



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO.323 OF 2018**

**PETER MUIRURI NGANGA & 4 OTHERS** (Suing as the Trustees of Disciples of

Christ Foundation Fellowship).....**PLAINTIFF**

**VERSUS**

**JOSEPH KAMAU MANDE & 2 OTHERS** (Sued as trustees for

New Covenant Disciples Church).....**1<sup>ST</sup> DEFENDANT**

**THE REGISTRAR OF SOCIETIES**.....**2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for injunction; principles to be applied; plaintiff and 1<sup>st</sup> defendant being churches; apparent that the two previously operated as one church and one split from the other; plaintiff claiming ownership of various properties but same properties also claimed by 1<sup>st</sup> defendant; difficult at this stage of the proceedings to make concrete pronouncements as to who is entitled to ownership of the suit properties; court orders that status quo be maintained and there be no dealings over the suit properties until the case is heard and determined)***

1. This suit was commenced through a plaint which was filed on 20 December 2018. The plaintiffs bring this suit on behalf of Disciples of Christ Foundation Fellowship, which is said to be registered under the Societies Act. The defendants are sued as trustees of New Covenant Disciples Church, also registered under the Societies Act. The plaintiff avers that both the trustees of the plaintiff church and of the defendant church were members and officials of Disciples of Christ Foundation Fellowship Church which is said to have been around since the year 2002 and had branches countrywide. It is pleaded that from inception, the plaintiff church acquired various parcels of land outlined in the plaint.

2. It is averred that in the year 2011, the plaintiff's trustees and members discovered that all along the church had not been formally registered, and as such, they went ahead and registered the church under the name of Disciples of Christ Foundation Fellowship and the Registrar of Societies, named as the 2<sup>nd</sup> defendant, issued them with a certificate of registration in the year 2011. The certificate is said to be No. 35832 under file No. SOC/61160. It is pleaded that the 1<sup>st</sup> defendant's trustees were not agreeable to the registration, and insisted that the church had already been registered way back in the year 1992, and it is claimed that they consequently broke away from the plaintiff church and decided to form their own organization outside the mainstream plaintiff church. It is pleaded that the 1<sup>st</sup> defendant's trustees subsequently filed a case being, Nakuru CMCC No. 187 of 2012, seeking orders to prevent the plaintiff's trustees from using the name Disciples of Christ Foundation Fellowship. It is contended that in the year 2012, while the case was on going, the 1<sup>st</sup> defendant's trustees in collusion with the Registrar of Societies, obtained another certificate of registration bearing the plaintiff's church name Disciples of Christ Foundation Fellowship, but under a different registration number being No. 38375 under file SOC/64827. It is averred that the suit Nakuru CMCC No. 187 of 2012, was dismissed in the year 2017, with the court holding that the plaintiff's registration came first in time. It is pleaded that following the judgment, the 1<sup>st</sup> defendant's trustees in cohorts with the 2<sup>nd</sup> defendant, illegally and fraudulently caused a change in their 2012 church name, Disciples of Christ Foundation Fellowship, to New Covenant Disciples Church, but retained the previous registration No. 38375 and he file No. SOC/64827. It is contended that the 2<sup>nd</sup> defendant ought to have registered the 1<sup>st</sup> defendant afresh. It is averred that the 1<sup>st</sup> defendant has taken upon itself to fraudulently transfer properties registered in the name of and/or held in trust for the plaintiff to the detriment of the plaintiff. The said properties are said to be Mau Summit/Molo Block 5/1147 (Moto); Waitaluk/Kapkoi Block 13/Wehoya/898; Mau Narok/Siapei Block 7/466; Mau Narok/Siapei Block 1/1641 (Likia); Ruiru/Kiu Block 2/14612 and 14613; Maji Mazuri Bock 1 (Igure)/861; Plots No. 494 and 915 of Certificate No. 17465 Thika Uhuru Welfare Association; Plot No. 041 Block 13 Certificate No. 17465 Juja Uhuru Welfare Group. It is further claimed that the 1<sup>st</sup> defendant's trustees are disrupting the management and functions of the plaintiff's various churches purporting that despite the change of name, the church is one and the same, operating under the same trusteeship. The plaintiff further avers that the defendants, who are neither members nor ordained ministers of the plaintiff, still hold

themselves out as members of the plaintiff church and are trying to change the physical church names into their new name, New Covenant Disciples Church, to the detriment of the plaintiff. It is averred that the defendant's trustees are further assuming the functions of the plaintiff's ministers and ordained officials thereby confusing and misleading faithful members of the plaintiff church. It is averred that unless the defendants are restrained from using the Certificate of registration No. 383375 issued in the year 2012, the plaintiff is likely to suffer irreparable damage. In the suit, the plaintiff wishes to have a declaration of ownership of the suit properties and a permanent injunction to restrain the 1<sup>st</sup> defendant from the same. They also wish to have the certificate of registration No. 38375 declared null and void.

3. Together with the suit, the plaintiff filed an application for injunction, seeking to restrain the 1<sup>st</sup> defendant church from interfering with the churches in the suit properties, or using the registration No.38375. It is that application which is the subject of this ruling.

4. The 1<sup>st</sup> defendant filed a replying affidavit sworn by Joseph Kamau Mande to oppose the application. He has deposed inter alia that Disciples of Christ Foundation Fellowship was first registered on 23 October 1992 and not 2011. He has annexed a copy of the certificate of registration. He has deposed that in the year 2002, the Registrar issued the church with a licence dated 10 December 2002 which he has also annexed. He has deposed that in the year 2002, the Disciples of Christ Foundation Fellowship appointed him its countrywide bishop and he has remained so ever since. He has averred that the plaintiff's trustees were members and employees of Disciples of Christ Foundation Fellowship, with him as bishop, and he has annexed copies of employee cards for the plaintiff's trustees for the year 2009 and some documents of employment including letters of transfer. He has further stated that his church has been filing annual returns and has annexed the returns for the years 2005, 2006, 2007, 2009, 2010, 2012, 2014 and 2015. He has deposed that it was in the year 2010 when the plaintiffs trustees formed the splinter group and left the church. To his surprise, the splinter group with the collusion of the 2<sup>nd</sup> defendant and without their consent, registered a new church in the very name of Disciples of Christ Foundation Fellowship in the year 2011, under the certificate of registration No. 35832 and file No. SOC/61160, which registration he contends to be null and void ab initio as the name was not available for registration. He has exhibited title deeds and sale agreements showing when and who purchased the properties. He has also mentioned that he is in possession of all original title deeds and sale agreements and has stated that the plaintiff filed what they (defendant) exhibited in the Magistrate's Court case. He has deposed that the plaintiff cannot claim properties purchased before its registration in the year 2011. He has also attached affidavits from pastors in charge of each church. They have contested the legality of registration of the plaintiff in their counterclaim.

5. I have considered the above alongside the submissions of both Ms. Kipruto, learned counsel for the applicant and Mr. Kimatta, learned counsel for the 1<sup>st</sup> respondent. The 2<sup>nd</sup> defendant did not appear and did not make any submissions in respect of this application. I am aware that this being an application for injunction, the principles laid down in the case of *Giella vs Cassman Brown (1973) EA 358* do apply. One needs to demonstrate a prima facie case with a probability of success, and further demonstrate that if the injunction is not granted, he/she stands to suffer irreparable loss. If the court is in doubt, it will decide the application on a balance of convenience. I have no problem with these principles only that the court needs to be alive that when determining an application for injunction, the court is being asked to pronounce how the subject matter of the suit ought to be preserved, pending hearing of the main suit and the court has discretion in such decision considering all the surrounding circumstances of the case.

6. The facts as alleged by the applicants are diametrically different from what the respondents claim to be the true facts. Whereas the applicant claims that the suit properties were purchased by members of its church, this is vehemently denied by the respondent. It is in fact extremely difficult, at this stage of the proceedings, to know who is saying the truth and who is not. I would on my part hesitate to make any concrete findings at this stage of the proceedings given the very contested facts. Much of these will need to await a full hearing of the suit.

7. There are however some properties at stake which I was informed are used as places of worship. There must be some sort of status that is currently in place, and I wouldn't wish to disturb that status until this case is heard and determined. My view of the matter therefore is that in so far as possession of the suit properties and their use as places of worship is concerned, whatever has been prevailing prior to this suit being filed do prevail, until a final finding is made on who between the plaintiff and the 1<sup>st</sup> defendant ought to own these properties.

8. It is also necessary that there be no sale, charge, lease or any dealings in these properties and I therefore issue an order to both plaintiff and 1<sup>st</sup> defendant, stopping either of them from selling, charging, leasing, or in any other way enter into dealings in respect of the suit properties. To buttress this order, I do issue an order of inhibition, that may be registered in the register of the suit properties, barring the registration of any disposition in the registers of the suit properties.

9. The only issue left is costs and in my discretion, I order that costs of this application be costs in the cause.

10. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 31<sup>st</sup> day of July 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Ms. Alwala holding brief for Ms. Kipruto for the applicants.

Mr. Kimatta for the 1<sup>st</sup> defendant/respondent.

No appearance for the 2<sup>nd</sup> defendant .

Court Assistants- Nelima Janepher /Patrick Kemboi.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**