REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 14 OF 2014

ABRAHAM MRAMBA (*IN HIS CAPACITY AS*

***THE OVERSEER* MALINDI SOUTH**

DISTRICT PEFA CHURCH.....PLAINTIFF/APPLICANT

=VERSUS=

MARGARET THOMAS CHARO MWAIVU.....DEFENDANT/RESPONDENT

RULING

Introduction:

1. The Application by the Plaintiff is the one dated 4th February 2014 and filed pursuant to the provisions of Order 40 of the Civil Procedure Rules. The Applicant is seeking for the following order:

   (a) THAT pending the hearing and determination of this suit, there be issued an interim injunction restraining the Respondent, her employees, representatives, servants and/or agents from trespassing onto, alienating, or dealing in any manner whatsoever with the Applicant's land and church building situated at Mkangani, also known as Bethlehem PEFA church or interfering in any manner with the installation of another Pastor at the said church by the Malindi South District PEFA church administration.

2. The Application is premised on the grounds that the Applicant has jurisdiction over where the suit property is situated and that the Respondent has continued to trespass on the Applicant's property and blocked him from exercising control and authority over the said church as mandated to him by the PEFA church ministry.

The Applicant's case

3. The Applicant has deponed that the Defendant, as a pastor of the PEFA church declared that he had defected from the PEFA Ministry and joined another outfit known as Pentecostal Joyful Revival Ministry; that for that reason, she was relieved of her duties as the pastor in charge of Bethlehem PEFA Church and that she was required to handover the leadership of the church together with its property.
4. According to the Applicant, the Respondent is now in the process of having the suit land registered in her name at the expense of the PEFA Church Ministry.

The Defendant's/Respondent's case

5. According to the Defendant's affidavit, the Ganda Pentecostal Church moved to Mkangagani and founded a church called Mkangagani Pentecostal Church where she was appointed as an elder and a woman leader of the church.
6. It is the Defendant's deposition that in 1998, she left Mkangagani Pentecostal Church and started a church called Bethlehem Pentecostal Church. She later on approached PEFA Church to assist her get a plot where she could construct a church building.
7. It is the Defendant's case that PEFA church refused to assist her to acquire land because of its policy whereupon one of the members of the church, Mr. Charo Kalama, granted to her church a loan of Kshs.50,000 for the purpose of securing a half an acre of plot no.576 in Mkangagani.
8. It is the Defendant's deposition that she purchased the suit property from Elizabeth Kombe and her two sons for Kshs.60,000 and that the PEFA church was never a party to the said purchase; that her church is affiliated to Pentecostal Evangelical Ministry Alliance (PEMA) and not PEFA church and that in the year 2008, her church organised a fund-raising for the purpose of raising money to construct a church building.

Further Affidavit

9. In the Further Affidavit, the Applicant deponed that the Respondent was a pastor within the fraternity of the PEFA church ministry and the premises where she now claims to have founded Bethlehem Pentecostal Church has always been known as Bethlehem PEFA Church; that the Defendant was issued with a preacher's permit number 000199 as a PEFA church pastor at Bethlehem and that any property that was purchased by the Defendant and her council of elders is held in trust for the congregation and the PEFA church.

Submissions

10. The Applicant's counsel submitted that at all material times, the Respondent was a member of Mkangagani PEFA Church. In the year 2002, she expressed her desire and calling to be a pastor and was allowed by the Malindi South District Council of PEFA church to start a branch at Bethlehem. This was followed by her installation as the pastor in charge of the said church.
11. Counsel submitted that all pastors serving under the PEFA Ministry are mandated by the administration to develop their local churches with the help of the local congregation. This, it was submitted, includes purchase of property and construction of permanent sanctuaries for the congregation to use as their place of worship. Counsel submitted that consequently, the Respondent has no right to take away the suit property because it was bought and developed by the congregation and the faithful from other PEFA church branches.

Supplementary Affidavit

12. In response to the Further Affidavit, the Respondent stated that her church is not a PEFA church but is affiliated to PEMA; that annexture “AMI” attached on the Further Affidavit is not genuine; that the permit exhibited on the Further Affidavit is also not genuine because it is purported to have been issued on 19th March 2014 and that such permits can only be issued by the general secretary and not the district overseer.
13. The Respondent finally averred that the constitution of PEFA church only allows the trustees of the church to buy properties and not pastors and that she has never been a trustee of the Plaintiff.
14. The Defendant's counsel submitted that no documentary evidence has been produced to show that PEFA and or Bethlehem PEFA is the legal owner of the suit property and that no evidence has been offered to show that the Defendant was a member of PEFA church.
15. Counsel further submitted that Bethlehem Pentecostal Church is under the umbrella of Pentecostal Evangelical Ministry Alliance (PEMA); that the church entered into an agreement with one of its members for a loan of Kshs. 50,000 for the purpose of purchasing half an acre of plot no. 576 and that the Defendant and three other members are holding the property in trust for the Defendant's church.

Analysis and findings

16. The issue in dispute in this matter is whether the suit property belongs to the Defendant's church known as Bethlehem Pentecostal Church or it belongs to Pentecostal Evangelistic Fellowship of Africa (PEFA).
17. The Plaintiff's case is hinged on the basis that the Defendant, being the overseer of Malindi South District PEFA church, has jurisdiction over where the suit property is situated and therefore accountable to PEFA church. The Defendant has denied that she is a member of PEFA church.
18. According to the Plaintiff's annexture AM4 which is dated 26th July 2013, the Defendant was dismissed from duty as a pastor in PEFA church due to misconduct. The Defendant was directed to handover all the PEFA church property and documents to PEFA-Bethlehem Church elders and the District Council.
19. On the other hand, the Defendant's case is that she was indeed a member of PEFA until 1998 when she started a church called Bethlehem Pentecostal Church, firstly at Mkangagani Primary School before receiving a loan of Kshs.50,000 and purchasing the suit property.
20. The Defendant annexed the agreement of sale which is on the letter head of "Bethlehem Pentecostal Church" dated 10th June 2005 for Kshs.50,000 that the church borrowed from William Charo Kalama.
21. Another agreement has been annexed dated 20th June 2005 between Elizabeth Kombe and Bethlehem Pentecostal Mkangagani in respect to the suit property for Kshs.60,000. The people who signed the agreement on behalf of the Bethlehem Pentecostal Church were the Defendant and four other members.
22. The Defendant's claim is that her church is affiliated to another church known as Pentecostal Evangelical Ministries Alliance (P.E.M.A). The Defendant has annexed on the Affidavit a letter dated 1st March 2013 from Bishop Ezekiel Kalu of PEMA church. In the letter the Defendant's church was being welcomed to work with PEMA. The constitution or the registration status of PEMA church was not annexed on the Defendant's affidavit.
23. To show that the Defendant was indeed a pastor in the Plaintiff's church, the Plaintiff annexed on its Further Affidavit a list of pastors and District Leaders for the month of February 2012. That list shows that the Defendant was the pastor for Bethlehem church. However, the list is not signed and its source is not shown.
24. The Plaintiff also annexed on its affidavit a permit that was purportedly issued to the Defendant to preach. The said permit is signed by the District Overseer and the District Secretary. The said permit is not dated and this court is unable to ascertain when, if at all, the Defendant was appointed by the Plaintiff to be its pastor.
25. I have also looked at the Plaintiff's constitution. According to Article 5 section 2 of the said constitution, applications for membership to the church are to be made in writing to the General Secretary.
26. The Plaintiff has not annexed any Application that was made by the Defendant to become a member of PEFA church. Indeed, other than the minutes that have been annexed on the Plaintiff's affidavits, there is no indication as to how the Defendant was ordained as a pastor of the Plaintiff's church.
27. The Plaintiff's constitution provides that it is the church's trustees who are supposed to buy, handle, sell borrow, charge, lease, lend and hold property on behalf of the fellowship. The said constitution at Article 12 further provides that all land, buildings and other movable and immovable property acquired by the society shall be vested in the names of not less than five trustees.
28. The Plaintiff has not provided any evidence to show that the Defendant, and the four individuals who purchased the suit property are the Plaintiff's Trustees or that they are members of the Plaintiff's church.
29. Indeed, the sale agreement in respect to the suit property is on the letter head of Bethlehem Pentecostal Church and not Bethlehem PEFA church. If indeed it is the Plaintiff's congregation that had purchased the suit property, it was upon the leadership of the church to have rectified this anomaly by immediately entering into a proper sale agreement with the seller of the suit property. The trustees of the church should been involved at some point in time.
30. In the circumstances, I find, prima facie, that it is the Defendant, under the auspice of Bethlehem

Pentecostal Church who purchased the suit property. The Plaintiff has not established, prima face, its proprietary interest in the suit property.

31. For the reasons I have stated above, I dismiss the Plaintiff's Application dated 4th February 2014 with costs.

Dated and delivered in Malindi this **5th** day of **September,** 2014.

O. A. Angote

Judge