



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 969 OF 2013

CHARLES ODERO OBURU.....1ST PLAINTIFF

JACOB OMBOKO ALURU.....2ND PLAINTIFF

VERSUS

BISHOP REUBEN WILLIAM OMWAKA.....DEFENDANT

JUDGMENT

1. This suit was initiated through a plaint dated 5/8/2013 and filed in court on 6/8/2013. The dispute in the suit relates to ownership of an unsurveyed and unregistered plot situated in Kibra Area, described as **Plot No K*****8**. Erected on it is an unapproved structure serving as a worship sanctuary. The worship sanctuary was erected by members of **Hossana Community Church**. At one time, the two plaintiffs and the defendant were leaders in the said Church.

2. The case of the plaintiffs was that they requested the defendant to allow them to use the name of Hossana Community Church to acquire the suit property. They further averred that they also requested the defendant to incorporate them and “their members” as part of Hossana Community Church so that they could have a place of worship. They contended that they did so because the defendant had a church registered under the Societies Act. The defendant acceded to their request and the membership of the church constructed the worship structure.

3. The plaintiffs further averred that the defendant had on several occasions disrupted their church activities. Consequently they sought court relief in terms of the following verbatim prayers:

*a) A declaration that Plot No K*****8 belongs to the plaintiffs absolutely.*

*b) That a permanent injunction does issue restraining the defendant whether acting by himself, his servants, agents or anybody or authority acting under him, from trespassing, disrupting church services or evicting the plaintiffs or members of the congregation from the suit premises being the parcel of land known as PLOT NO K*****8.*

*c) Eviction of the defendant and his agents from the suit premises being PLOT NO K*****8 KIBERA LAINI SABA.*

d) Costs of this suit

e) Any other relief that this honourable court may deem fit to grant

4. The defendant filed a statement of defence dated 22/6/2017. He averred that the suit property was purchased using contributions by members of Hossana Community Church. The plaintiffs merely appended their signatures on the sale agreement in their capacity as officials of the church. The plaintiffs did not own the suit property. The plaintiffs subsequently purported to unprocedurally change the name of the church from **Hossana Community Church** to **Universal Pentecostal Church**. He maintained that the suit property belonged to Hossana Community Church and urged the court to dismiss the plaintiffs suit.

5. At the hearing, the 1st plaintiff testified as PW1. He adopted his written statement dated 2/8/2013 as part of his sworn evidence-in-chief. He stated that he was the chairman of Hossana Community Church, situated in Laini Saba, Kibra. On 9/6/2008 and 18/7/2008, Pastor Jacob Ahiru Omboko, Pastor Harun Atsowa Sakwa and himself as Chairman of the Church purchased the suit property. The defendant witnessed the sale agreement. The purchase price was contributed by officials and members of **Hossana Community Church**. The congregation also conducted a *harambee* to raise more funds. The defendant was invited as a guest during the fundraiser.

6. PW1 added that a dispute arose when the defendant who was their bishop moved away from **Hossana Community Church** –Laini Saba Kibra, and established his own church elsewhere. The defendant thereafter started barring church members from attending Sunday services at the suit premises. The defendant was using the Area Chief to grab the suit premises.

7. In cross-examination, he testified that according to the purchase agreement relating to the suit property, the purchaser was Hossana Community Church. The said Church was registered under the Societies Act on 20/2/1997. Officials of the Church were William Omwaka (defendant) as Chairman, Olupeya (Secretary) and Ingosi (Treasurer). He did not have any evidence to demonstrate that he was a trustee of the church.

8. In re-examination, he stated that they had founded a new church which was yet to be registered because the Government had frozen registration of churches. He added that the Area Chief was biased.

9. The defendant testified as DW1. He adopted his written statement dated 8/2/2018 as part of his sworn evidence-in-chief. He stated that he was the Founder and Bishop of Hossana Community Church. The Area Chief introduced him to James Karanja Njoroge who sold to the Church the suit property. The purchase price was raised by the church through contributions by the congregation. He too made a personal contribution of Kshs 28,000 towards the purchase price fund. He authorized the plaintiffs to sign the agreement on behalf of the church. He witnessed the agreement. The plaintiffs subsequently broke away from Hossana Community Church and started their own church. The suit property belonged to the Hossana Community Church.

10. During cross-examination, he stated that the 1st plaintiff was the Building Committee Chairman. The 1st plaintiff signed the sale agreement in his capacity as Chairman of the Building Committee. The purchaser of the suit property was the Church. He wrote a letter to the Bank to enable the Church Branch to open a bank account. Hossana Community Church filed returns every year.

11. I have considered the pleading, together with the evidence placed before the court. Two issues fall for determination in this suit. The first issue is whether the plaintiffs are the owners of **PLOT NO K*****8**. The second issue is whether the plaintiffs are entitled to the reliefs sought in the plaint. I will make brief sequential pronouncements on the two issues.

12. The suit property is part of an unsurveyed and unregistered Government Land within Laini Saba Area of Kibra. The plaintiffs rely on the sale agreement dated 18/7/2008 to advance their case that they are the owners of the suit property. I have examined the sale agreement. It is clear from the sale agreement that the suit property was purchased by Hossana Community Church. The plaintiffs merely signed the agreement for sale in their capacities as officials of **Hossana Community Church**. There is therefore no basis for the plaintiffs' contention that they are the owners of the suit property.

13. The plaintiffs further contended that they merely used Hossana Community Church as a vehicle for purchasing the suit property. Evidence placed before the court both by PW1 and DW1 indicates that the suit property was purchased by Hossana Community Church using funds raised through church *harambees* and contributions by the Hossana Community Church congregation. What the plaintiffs do not appear to appreciate is that church property belongs to the church; it does not belong to the leaders of the Church.

14. Lastly on the issue of ownership, it does emerge from PW1's evidence under re-examination that the plaintiffs had broken away from Hossana Community Church and had founded their own church which is yet to be registered. In my view, they are entitled to exit from Hossana Community Church. However, they are not entitled to the suit property which belongs to Hossana Community Church.

15. Consequently, my finding on the first issue is that the plaintiffs do not own and have no legitimate claim of ownership over **PLOT NO K*****8** situated in Laini Saba, Kibra. Hossana Community Church is the beneficial owner of the said plot. The Church's continued enjoyment of the said property is, however, subject to the Government's legal interest therein.

16. In light of the above finding on the first issue, it follows that the plaintiffs are not entitled to the reliefs sought in the plaint.

17. The net result is that the plaintiffs have failed to prove their case on a balance of probabilities. Consequently, the suit herein is dismissed for lack of merit. The plaintiffs shall bear costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF OCTOBER 2020.

B M EBOSO

JUDGE

In the Presence of: -

Court Clerk - June Nafula

Note

This Judgment was supposed to be delivered on 21/10/2020. This was not possible because I was assigned duties outside the Station.

B M EBOSO

JUDGE