



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 218 OF 2016

BISHOP REV. BERNARD NGUYO.....1ST APPLICANT

SHADRACK MUTHAMA.....2ND APPLICANT

DANIEL MUTUA3RD APPLICANT

(Suing as official of African Inland Church (Machakos Area))

VERSUS

THE CHIEF LAND REGISTRAR1ST RESPONDENT

THE MACHAKOS LAND REGISTRAR2ND RESPONDENT

THE NATIONAL LAND COMMISSION3RD RESPONDENT

AND

SHADRACK SILA.....1ST INTERESTED PARTY

BERNARD WAMBUA.....2ND INTERESTED PARTY

ARON MUTUNDU.....3RD INTERESTED PARTY

PETER SILAS.....4TH INTERESTED PARTY

PAUL MUNYAO.....5TH INTERESTED PARTY

JUDGMENT

1. In the Motion dated 23rd September, 2016, the Ex-parte Applicants are seeking for the following reliefs:

a) That an order of mandamus do issue directed against the Respondents jointly and severally compelling themselves, their servants, agents and/or employees to revoke, annual and/or cancel the interest of title to Title No. Mwala/Mathunthini/570 granted to the Applicants in the name of

AIC Mathunthini L.C.C on the 24th of June, 2016 and to further compel Respondents by themselves, their servants, agents and/or officers jointly and severally to forthwith issue a fresh Title Deed in respect of Title No. Mwala/Mathunthini/570 in favour of and in the name of Africa Inland Church Kenya Trustees registered.

b) That an order of prohibition do issue against the Respondents and the Interested Parties prohibiting them jointly and/or severally either by themselves, their servants, employees and/or agents from interfering with the Applicants' (and the members of AIC Makutano) occupation, possession, ownership and use or dealing with Title No. Mwala/Mathunthini/570 and further prohibit and said Respondents and Interested Parties from registering any dealings whatsoever with regard to the title to Title No. Mwala/Mathunthini/570.

c) Costs of this Application be provided for.

2. The Motion is supported by the Affidavit of the 1st Applicant who has deponed that the Applicants are the duly registered officials of the African Inland Church, Machakos Area; that the Constitution of the African Inland Church (A.I.C) provides that all properties of the church are to be received and held by its Board of Trustees and that African Inland Church Mathunthini Local Church Council is non-existing entity.

3. According to the Applicants, the action of the Respondents in granting title to African Inland Church Mathunthini Local Church Council is illegal, unlawful, null and void; that the Respondents acted unfairly and in bad faith and that the Respondents' action is irrational, unreasonable oppressive and an abuse of power.

4. In response, the 1st Interested Party deponed that all the Interested Parties were duly elected as officials of African Inland Church Mathunthini Local Church Council; that African Inland Church Mathunthini is registered under African Inland Church Council registration number 1152 and that the Applicants head a splinter group which is battling for the leadership of the church.

5. According to the Interested Parties, the title to Mwala/Mathunthini/570 is where the church premises has been erected and that for a title to be cancelled, evidence has to be received which a court sitting in Judicial Review is ill-equipped to do so.

6. The Applicants' counsel submitted that Judicial Review is concerned not with private rights or the merits of the decision being challenged but with the decision making process; that the Respondents perform public duties and are therefore subject to Judicial Review and that through unclear and unlawful circumstances, the 1st Respondent, through the 2nd Respondent, purportedly registered the suit land in the name of African Inland Church Mathunthini Local Church Council.

7. The Applicants' counsel submitted that the Ex-parte Applicants have no mandate to hold property on behalf of the African Inland Church.

8. The Applicants' advocate submitted that the Respondents acted illegally, unfairly and irrationally by failing to take into consideration that the African Inland Church Kenya Trustees Registered is the only body under the African Inland Church that is mandated to hold property on behalf of the African Inland Church.

9. Counsel submitted that the Respondents did not give the Applicants a fair hearing and that the decision that was arrived at was contrary to the Rules of Natural justice.

10. Counsel relied on several authorities which I have considered.

11. The Respondents' counsel submitted that the Application is bad in law because it seeks the court to investigate the illegality of the title issued to the Interested Parties; that the land is not the property of the

African Inland Church Kenya but was set apart by Masaku County Council for use by the local church and that there is no evidence to show that African Inland Church Kenya purchased the said land.

12. Counsel submitted that under the 1981 Constitution, it is the Local Church Council that is mandated to supervise the local church property and that the 2008 Constitution is not binding on the Interested Parties. Counsel submitted that the 2008 Constitution is subject to challenge in constitutional Petition No. 395 of 2012.

13. The Interested Parties' advocate relied on several authorities which I have considered.

14. The Ex-parte Applicants are seeking for orders of mandamus compelling the Respondents to revoke the title for parcel of land known as Mwala/Mathunthini/570 granted in the name of African Inland Church of Mathunthini.

15. According to the Applicants, the Respondents ought to register the suit land in the name of African Inland Church Kenya Trustees Registered.

16. The law relating to the filing of Judicial Review Applications was enunciated by the Court of Appeal in the case of *Commissioner of Lands vs. Kunsite Hotel Limited* as follows:

***“Judicial Review is not concerned with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he has been subjected.*”**

17. The Applicants' case is that under the 2008 Constitution of African Inland Church (k), all properties of the church are to be received and held by its Board of Trustees and not the local church.

18. On the other hand, the Interested Parties, who are the officials of African Inland Church Mathunthini Local Church Council, have argued that under the 1981 Constitution of the African Inland Church Kenya, it is the local church leadership that is mandated to own and manage the assets of the church. The Interested Parties have informed the court that the question of which of the two Constitutions is valid is a matter that is pending in court.

19. It is therefore obvious that the Applicants are seeking this court to find out who between the Applicants and the Interested Parties should own the suit land and to decide on which Constitution of the church is valid. That in my view, are issues that cannot be dealt with in a Judicial Review Application.

20. The Applicants ought to file a civil suit so as to call evidence and produce documents to show that the suit land was registered in favour of African Inland Church Mathunthini Local Church Council either fraudulently or by mistake. Until that is proved, it cannot be said that the District Land Registrar acted illegally, unfairly or irrationally in registering the suit land in favour of African Inland Church Mathunthini Local Church Council.

21. The issue of the Applicants having not been given a fair hearing does not arise considering that the land was never registered in favour of the Applicants in the first place. According to the official search, the land belongs to Masaku County Council and the Council only reserved the land for Mathunthini African Inland Church.

22. For those reasons, I find and hold that the suit is bad in law and incompetent. I therefore dismiss the Notice of Motion dated 23rd September, 2016 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE