



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**CIVIL CASE NO. 33 OF 2015**

**HENRY SHIKUKU BARASA**

**JOASH CHIMUGE WASWA**

**JOHN NYONGESA NGEYWA (*Suing in the capacity*)**

*as the duly authorized representatives of*

**MATISI OUTREACH CHURCH.....PLAINTIFFS**

**VERSUS**

**REUBEN FWAMBA MBITA.....DEFENDANT**

**JUDGMENT**

1. The plaintiffs, **Henry Shikuku Barasa, Joash Chimuge Waswa and John Nyongesa Ngeywa**, suing in the capacity as the duly authorized representatives of **Matisi Outreach Church**, filed a claim by way of an ordinary plaint dated **10/3/2015**. In that plaint they claimed that the suit land being **Title No. Kiminini/Kinyoro Block 3(Matisi)19** measuring approximately Nought Decimal Three Seven Six Four (0.3764) Hectares or thereabouts (hereinafter referred to as the suit land) is registered in the names of Matisi Outreach Church and a Title Deed was issued to the said church on **15/12/1993**.
2. They claim further that they are officials of the said church tasked with among other mandates being custodians of the Church's property including the suit land.
3. It is the Plaintiff's contention that the defendant has, without any justification whatsoever and or color of right and without justification in law laid a claim to the aforementioned property and used the provincial administration to harass and interfere with members of the Church.
4. The Plaintiff further avers that the members of Matisi Outreach Church are thus hampered from fully utilizing and enjoying the suit land owing to actions of the defendant hence the need for intervention of this Court.
5. The Plaintiffs claim against the Defendant is for;
  - a) **An order of declaration that Matisi Outreach Church are the rightful owners of the whole of that land known as Land Title No. Kiminini/Kinyoro Block 3(Matisi) 19 measuring approximately Nought Decimal Three Seven Six Four (0.3764) Hectares or thereabouts situated within Trans Nzoia County.**
  - b) **An order of permanent injunction restraining the defendant, his agents, servants and/or employees from in any manner interfering with the members of Matisi Outreach Church peaceful occupation of the whole of that land known as Land Title No. KIMININI/KINYORO BLOCK 3(MATISI) 19.**
  - c) **Costs of the suit.**
  - d) **Any other relief that the court may deem fit to issue.**

**Defendant's Defence**

6. The defendant states that the Plaintiffs claim is untenable for lacking proper and mandatory documentations that were capable of conveying the land and title to them.

7. He asserts that the property subject matter of this suit belongs to Richard Tubuto, Justus Wanyonyi, Sanson Wakape, Amos Koskei, Philip Shituma, Rechio Nasike and himself, having purchased the same way back in **1975** jointly with Kenya Assemblies of God church who eventually pulled out in **1976** upon which exit they were duly restituted. The Defendant has enumerated particulars of fraud on the part of the plaintiffs as follows;

- a) **Falsely presenting forged sale agreements to the lands office as proof of acquisition.**
- b) **Misrepresenting themselves as lawful owners of that land which they are not**
- c) **Purporting to be officials of Kenya Good News Outreach Church when they were not**
- d) **Misleading the lands registry officials to issue title deed to a non-existent or unregistered entity.**
- e) **Colluding with lands officials to obtain a title deed over the property without proof of acquisition**
- f) **Defrauding the defendant and six others who are lawful owners of that parcel of land in issue**

8. The defendant asserts that the title deed in respect of the property herein was fraudulently acquired in collusion with some officials at the lands registry.

9. The defendant therefore prays that the title deed in respect to the suit land be cancelled and the defendant and his partners mentioned above be pronounced owners of the same.

10. The defendant also gave notice in his defence that before or at the hearing of this suit, he would raise a preliminary objection to the suit on the grounds that the plaintiffs are representative of an entity not legally recognized and that the suit is barred in law and an abuse of the court process. He prays that the Plaintiff's suit be dismissed with costs.

#### **Plaintiffs' Evidence**

11. **PW1, Henry Shikuku Barasa** states that he has been a Bishop at Matisi Outreach Church since **2010**. On the subject matter, he states that the suit land is owed by Kenya Good News Outreach Churches which is an organization duly that is registered and that the organization is the umbrella body of all Outreach churches. He produced the certificate of registration to that effect.

12. He contends that Matisi Outreach Church is the registered owner of the suit land as evidenced by the title deed. On being cross examined by Mr. Karani, he conceded that he is not a trustee of Kenya Good News Outreach Church and that Matisi Outreach Church is not a registered organization. He however maintained that Matisi Outreach Church operates under Kenya Good News Outreach Churches.

13. **PW2, John Nyongesa Ngeywa**, and **Joash Chimuge Waswa (PW3)**, the plaintiff's treasurer and secretary respectively adopted their statements filed together with the plaint. They both reiterated the earlier evidence of **Henry Shikuku Barasa (PW1)**. At that juncture, the Plaintiffs closed their case.

#### **Defendants' Evidence**

14. **DW1, Reuben Fwambwa Mbita** the defendant in this case testified and stated that the suit land was bought sometime in **1976** from one Cleophas Khaemba by officials of Kenya Assemblies of God (KAG) Church and that DW1 was the Bishop of the said church at the time. His testimony was that the said church bought **1 acre** at **Kshs. 1500** of which **Kshs. 600** was paid by the missionaries.

15. He stated that after the said KAG church vacated to a nearby location leaving the church under his care, he was approached by persons from Kenya Good News who sought to use the premises for worship for a while till they acquired their own land, upon which event they would vacate.

16. They utilized his land for a while and after some time he took the members of the Kenya Good News, led by a Bishop Jacob, to Mr Cleophas Khaemba who sold them 2 Acres next to the defendant's land.

17. **DW1** contends that it was after they acquired their own piece of land that he issued them with a written notice to vacate the suit land and build their own and they resisted that move. According to him, he came to learn from one of their members that the Kenya Good News Church had already acquired title to his portion of land.

18. It is then that he reported to the local administration where, upon being requested to, the plaintiffs failed to produce any documents entitling them to the land.

19. The defendant then conducted a search at the lands office and found that indeed his land had been registered in the name of "Matisi Outreach Church". The Land Registrar summoned the plaintiffs but they failed to appear. At that point the Land Registrar wrote to the District Criminal Investigation Officer to take action against them.

## Analysis of Evidence and Issues for Determination

20. From the pleadings, the evidence and submissions herein from both parties, the issues for determination are as follows:

- a. *Whether the plaintiffs have locus standi to institute this suit;*
- b. *Whether the suit land was fraudulently registered in the name of the Plaintiff;*
- c. *What orders should issue?*

### (a) Whether the plaintiffs have locus standi to institute this suit

21. The plaintiffs produced an application, (**Kitale Misc. Civil Appl. No. 4 of 2015 - Henry Shikuku Barasa & Others -vs- Reuben Fwamba Mbita**), in which they had sought leave to file a representative suit on behalf of Matisi Outreach Church. It is clear from perusal of documentary exhibits tendered in court that the suit land is presently registered in the name of the Matisi Outreach Church. In my view that registration is irregular owing to what is stated hereinbelow.

22. The plaintiffs only produced a certificate of registration of Kenya Good News Outreach Churches. They concede that Matisi Outreach Church is not registered.

23. The defence have in their submissions averred that the plaintiff is a society that is not registered as required by law and therefore it has no authority to own the said suit land nor capacity to file the suit herein.

24. The Plaintiff on the other hand has maintained that the suit land is owned by Kenya Good News Outreach Churches which is an organization duly registered and the organization is the umbrella body of all outreach churches.

25. **Section 4** of the **Societies Act of 1968** provides that any society that is not registered or an exempted society is an unlawful society.

26. In the case of **Eritrea Orthodox Church -Vs- Wariwax Generation Ltd. [2007] eKLR Onyancha, J.** held that, the institution of the proceedings by the persons who form the society without complying with **Order 1 rule 8 of the Civil Procedure Rules** aforesaid renders the suit null and void *ab initio*. In this case the Matisi Outreach Church is not a registered organization though an application for leave under **Order 1 Rule 8** was made, and presumably leave obtained, the unregistered status of that Church in its greatest drawback in this litigation.

27. In **Kitale Land Case No. 138 of 2013 Anne Naliaka, Edward F. Khaoya, Col. Tom Wanambisi Dawson Mudenyio, (Being Officials Of Kitale Family House Of Hope) Versus Benson Nyongesa Wamalwa As Trustee Covenant of Holiness Ministries**, this court stated as follows:

**“In Nairobi High Court Civil Case No. 5116 of 1992 (OS) Free Pentecostal Fellowship in Kenya -vs- Kenya Commercial Bank Ltd an objection as raised to the effect that the suit was instituted in the name of a religious organization which is merely a society. The court held that that organization was not a body corporate and that it lacked capacity to institute the proceedings in its own name or hold property, movable or otherwise. It therefore lacked 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 could not under the law vest in it. The court dismissed the plaintiff’s suit on those grounds.”**

28. The court in the **Anne Naliaka** case also relied on the decision in the case of **Nairobi ELC No. 969 of 2012 Josephat Kimani Mirara & Others suing as Officials of Githurai Victory Market S.H.O. -vs- Romano K. Mikigu.**

29. In this case the plaintiffs have presented nothing to prove Matisi Outreach Church is registered in any way or that they are its trustees. They have also failed to prove its connection with the Kenya Good News Outreach Churches. Consequently, I find that the plaintiffs can not purport to bring this suit on behalf of such a body that is not registered in law to seek orders that the Church is the rightful owner of the suit land. Neither can an injunction issue as sought in the plaint.

30. On this preliminary ground I therefore find the plaintiffs’ suit to be incompetent and I hereby strike it out with costs.

Dated, signed and delivered at Kitale on this 31<sup>st</sup> day of January, 2019.

MWANGI NJOROGE

JUDGE

31/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

**Court Assistant - Picoty**

**Mr. Bisonga for plaintiffs**

**Mr. Karanigrey for defendants**

**COURT**

**Judgment read in open court.**

**MWANGI NJORGE**

**JUDGE**

**31/01/2019**