



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO. 202 OF 2013

MUHAMMAD AWADH SALIM

MOHAMED ABDILLAHI YUSUF

ATHMAN NAAMAN MOHAMED (Suing as the TRUSTEES OF THE

QURAN AND SUNNA SOCIETY OF EAST AFRICA.....PLAINTIFFS

-VERSUS-

KALIMUDDIN EBRAHIM HASSANALI

K.M. KARIMHAI & CO ADVOCATES

ABDULNASSER SAID AHMED.....DEFENDANTS

JUDGEMENT

1. The 3 plaintiffs have brought this claim on behalf of Quran and Sunnah Society of East Africa vide the plaint dated 9th September 2013 seeking judgment against the defendants jointly and severally for orders that:

(a) An order to compel the defendants to release to the plaintiffs the original documents of title for parcel of Land Subdivision No. 3368/1/MN.

(b) Cost of and incidentals to this suit be provided.

(c) Any other and or further relief that this Honourable Court may deem fit and just to grant.

2. The defendants denied the claim in toto vide their defence and counter – claim filed on 14th October 2013. The defendants pleaded that prior to the purchase of plot No 3368/1/MN, the late Hassanali Mulla had donated a portion of an undemarcated plot for the construction of a Mosque. That the 1st and 2nd plaintiffs' names were included in the title deed merely because they had persuaded the committee that failure to do so would result in withholding of funds generated by the donors from Canada. They have prayed in the counter – claim dated 10th October 2013 for judgment that:

(i) The plaintiffs' suit be dismissed with costs.

(ii) That plot number MN/1/3386 be registered in the name of the Committee of Mulla Mosque.

(iii) Costs of the suit.

3. The plaintiffs have filed a reply to the defence and the counter – claim on 11th November 2013 denying the facts as set out therein. The plaintiffs reiterated the contents of their plaint pleading that they are the ones who paid the entire purchase price. The plaintiffs also denied the allegation of fraud pleaded against them. The plaintiffs instead asked the Court to grant their reliefs and dismiss the counter – claim with costs.

4. At the close of pleadings the parties called oral evidence. The plaintiffs called two witnesses while the defendants called three. Muhammad Awadh Salim testified as PW 1. He stated that Quran and Sunnah Society of East Africa is a registered trust. PW 1 said he heard the plot where Mulla Mosque is located was being sold and they had been given a deadline to pay for it by the year 2005. His colleagues asked him to seek help from Canada. That the Canadians gave a condition that he creates a trust from which the funds were to be channelled.

5. PW 1 continued that he held a meeting with the Mulla Mosque Committee and in 2006 a trust deed was created. PW 1 further stated that the funds were raised both locally and abroad and an account was opened in Dubai Bank in the name of the Society. A sale agreement was drawn and the purchase price was paid. PW 1 continued further that a disagreement arose when they were about to finish making the payment. That the society paid all the price and arrears of land rates. According to him, the Society bought the whole land plus the developments in it. PW 1 accused the defendants of changing their mind after he collected the funds. That the administrators of the Mosque had nothing to do with the purchase of the land.

6. In cross – examination, PW 1 said he came to Mulla Mosque as one of the worshippers and found the Mosque seeking for funds to buy land. That he was asked to help and he agreed. The money was raised through Quran and Sunnah Society Canada and other donors. That the Mosque was already built at the time with the 3rd defendant acting as its caretaker. That the 3rd defendant was involved in the process of the sale. PW 1 said he raised the money for charity to buy the plot. The title is registered in the name of Quran and Sunnah Society of East Africa. PW 1 said he is not a leader of the Mulla Mosque. In re – examination, PW 1 admitted that when he went there, Mulla Mosque was already in the process of buying the land. That he has no intention of removing the Mosque from the suit land.

7. Mohamed Abdilahi Yusuf testified as PW 2. He said that they had classes at Mulla Mosque in 2005 being taught by Ahmed Mohamed Haji and the 3rd defendant who was the caretaker of the Mosque. That Ahmed called six of them and they formed an umbrella to represent the group. That the name of the umbrella came later through the formation of the trust deed. That the purpose of the group was to raise funds to buy the land. That the money was raised and subsequently the land bought. PW 2 stated that he never visited the offices of the 2nd defendant after the title had been issued. The dispute is that the 2nd defendant refused to release the title deed unless all the 3 trustees are present. That the receipts show Quran and Sunnah Society and Mulla Mosque are one. He saw no reason why the name of Quran and Sunnah Society should be removed.

8. PW 2 said he went to Mulla Mosque for classes after it was built. That funds were being raised to buy land for Mulla Mosque. That it is the 3rd defendant who requested for the fundraising to be done. PW 2 said he is not a member of Mulla Mosque. That the Mosque is built on the suit land. PW 2 said he could not give approximate value of the Mosque. This marked the close of the plaintiff's case.

9. The defence opened their case on 24th October 2017 with the evidence of Mohammed Hassan Abdi. He said he joined Mulla Mosque after a disagreement arose in Buxton. That when he joined, he found members of the Mosque discussing the idea of buying land. That the Mosque already had a committee running it. He was appointed as one of the trustees to help raise funds. That it is PW 1 who came up with the name Quran and Sunnah Society. According to DW 1, the land belongs to Mulla Mosque. That the Mosque will be endangered if the land remains registered in the name of Quran and Sunnah Society.

10. In cross – examination, DW 1 said when he joined, the Mosque did not have capacity to raise the purchase price of KShs 3.5 Million. DW 1 also said he did not participate in handling funds but he was involved in the fundraising process.

11. Abdul Halim Bilel testified as DW 2. He also said that Quran and Sunnah Society was formed to raise funds to buy the land where Mulla Mosque is. He was one of the trustees of Quran and Sunnah Society. It is DW 2's case that Quran and Sunnah Society Canada does not own the land. In cross – examination, DW 2 said that the title should be registered in the name of Mulla Mosque Committee. That the money was raised for the benefit of the people worshipping at Mulla Mosque. That members of Quran and Sunnah Society trust are mostly comprised of visitors. That PW 1 does not live in the neighbourhood of the Mosque.

12. DW 3 is Shabir M. Ibrahim. DW 3 said that the land was owned by his grandfather. DW 3 said they allowed the Mosque to be built first and later purchase the land to make it legal. That a purchase price was agreed and at the time the agreement was reached, he had never heard of Quran and Sunnah Society. He only met the trustees during the signing of the documents when he was told they had helped in raising the funds. According to him, the claim by Quran and Sunnah Society is unjustified. DW 3 said he did not know when Mulla Mosque Committee was formed. This marked the close of the defence case.

13. The advocates for the parties filed written submissions on 8th August 2018 and 20th August 2018 respectively. The plaintiffs' submissions contained a summary of the evidence adduced by both sides and urged the Court to find in their favour. Similarly the defendants also gave their comments on the evidence adduced. The defendants further submitted that an oral contract was made by the actions of the parties and that the plaintiffs ought not to be allowed to walk away from their obligations citing the case of **Eldo City Ltd vs Corn Products (K) Ltd & Another (2013) eKLR**. The defendants further submitted that what was given to Mulla Mosque was a donation which is defined as a gift. That the plaintiffs are estopped from claiming ownership and or right to be in possession of the original title of the said plot by virtue of section 120 of the Evidence Act. In support of this line of submissions, the defendants relied on the doctrine of estoppel, quoting the holding in **Combe vs Combe (1951) 2 KB 215 and D. Koisagat Tea Estate Ltd vs Eritrea Othodox Tewhdo Church Ltd (2015) eKLR** and many other cases cited. The defendants therefore urged this Court to dismiss the plaintiffs' case with costs and allow their counter – claim as prayed.

14. From the evidence and the pleadings, it is not in dispute that Mulla Mosque was existing before the issue of funds arose. It is also agreed that a trust was formed for purposes of raising funds to buy the land where the Mosque was already built on and indeed the funds were raised and the land paid for.

15. The simple question for my determination is whether the trust (Quran and Sunnah Society) having raised the money to purchase the land is now entitled to be registered solely as the owner and or to possession and use of the same or the land should remain the property of Mulla Mosque through its appointed/elected committee. The 1st and 2nd plaintiffs admit they are not the founders of Mulla Mosque. They stated in

their evidence that in one of the attendance to worship at Mulla Mosque, they found an on-going discussion on how to raise funds to pay for the land. The 1st plaintiff admits he was requested to use his links with Canadian friends to raise funds that the Mosque needed to purchase the land.

16. PW 1 agreed to assist and when he contacted his networks, the said friends recommended a trust be created through which the funds would be channelled. It is on this basis that Quran and Sunnah Society of East Africa was formed and registered in the year 2006. Once registered both the plaintiffs and the defendants admit sources of funds were from Kenya, Tanzania and a big chunk from Canada. After the money was raised, a sale agreement was drawn. This evidence clearly supports the assertion by the defendants that Quran and Sunnah Society of East Africa raised the money for purposes of gifting Mulla Mosque the money to purchase the land. In my analysis of the evidence adduced, even if Quran and Sunnah Society of East Africa intended to carry on other activities besides the original purpose for which it was formed to receive funds from the donors, that intention cannot cancel and or revoke the trust to assist that was created between the Society and Mulla Mosque.

17. The purpose of creating the trust created was to receive funds on behalf of and for the benefit of purchasing land where Mulla Mosque is built. The plaintiffs are estopped by their actions from claiming any rights over the plot subdivision No 3368/1/MN which was donated to the mosque long before their trusteeship came into being. The fact of the money being raised for the benefit of Mulla Mosque is evidenced further by receipts issued by the 2nd defendant to the plaintiffs. The plaintiffs at the time of receiving the receipts seem not to have had issues when it was clearly indicated that the money was being paid on account of "Quran & Sunnah Society Mulla Mosque."

18. It is therefore my considered opinion and I so hold that although the sale agreement dated 18.12.2007 was entered between the 3rd defendant and Quran and Sunnah Society of East Africa, the said Quran and Sunnah Society of East Africa was merely acting in trust of and for the benefit of Mulla Mosque and thus the plaintiffs cannot use the said agreement to disinherit Mulla Mosque. Similarly their registration as owner of the suit land can only be inferred to have been done in trust for Mulla Mosque. The registration did not and cannot confer any benefits to the society and or its trustees as their role was shown to be limited to raising funds. This added to the fact that the 1st & 2nd plaintiffs' admission that they are not members of Mulla Mosque.

19. The plaintiffs are thus acting dishonestly in bringing this suit which now they intend use to take over the land that they are not entitled to. Whether Mulla Mosque had a committee or not is immaterial as it was being run in the best way the worshippers chose at the time and change of way of management can only be done with the consent of all the worshippers and not a decision of a few cliques that were requested to help which request they voluntarily accepted to do. For the foregoing reasons, I find that the plaintiffs are not entitled to the orders they are seeking. Consequently, I hereby dismiss their suit with costs to the defendants.

20. Having dismissed the plaintiffs' suit, the orders which commends themselves in the circumstances is to allow the defendants counter – claimed and in particular that the representatives of Mulla Mosque to retain possession of the land as well as the title deed. To give effect to this order, I do enter judgement for the defendants as prayed in the counter – claim. This is the judgement of the Court.

Dated, signed & delivered at Mombasa this 22nd February 2019

A. OMOLLO

JUDGE