close look at the documents filed together with the plaint shows that at one stage, the applicant and the respondents were working together. They were together when they started the Covenant Holiness Ministries. The idea of Kitale Family House of Hope came as a result of the donors insisting that they were not going to channel funding through an organization associated with church affairs.

9. The applicant was a member of the Kitale Family House of Hope until 30/9/2013 when he was removed from the management of Kitale Family Hope. On 7/10/2013 the applicant wrote an e-mail to the donors asking them to stop dealing with Kitale Family House of Hope but the donors wrote back to him on 9/10/2013 insisting that they could not work with a religious affiliated organization. The applicant had wanted the donors to start dealing with Covenant Holiness Ministries and not through Kitale Family House of Hope.

10. It is clear that Kitale Family House of Hope is in the process of registration. There is a letter dated 15/3/2013 confirming that registration might take time. The plaint as it is is not hopeless. It can be cured by amendment. The circumstances under which the respondents moved to court are clear. They came as individuals and there is no doubt that they are officials of Kitale Family House of Hope. Though Kitale Family House of Hope is yet to be registered, it is clear that the land in issue was registered in the name of Covenant Holiness Ministries as the Kitale Family House of Hope was not yet registered and there were no trustees who could hold the land for the organization. The respondent's suit cannot therefore be defeated on account that Kitale Family House of Hope is not a registered entity. The history of the project is self-evident and the court cannot strike out the plaint on account of procedural technicalities.

11. On the issue as to whether the Defendant/Applicant is entitled to the injunction, I do not think he is entitled to an injunction. First he has not demonstrated that his counter-claim has any chance of success. Secondly, the applicant is complaining that bricks are being burnt on the suit land. He has not demonstrated that he will suffer damage which might not be compensated in damages.

12. For the reasons given above, I find that the applicant's application has no merits. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 5th day of May, 2014.

E. OBAGA

JUDGE

In the presence of Mr Kiarie for defendant and Mr Kraido for Plaintiff. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

5/5/2014