



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. APPEAL NO. 53 OF 2018

BISHOP PAUL MUEMA MWANGANGI (*Suing as trustee and*

Chairman on behalf of **GOSPEL COMMUNITY**

CHURCH & MINISTERS.....PLAINTIFF/APPLICANT

VERSUS

REV. ANDREW NZEKI *being sued as the Chairman of* **ALL IN CHRIST**

CHURCH TALA REGION.....1ST DEFENDANT/RESPONDENT

PASTOR CHARLES

KITUKU KITHUSI.....2ND DEFENDANT/RESPONDENT

RONALD MUTUA KUTU.....3RD DEFENDANT/RESPONDENT

DANIEL NGILA.....4TH DEFENDANT/RESPONDENT

ABEDNEGO KYALO MUNYAO.....5TH DEFENDANT/RESPONDENT

ROBERT NZUKI MWANIA.....6TH DEFENDANT/RESPONDENT

PETER KIMEU MUTULILI.....7TH DEFENDANT/RESPONDENT

(Being an Appeal from the Ruling of Hon. D. Orimba Principal

Magistrate, Principal Magistrate's Court, Kangundo,

delivered on 11th July, 2018 in Civil Case No. 74 of 2018)

BETWEEN

REV. ANDREW NZEKI *suing as the Chairman of* **ALL IN**

CHRIST CHURCH TALA REGION.....1ST APPELLANT/APPLICANT

PASTOR CHARLES KITUKU KITHUSI.....2ND APPELLANT/APPLICANT

RONALD MUTUA KUTU.....3RD APPELLANT/APPLICANT

DANIEL NGILA.....4TH APPELLANT/APPLICANT

ABEDNEGO KYALO MUNYAO.....5TH APPELLANT/APPLICANT

ROBERT NZUKI MWANIA.....6TH APPELLANT/APPLICANT

PETER KIMEU MUTULILI.....7TH APPELLANT/APPLICANT

VERSUS

BISHOP PAUL MUEMA MWANGANGI (*sued as trustee and*

Chairman on behalf of **GOSPEL COMMUNITY**

CHURCH AND MINISTERS.....RESPONDENT

RULING

1. In the Application dated 13th July, 2018, the Appellants are seeking for the following orders:

a. That this Honourable Court be pleased to order a stay of the Ruling and orders delivered by the Subordinate Court on 11th July, 2018 in Civil Case No. 74 of 2018 pending the hearing and determination of the Appeal.

b. That the costs of this Application be provided for.

2. The Application is supported by the Affidavit of the Chairman of All in Christ Tala Region who has deponed that the Appellants are aggrieved by the decision of the subordinate court in Civil Case No. 74 of 2018 (*Kangundo*) and that the Ruling has restrained members of the church from selling and using a property known as Mukunike Gospel Community Church also known as All in Christ Church AICC Kwale-Mukunike pending the hearing and determination of the suit.

3. It is the Appellants' case that the order in favour of the Respondents has the effect of rendering more than fifty five (55) members of the church helpless with no place of worship; that the execution of the orders will disrupt all the prayer schedules and that the Appellants have an arguable appeal.

4. In response, the Respondent deponed that the suit property belongs to the Gospel Community Church; that sometimes in the year 2018, the Appellants chased away the pastor of the church and proceeded to wipe out the name of "*Gospel Community Church-Mukunike*" and replaced it with the name of "*All in Christ Church*" and that he reported the incident to the area OCS.

5. It is the deposition of the Respondent that from the agreements, it is clear that the Gospel Community Church is the owner of the suit property and that the current Application is aimed at delaying the finalization of the suit in the lower court.

6. In the Supplementary Affidavit, the Appellants deponed that the Respondent was paid for the use of the name of the church; that the church acquired another name and that the existence of an agreement is not conclusive proof of ownership of land.

7. The Appellants' advocate submitted that the Appeal is arguable and not frivolous; that the church is losing its members who cannot withstand the cold/sunny weather and that if the Appellants lose their members, it would be difficult to reverse the situation.

8. The Respondent's advocate submitted that the Applicants have not demonstrated any arguable point in the Appeal; that the Applicants are not the owners of the suit property in dispute and that the Applicants did not change the name of the church in 2018.

9. Although the Appellants/Applicants are challenging the Ruling of the lower court dated 11th July, 2018, they have not annexed on their Affidavit a copy of the Application that gave rise to that Ruling. Indeed, in the absence of the Application and the Replying Affidavit that were filed in the lower court, it is not possible for this court to ascertain the issues that were before the court.

10. The failure by the Appellants to avail to this court the pleadings that were before the subordinate court renders the Application incompetent. On that ground alone, I dismiss the Application dated 13th July, 2018 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE