



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**E & L CASE NO. 594 OF 2012**

**INTERNATIONAL PENTECOSTAL HOLINESS CHURCH &**

**10 OTHERS.....PLAINTIFFS**

**VERSUS**

**STAR-LAND COMPANY LTD.....1<sup>ST</sup> DEFENDANT**

**GRRENVILLE PLANTATIONS LIMITED.....2<sup>ND</sup> DEFENDANT**

**PANCREAS OYATSI.....3<sup>RD</sup> DEFENDANT**

**AND**

**SAMMY MALWA.....1<sup>ST</sup> APPLICANT/INTERESTED PARTY**

**JAPHETH YAKHAMA ENZIANI..2<sup>ND</sup> APPLICANT/INTERESTED PARTY**

**SAMSON LUVUKA.....3<sup>RD</sup> APPLICANT/INTERESTED PARTY**

**RULING**

**[NOTICE OF MOTION DATED 26<sup>TH</sup> SEPTEMBER, 2019]**

1. **Sammy Malwa, Japheth Yakhama Enziani and Samson Luvuka**, the applicants, moved the Court vide the Notice of Motion dated the 26<sup>th</sup> September 2019, seeking to be enjoined in the suit as interested parties and be granted leave to file their defence. The application is based on the four grounds marked **(a)** to **(d)** on its face and supported by the affidavit sworn by **Sammy Malwa**, the 1<sup>st</sup> Applicant, on the 26<sup>th</sup> September, 2019. That it is their case that they were the principal founders of Soul Restoration Worship Centre and signed the sale agreement for purchase of two acres from the 1<sup>st</sup> Defendant for Kshs.400,000 on the 30<sup>th</sup> January, 2004 out Eldoret Municipality No. 23201/30. That the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> to 7<sup>th</sup> Plaintiffs have left the Applicants out of this suit despite being the initial founders and members of the 1<sup>st</sup> Plaintiff.

2. The application is opposed by the Plaintiffs through the replying affidavit sworn by **Reverend Daniel Kwatuha**, the Secretary General of the Highlands Conference, Presiding Bishop and vice-Chair of the National Conference. That it is the Plaintiffs' case that the Applicants ceased being members of the church, and though they still masquerade as believers of the church, they have no say in the litigation of the church as that is the responsibility of the registered trustees.

3. That following the directions of 12<sup>th</sup> May 2020, the learned Counsel for the Applicants and the Plaintiffs filed their written submissions dated 2<sup>nd</sup> December, 2019 and 19<sup>th</sup> December, 2019 respectively.

4. The following are the issues for the Court's determinations;

***(a) Whether the Applicants are necessary parties to be enjoined in the proceedings for the issues therein to be determined.***

***(b) Who pays the costs of the application?***

5. The Court has carefully considered the grounds on the Motion, the affidavit evidence, the submissions by the learned Counsel, the cited superior court's decision therein and come to the following determinations;

(a) That the Motion is brought pursuant to **Sections 1, 1A, 3A and 63(e) of the Civil Procedure Act** and **Order 1 rule 10(2) of the Civil Procedure Rules** as can be discerned on its heading. That **Section 1 of the Civil Procedure Act** do not appear to have any relevance to the application. That **Sections 1A, 3A and 63(e)** of the said Act provides for the objective of the Act, inherent powers of the Court and supplementary applications for interlocutory orders respectively. That **Order 1 Rule 10(2) of Civil Procedure Rules** provides for the Court's power on its own Motion or on application to order the exit or addition of party to a suit. That there is therefore no dispute that the Court is with jurisdiction to hear and determine the application before it.

(b) That what comes out clearly from **Order 1 Rule 10(2) of the Civil Procedure Rules** is that for a party to be enjoined to a suit, the Court must be satisfied that their participation in the proceedings is ***"necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all questions involved in the suit."*** That the superior court's decision cited by Counsel confirms that position by emphasizing that the party seeking to be added has to show the personal interest or stake to the subject matter, and that their joinder will not prejudice or cause an injustice to the other party or parties. That from the affidavit evidence availed by the Applicants, they have not shown any personal interest or stake to the suit land subject matter of the suit. That all they say is that they are founder members of the 1<sup>st</sup> Plaintiff and that they signed the sale agreement for the two acres bought from the 1<sup>st</sup> Defendant. That indeed, the sale agreement they exhibited to the supporting affidavit shows it was witnessed by **Jackson Khayumba, Daniel Kwatuha, John Wanjala Simiyu and Sammy Malwa**. That Sammy Malwa is the 1<sup>st</sup> Applicant but the other two Applicants' names are not among those of the named witnesses. That there is no documentary evidence availed to confirm who the original or initial founders of the 1<sup>st</sup> Plaintiff were. That even if the Applicants or some of them were among the founders of the 1<sup>st</sup> Plaintiff, that would not confer upon them an interest or stake in the suit land sufficient to be enjoined in the proceedings if they are not the registered trustees or officials through whom the 1<sup>st</sup> Plaintiff acts or performs its legal obligations as of the time of filing this suit and or thereafter.

(c) That the Plaintiffs have deponed that the Applicants are no longer members of the 1<sup>st</sup> Plaintiff. That though there is no rejoinder to that from the Applicants, that is an issue that is not before this court for determination. That the upshot of the foregoing is that the Applicants have failed to show the Court that they have a legal interest or stake in any of the issues before the Court, that would make them necessary parties for those issues to be determined. That does not however, mean any of the parties to the suit cannot call them or any of them as their witnesses upon recording, filing and serving their statements to the other parties in accordance with the law.

(d) That the Applicants having failed in their application, they will pay the Plaintiffs costs.

6. That flowing from the foregoing, the Court finds no merit in the Applicants/Intended Interested Parties' application dated the 26<sup>th</sup> September, 2019 and the same is dismissed with costs.

Orders accordingly.

**Delivered virtually and signed at Eldoret this 7<sup>th</sup> day of October, 2020.**

**S. M. KIBUNJA**

**JUDGE**

**In the presence of:**

Plaintiffs: None.

Defendants: None.

Applicants: None.

Counsel: None.

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.

Court Assistant: Christine