



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 114 OF 2011

REGISTERED TRUSTEE GOSPEL OF GOD CHURCH.....PLAINTIF

VERSUS

ELIAS RIMBERIA MBOROTHI1ST DEFENDANT

ZAVERIO NGURU MBOROTHI2ND DEFENDANT

MOSES KAMUNDI3RD DEFENDANT

GEDIEL KIRIMI4TH DEFENDANT

FRANCIS MUCHERU5TH DEFENDANT

REGISTERED TRUSTEE,

GOSPEL OF GOD CHURCH INTERNATIONAL.....6TH DEFENDANT

NORA NTUI MUTAI7TH DEFENDANT

THE LAND REGISTRAR, MERU8TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL9TH DEFENDANT

RULING

1. This ruling is in respect of the objection raised by defence counsel to the effect that plaintiff should produce the original documents and not copies. The objection was raised at the point where PW 1 was about to produce the certificate of exemption of 20.8.1968 which is item I in plaintiff's list of documents dated 9.8.2011.

2. Plaintiff's counsel avers that the original documents were carted away by the members who want to form another church.

3. I have perused the file and I find that the dispute herein has a turbulent history culminating in litigation in various forums. I am inclined to believe that the wrangles in the church may have occasioned loss of documents. As such plaintiffs have laid a basis as to why they do not have the original documents.

4. Secondly, I find that some of the documents listed by plaintiff are public documents. A case in point is

the ruling by Judge S. Oguk of 5.11.1999.

5. Thirdly, I find that some of the documents plaintiff is referring to are the same as those the defence is relying on. These include:

(i) The certificate of exemption of 20.8.1968 listed as item 1 in defence list dated 3.8.2017 which is also item 1 in plaintiff's list. I note that this is the document that has sparked off the objection.

(ii) Registration of society's letter of 22.03.2005 which is listed as their no. 6 in defence list and it is item no. 3 in plaintiff's list.

(iii) Certificate of registration of 7.7.04 which is item no. 4 in defence list and is item no. 5 in plaintiff's list.

6. Order 3 rule 2 (d) and order 7 rule 5 (d) of the civil procedure rules stipulate that pleadings shall be filed along with "copies" of documents to be relied on at the trial.

7. The defence availed their list to the plaintiff and to the court and hence the existence of the said documents cannot be denied.

8. Defence is at liberty to challenge the authenticity of the said documents during cross examination.

9. However considering the history of this case, the ruling of judge Oguk and taking into account the provisions of article 159, 2 (b) (d) of the constitution that justice shall be done without undue regard to procedural technicalities and that justice shall not be delayed, then I decline to uphold the objection in respect of the production of plaintiff's documents.

10. Plaintiff is at liberty to produce the copies of their documents.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 28th FEBRUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

C.P Mbaabu holding brief for Kiara for 7th defendant

Murango Mwenda for 3rd, 4th, 5th and 6th defendants

Kiongo for 8th and 9th defendants

Miss Nyaga for 1st and 2nd defendants

Mugo for the plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE