



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO. 480 OF 2015 (FORMERLY KISUMU HC CIVIL SUIT NO. 43 OF 2008)

REV. WILFRED OCHIENG' AMOLLO.....1ST PLAINTIFF

VALERIE ACUFF.....2ND PLAINTIFF

REV. PAUL ANYIGO ANYUOGO.....3RD PLAINTIFF

PASTOR WILLIAM ONYANGO OMOLLO (On behalf

of themselves and on behalf of all other members

of SKILLS FOR LIVING MINISTRIES).....4TH PLAINTIFF

VERSUS

ANTHONY OCHOLA OWITI.....1ST DEFENDANT

GRACE MINISTRIES.....2ND DEFENDANT

JUDGEMENT

1. Rev. Wilfred Ochieng Amollo, Valerie Acuff, Rev. Paul Anyigo Anyuogo and Pastor William Onyango Omollo, the Plaintiffs, on behalf of themselves and other members of Skills For Living Ministries commenced this suit against Antony Ochola Owiti and Grace Ministries, the Defendants, through the plaint dated and filed on the 11th March 2008 seeking for the following prayers:-

a) **“An order that the 1st and 2nd Defendants do vacate and surrender and transfer to the Plaintiffs both the Sunday School and Skills For Living Church situate at Migosi (off Kisumu-Kakamega road) within Municipality of Kisumu now being occupied by the 2nd Defendants as well as the title deed to the land on which they are situate and all other documents relating thereto.**

b) **An order that the 1st Defendant do surrender to the Plaintiffs all certificates, documents and training materials which came into his possession during the period he served as Pastor and treasurer of Skills For Living Ministries including documents relating to the Sunday School and the church at Migosi as well as books of account and other documents relating to the pharmacy at Kondele.**

c) **An order that the 1st Defendant do render and deliver to the Plaintiffs a true and honest account of his dealings with the sums set out in paragraph 10 herein as well as all the proceeds from the pharmacy at Kondele as set out in paragraph 14 herein, and account for the same to the Plaintiffs.**

d) **General damages.**

e) **Costs of this suit plus interest thereon.”**

2. The 1st to 4th Plaintiffs have sued as the Chairman/General overseer, International Director/Founder, General Secretary and General Treasurer respectively, of Skills For Living Ministries which is a church organization registered as a Society under The Societies Act Chapter 108 of Laws of Kenya. They aver that they had at all material times employed the 1st Defendant as a pastor and treasurer of the Church until early 2007 when he left and began operating another church named Grace Ministries, the 2nd Defendant, without handing over and accounting to the Plaintiffs for the assets, funds and documents/certificates received and in his custody. That specifically the 1st Defendant had failed to account for Kshs. 315,235/50 received for the purposes of buying land and construction of a church thereon and another Kshs.

249,400/= which he converted to his own use instead of using it for the church purposes.

3. The 1st Defendant denied the Plaintiffs' claim through his filed statement of defence dated the 4th April 2008. He avers that he was never employed as a Pastor or treasurer by the Plaintiffs. That he was only a volunteer and honorary member to the Board of Skills For Living. That he never handled the finances of the Skills For Living Ministries or operated a pharmacy, save to deliver reports prepared by the pharmacy employees to Siaya Skills For Living Ministries, at a token fee. That he was all along a Pastor with Grace Ministries which was a sister church aligned to, but not owned by Skills For Living Ministries. That he never received the monies claimed by the Plaintiffs and that the Plaintiffs never owned or built a church at Migosi as claimed. . That the church at Migosi was put up for Grace Ministries at Grace Centre with funds from well-wishers, fund raisings and charitable donations through Valarie Acuff, and has never been owned by the Plaintiffs. The 2nd Defendant also opposed the claim through their statement of defence dated the 3rd April 2008 which is more or less in sync with that of the 1st Defendant on the material areas.

4. In support of the Plaintiffs' case, Rev. Wilfred Ochieng Amolo and Valarie Acuff, who are the 1st and 2nd Plaintiffs testified as PW1 and PW2 respectively. Their case is that their interaction with the 1st Defendant goes back to about 2002 when Skills For Living Ministries was started and registered with his participation as treasurer. That the 1st Defendant was ordained as a Pastor in the church in 2004 and signed a Standard Pastors Agreement on the 8th April 2004. That the 1st Defendant was tasked to utilize the funds given to him to acquire a parcel of Land along Kisumu/Kakamega road for a church house and the construction thereof. That the plot was acquired and the Grace Center Church constructed and operationalized. That the 1st Defendant was also given funds to start the Kondele pharmacy as an income generating venture of the church. That in 2006, the Plaintiffs discovered the land where Grace Center had been constructed was not registered in the church's name. That though the 1st Defendant promised to transfer the land to the church, he never did so. That the 1st Defendant left the church in 2008 and established another church named Grace Ministries at the Grace centre without accounting for the assets, funds, documents and certificates that came to him while being a Pastor with Skills For Living Ministries and hence this suit.

5. In support of the 1st Defendants' case, Antony Ochola Awiti, the 1st Defendant testified as DW1. His case is that he was ordained as a Pastor with Christian Outreach in 2000 before the registration of Skills For Living Ministries. That he was involved in the registration of Skills For Living Ministries as a member and its Treasurer. That Grace Ministries was registered and existed alongside Skills for Living Ministries and that both were friends and partners. That the funds to buy land and construct Grace Center building were from fund-raising and donations channeled through Skills For Living Ministries. That the Grace Center was used and owned by Grace Ministries. He agreed that the minutes of 11th January 2007 confirms that the separation of Skills For Living Ministries and Grace Ministries was discussed and by then he was still a member and treasurer of the former. That he later left Skills For Living Ministries for Grace Ministries where he became the Chairman and Pastor until about 2010 when he left and that after about one year became a pastor with A.C.K Migosi. He stated that the land on which Migosi Center is situated on was registered in his name and that of one Benson Kariuki though he could not recall the parcel number. He denied receiving any money from the Plaintiffs, stating that money used to be deposited in the bank account where the signatories were 1st to 3rd Plaintiffs and himself. That the Kondele pharmacy was run by the board and he was only their contact person. That he had accounted for the proceeds from the Kondele pharmacy but had not availed to the court copies of the reports.

6. The counsel for the Plaintiffs filed their written submissions dated 16th April 2018.

7. The court has after considering the oral and written testimonies tendered by PW1, PW2 and DW1, the documentary evidence, pleadings, and written submissions come to the following conclusion;

a) That the 1st to 3rd Plaintiffs and the 1st Defendant worked together in establishing Skills For Living Ministries on or about 2001. That the 1st defendant was the treasurer and later combined that role with being a Pastor and Overseer/Manager of Skills Pharmacy Kondele. This is confirmed by the Agreement for Pastors, lease agreement with Charles Obwogi and G. Z. Owiti, all bearing the 1st Defendant's signature and produced as exhibits P1, 4 and 5. That further, the certificate of registration of Skills pharmacy as a business name, letter dated 26th May 2004 to Thomas O. Aringo, and another of 30th June 2004 to the Commissioner Income Tax Department, both in Skills Pharmacy headings, which were produced as exhibits P6, and 11 carries the 1st Defendant's name and signature.

b) That the evidence tendered by the Plaintiffs when taken against that of the 1st Defendant clearly shows that the 1st Defendant had a central role in the operations and management of the Skills For Living Ministries and the Skills pharmacy in Kisumu. That the agreement he signed on the 8th April 2004 bound him as long as he worked with the Skills For Living Ministries as stated at clause 2. That clause 11 required of him to surrender any certificates, documents or training materials should he leaves the church while clause 13 (c) demanded that he oversees finances and planning honestly and diligently. That further clauses 15 and 16 required the 1st Defendant as the Pastor to receive both financial and material gifts made to the church and forward the agreed percentage to the Executive Committee, and that in case he leaves the church, the assets that were under his care and maintenance remain with the church. That while the testimonies tendered by PW1, PW2 and confirmed by 1st Defendant shows that the funds for the acquisition of the plot for development of Grace Center and the construction thereof was procured and arranged for the benefit of Skills For Living Ministries, the same was taken over by Grace Ministries when the 1st Defendant left and became its Pastor and Chairman, without the former's consent. That as the 1st Defendant reportedly left Grace Ministries, the 2nd Defendant, on or about 2010, and as the 2nd Defendant did not tender any evidence to counter or rebut that of the Plaintiffs over the ownership of Grace Center and the plot on which it is situated, then the plaintiffs have proved their case on the ownership. That further the fiduciary position the 1st Defendant occupied with Skills For Living Ministries required of him to do proper and exhaustive handing over and accounting to the Plaintiffs so as to ensure that funds and assets of its members are secured. That accordingly, the court finds that the Plaintiffs have made a case for taking of accounts against the 1st Defendant.

c) That as the Plaintiff did not provide the court with a copy of the letter of allotment or lease or certificate of title or green or white card or certificate of official search of the plot upon which Grace Center is situated, and which they pray to be transferred to them,

the court is unable to consider making the order at this stage in view of the 1st Defendant testimony that the said plot was registered in the joint names of himself and one Benson Kariuki, who is not a party in his case. That there is therefore need for the parties to discuss this matter when taking account and file appropriate documents on the plot registration.

8. That flowing from the foregoing, the court finds that the Plaintiffs have proved their case against the Defendants on a balance of probabilities and orders as follows;

a) That in accordance with Order 21 Rule 17 of Civil Procedure Rules, a preliminary decree be and is hereby issued in favour of the Plaintiffs and against the 1st Defendant to within ninety (90) days render a true and honest account during the period he was treasurer and Pastor with Skills For Living Ministries in respect of ;-

(i) funds received for the purchase of the plot and development (constructions) of Grace Center thereon and

(ii) the funds received and the proceeds from the Skills Pharmacy, Kondele.

b) That the parties be at liberty to consult, exchange and agree on the source documents to be used or taken into account during the exercise in (a) above.

c) That the matter be fixed for a mention after the expiry of the period given in (a) for further orders.

d) Each party at liberty to apply.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 30TH DAY OF JANUARY 2019

In the presence of:

Plaintiffs Absent

Defendants Absent

Counsel Mr. Orengo for the Plaintiffs

M/s Nyagala for the Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE