

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 5116 OF 1992 (OS)

FREE PENTECOSTAL FELLOWSHIP IN KENYAPLAINTIFF

VERSUS

KENYA COMMERCIAL BANK.....DEFENDANT

RULING

This suit was started by originating summons pursuant to the provision of o XXXVI rules 3 and 7 Civil Procedure Rules, s 3A Civil Procedure Act and s 72 of the Registered Land Act cap 300 Laws of Kenya.

The suit came for hearing on 11th February, 1992. An issue of jurisdiction to grant the orders prayed for herein, to wit an order that the defendant Bank transfer land known as Dagoretti/Mutuini/536, was raised by learned counsel for the defendant, Mr Mohamed Ibrahim. His submission was based on the fact that the suit was instituted in the name of a religious organization which is merely a society.

Mr Ogeto, counsel for the plaintiff was of the view that the Court has the power to amend the summons under o 1 rule 10 of the Civil Procedure Rules to correct any error relating to parties to a suit.

The position at common law is that a suit by or against unincorporated bodies of persons must be brought in the names of, or against all the members of the body or bodies. Where there are numerous members the suit must be instituted by or against one or more such persons in the representative capacity pursuant to the provision of o1 rule 8 Civil Procedure Rules. The suit may also be instituted by or against trustees of the body of persons.

In the instant matter the suit was instituted in the name of a religious organization. It is not a body corporate which would then mean it would sue as a legal personality. That being so it lacked the capacity to institute proceedings in its own name.

hold property, movable or otherwise. The plaintiff being an unincorporated body lacks the capacity to own land in its own name. Consequently, the property which was bought on its behalf in a public auction which was held at the instance of the defendant in exercise of its statutory power and right of sale under s 74 RLA cannot under the law vest in it.

Not without much sympathy to the plaintiff church, I am constrained to dismiss this suit.

The Court cannot effect amendments pursuant to o 1 rule 10 *suo motu* except in clear cases, this not being one.

Suit is dismissed. No order as to costs.

Dated and delivered at Nairobi this 11th day of March, 1992

S.E.O BOSIRE

JUDGE