



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 138 OF 2013

ANNE NALIKA.....1ST PLAINTIFF

EDWARD F. KHAOYA.....2ND PLAINTIFF

COL. TOM WANAMBISI.....3RD PLAINTIFF

DAWSON MUDENYO.....4TH PLAINTIFF

(Being officials of KITALE FAMILY HOUSE OF HOPE)

VERSUS

BENSON NYONGESA WAMALWA *(Trustee*

COVENANT OF HOLINESS MINISTRIES.....DEFENDANT

J U D G M E N T

Introduction

1. By a plaint dated 11/10/2013, the four plaintiffs herein sued the defendant for the following orders:-

(a) **An order of injunction restraining the defendant by himself, his agents, servants or workers howsoever, from trespassing on the premises of Kitale Family House of Hope on Title No. Kwanza/Namanjalala Block 5/655 and seize or in any way interfere with the running of the children's home and school or any other project thereof.**

(b) **A declaration that the defendant and his organization known as Covenant of Holiness Ministries are holding land Title No. Kwanza/Namanjalala Block 5/655 in trust for Kitale Family House of Hope.**

(c) **An order that the defendant do facilitate the transfer of 2 acres to be excised from title No. Kwanza/Namanjalala Block 5/655 to Kitale Family House of Hope.**

(d) **Costs.**

The Plaintiffs' Case

2. In the plaint the plaintiffs claimed that prior to 30/9/2013 they and the defendant were volunteer workers with Kitale Family House of Hope, a Charitable Organization running a Children's Home and a School that provided learning opportunities to destitute children. The said organization was funded by Development Partners. At the time of the institution of this suit the plaintiffs Nos. 1 - 3 were Members of the Board that ran the Kitale Family House of Hope.

3. The plaintiffs averred that the Kitale Family House Children's Home and school are built on a plot of land known as **Kwanza/Namanjalala Block 5/655**. The said land is registered in the name of Covenant of Holiness Ministries. The plaintiffs aver that the Covenant of Hope Ministries is a trustee for the Kitale Family House of Hope and that the purchase of the suit land was entirely funded by the Development Partners of the Kitale Family House of Hope, just as was the construction of infrastructure on the said land all which land and infrastructure they term as valued at more than Kshs.6,000,000/=.

4. The plaintiffs aver that on 5th October, 2013 the defendant wrote a letter which he copied to the Development Partners of Kitale Family

House of Hope in which letter the defendant threatened to forcibly enter the premises of Kitale Family House of Hope and unprocedurally take over the management of the Children's Home and School. The threats by the defendant led to displeasure on the part of the Development Partners who in turn threatened to stop funding the institutions.

5. The plaintiffs aver that they now seek an order of this court to restrain the defendant from trespassing onto the suit premises so as to restore the confidence of the Development Partners so they may continue funding the said projects of Kitale Family House of Hope failure to which the projects will greatly suffer.

6. It is further alleged that vide an agreement dated 5/7/2010 the defendant agreed to transfer 2 acres out of the suit land to the Kitale Family House of Hope.

The Defendant's Defence and Counterclaim

7. The defendant filed his defence and counterclaim on 8/11/2013. He denied all the allegations in the plaint. He pleaded that the suit is incompetent and that it should be struck out.

8. The defendant admitted to being the Bishop of Covenant of Holiness Ministries to which he said the Kitale Family House of Hope belongs. He urges that the Kitale Family House of Hope, being a project of the Covenant of Holiness Ministries is not registered as a Ministry, as a business name or in any other capacity, and thus has no legal status as a corporate or non-corporate association; therefore, the defendant further pleads, the plaintiffs are incapable of being officials of an entity that does not legally exist, the said entity cannot have trustees and cannot own property. He urges that the suit property and the infrastructure and projects thereon are owned by the Covenant of Holiness Ministries.

9. The plaintiffs states that the donations that were made towards the purchase of the land and developments on the land were made to the Covenant of Holiness Ministries which was originally registered as a Community Based Organization and subsequently as a Society under the Societies Act.

10. It is further alleged that the defendant has his residential house built upon the suit land which the plaintiffs have obstructed him from accessing since the year 2013. The defendant pleads that the plaintiffs have been "bare licencees" in the suit property whose licenses were withdrawn by the defendant vide a notice dated 5/10/2013 which required them to move out of the land with effect from 14/10/2013.

11. In his counterclaim the defendant pleads that the alleged agreement of 5/7/2010 has no legal effect since land cannot be transferred to a non-entity, and further, it is void from non-compliance with the provisions of **Section 6 of the Land Control Act**.

12. The counterclaim seeks orders that the plaintiffs' suit be dismissed with costs and that the plaintiffs be ordered to forthwith move out of the land comprised in the suit property and in default they be evicted; He also seeks a permanent injunction, costs and interest.

The Plaintiffs Reply to Defence and Defence to Counterclaim

13. In their reply to defence and defence to counterclaim the plaintiffs aver that they have brought the suit in their names as office bearers of the Covenant of Holiness Ministries and hence they are properly described in the plaint. They also aver that the Kitale Family House of Hope is a project of a duly registered Community Based Organization known as Covenant of Holiness Ministries of which the 2nd and 4th plaintiffs are still trustees. They thus aver that their suit is competent. They aver that a misdescription should not defeat their suit and that they have locus standi.

14. The plaintiffs also aver that the defendant is sued in his capacity as a trustee of the Community Based Organization known as Covenant of Holiness Ministries and not as Bishop of Covenant of Holiness Ministries Church Ministry and that the defendant no longer has any interest in the Community Based Organization known as Covenant of Holiness Ministries from which he was removed as part of management and as a volunteer worker.

15. They aver that the Covenant of Holiness Ministries Community Based Organization is an entity separate and independent of the defendant's church ministry prefixed by the same name. They deny that the organization was at any time changed into a society under the Societies Act. They also aver that the agreement of 5/7/2010 is legally binding on the defendant, and it is not rendered null and void by non-compliance with **Section 6 of the Land Control Act**.

16. The plaintiffs also aver that there is no sufficient material pleaded in the counterclaim to warrant a grant of the prayers sought in the counterclaim.

The Plaintiffs' Evidence

17. The 2nd plaintiff and another witness, Jesma Alexes O'hara testified on behalf of the plaintiffs at the hearing. The 2nd plaintiff introduced himself as a Director of Kitale Family House of Hope. He averred that the defendant is a Pastor with International Pentecostal Holiness Church which was registered in 2007. He produced a copy of a Certificate of Registration showing that the Covenant of Holiness Ministries was registered under the Ministry of Gender, Children and Social Development as a Community Based Organization on 19/11/2007.

18. According to the plaintiff, a sponsor called Neighbours Aid Community Stores (NACS) funded the purchase of the suit premises, were which bought between November, 2007 and April, 2008. The reason why the defendant was asked to sign the sale agreement for the plot was that it was not intended that the prospective seller should know that the purchase was donor funded in order to avoid price exaggeration.

Two acres of land were bought and PW1 signed as a witness. According to PW1 the trustees to the Covenant of Holiness Ministries were himself the defendant, Albert Okumu Onyango, and one Danson Mudenyo.

19. The land was registered. However, on 5/10/2013, an advocate acting for the defendant wrote to the plaintiffs to the effect that the Covenant of Holiness Ministries was no longer Community Based Organization, but a Church Organization and that the plaintiffs should move out of the suit premises. The witness said he was not aware that the Covenant of Holiness Ministries had changed from a Community Based Organization to a Society and that the change was not done in a proper manner.

20. The witness also testified that a memorandum of understanding had been written down when Neighbours Aid Community Stores got concerned that the land was to be registered in the name of an individual. There was also a misunderstanding regarding the name Covenant of Holiness Ministries. One of the project sponsors was concerned that it sounded like a Religious Organization yet the sponsor was not funding such organization.

21. When the plaintiffs engaged the defendant in the plans to change the name, the defendant refused to co-operate and the plaintiffs removed him from the management team. He also produced a certificate showing the Kitale Family House of Hope is now registered. PW2 was Jesma Alexes O'hara, a resident of Australia. She testified that she and her husband started the Neighbours Aid Community Stores in 2002. She identified the four plaintiffs as Board Members of Covenant of Holiness Ministries which she referred to as a Community Based Organization.

22. According to the PW2, the defendant was the Chairman of Covenant Holiness Ministries whom she met in 2006 and who introduced the plaintiffs. The defendant told the witness that the Children's Home faced imminent eviction and that they needed to buy land on which to build a Children's Home.

23. Neighbours Aid Community Stores agreed to fund the purchase of the land. Neighbours Aid Community Stores was to fund Covenant of Holiness Ministries as a Community Based Organization and the name of the project was Kitale Family House of Hope. Subsequently the Neighbours Aid Community Stores funded the construction of the Children's Home. After the land was purchased the defendant was reluctant to give the Neighbours Aid Community Stores the title until five years had elapsed. When in 2013 a letter was written by the defendant's lawyer saying that a religious organization had taken over the Community Based Organization, and that Neighbours Aid Community Stores funds should be channeled through the new society account, Neighbours Aid Community Stores demurred. The witness averred that Kitale Family House of Hope was not a project started by the defendant, but a project of the Covenant of Holiness Ministries which the Neighbours Aid Community Stores was funding.

The Defendant's Evidence

24. The defendant (DW1) and 3 other persons testified for the defence. The defendant's evidence is that he had been a Pastor with the International Pentecostal Holiness Church since 1992 until 2010 when he started his own church called Covenant of Holiness Ministries. The defendant maintains that he is the one who conceived the idea of starting his own church and a children's home and in 2006, he met PW2 on the internet and asked her and her husband for help since he had no money. They agreed and asked the defendant to look for land. The defendant identified the suit land and informed the couple who sent Kshs.300,000/= which he used to go and buy 1 ½ acres of the identified land. The 2nd plaintiff became a witness to the agreement.

25. In November, 2007 the defendant commenced efforts to put up a church and a children's home. However he first built his own dwelling house and planted trees on the land. He also asked PW2 and her husband to assist him put up a children's home and a school which he maintains they did. The defendant then obtained a certificate of registration of the church and also obtained title to the suit land in the name of Covenant of Holiness Ministries on 1/10/2012. The title comprised of 3 acres. According to the defendant there was an agreement that the church's land was 2 acres, and one acre was to be given "back to the owner". However at some point the defendant faced some criminal charges, allegedly at the instigation of the 2nd plaintiff. In the meantime the 2nd and 4th plaintiffs registered a caution over the suit land.

26. DW2 testified on 10/0/2017. His version of the events is that he is the secretary of the Trans-Nzoia Investment Company and the plaintiff and the defendants, are persons known to him. He testified that on 29/6/2012, the 2nd and 4th plaintiffs together with the defendant and one Albert Onyango came to the Trans-Nzoia Investments Company Ltd to process title for the land which had been purchased by the Covenant of Holiness Ministries. They availed him the transfer forms and the certificate of registration No. 32722, PIN P051392731X and their photographs. DW2 and one Joseph Kiptoo then executed the transfer on behalf of the company (as transferors) and the defendant, the 2nd and Albert Onyango signed as transferees for and on behalf of Covenant of Holiness Ministries. According to him the land belongs to the Covenant of Holiness Ministries registered under the Societies Act.

27. DW3 adopted his written witness statement filed in court on 29/6/2015 as his evidence in chief and was cross-examined on it. DW3's version is that on 13/11/2007, he entered into written agreement in which he sold 1 ½ acres of land to the defendant; on 15/2/2008, he sold another ½ acre to the defendant at the cost of Kshs.100,000/=. The witness stated that the balance of his acreage in the land after selling two acres to the defendant was one acre. He agreed with the defendant that one title would be issued for the 3 acres in the name of his church Covenant of Holiness Ministries after which the defendant would give back one acre to him. In his view two acres out of the land comprised in Kwanza/Namanjalala Block 5/655 belongs to the church while one acre belongs to him.

28. DW4 is the defendant's wife. She adopted her statement filed in court on 29/6/2015 as her evidence-in-chief and was cross-examined. Her evidence is that she and her husband sought land on which to establish a church and a children's home. They purchased 2 acres from Stephen Simiyu Chemiati (DW3) at a total consideration of Kshs.400,000/= which they paid in full. She concedes that the 2nd plaintiff was a witness to that agreement. After the purchase, DW4 and her husband erected a semi-permanent house which they occupied as a residential house. Then the defendant successfully sought and obtained funds from donors abroad, and, using these, financed the construction of a children's home which began operating under the name of Covenant of Holiness Ministries. A school was also established, where she worked as a matron and a tailoring teacher. On 23/5/2013 however, the 2nd plaintiff and other unnamed persons barred DW4 and her

husband from occupying the house on the suit land. Later, the defendant's house on the suit land was broken into and the household items therein taken to an unknown place.

29. The plaintiffs filed their written submissions on 15/1/2017 and the defendant filed his on 21/11/2017. I have considered the said two sets of submissions. In my view the issues for determination in this case are as follows:-

(1) Whether the Covenant of Holiness Ministries hold Land Title No. Kwanza/Namanjalala Block 5/655 in trust for Kitale Family House of Hope.

(2) Whether 2 acres should be excised from Title No. Kwanza/Namanjalala Block 5/655 and transferred to the Kitale Family House of Hope.

(3) Whether an injunction should issue restraining the defendant, or his agents from trespassing onto the premises of Kitale Family House of Hope or interfering with the running of the children's home, school or any other project thereof.

(1) Whether the Covenant of Holiness Ministries hold Land Title No. Kwanza/Namanjalala Block 5/655 in trust for Kitale Family House of Hope.

30. In determining this issue there is need to examine the process of acquisition of the suit property. It is common ground that the plaintiffs and the defendant at one time were in concert at the beginning of the Kitale Family House of Hope Project. It is also common ground that the Kitale Family House of Hope project was established under an organization called the Covenant of Holiness Ministries. In my view this organization can only be the one registered as a Community Based Organization under the Ministry of Gender, Children and Social Development on 19/1/2007. PW1 produced the Registration Certificate as P. Exhibit 20.

31. Subsequently the defendant caused another registration under the name of Covenant of Holiness Ministries but under the Societies Act. This was effected on 30/8/2010 vide Certificate of Registration No. 32722. This Society appears to be quite different from the earlier organization as the defendant testifies that he is the sole founder of the society. He testified as follows: -

“I have been a pastor with International Pentecostal Holiness Church since 1992 until 2010 when I started my own church called Covenant of Holiness Ministries”.

No sufficient evidence has been laid before the court to support the allegation that the Community Based Organization was turned into a church. It could, in my view be a case of registration of two organizations under the same name.

32. However the purchase of the suit land occurred between the year 2007 - 2008. The two opposing witnesses, PW1 and DW1 concur that the suit land was purchased using donor funding between the year 2007 - 2008. The two witnesses also agree that the donor, or development partner as they prefer to call it, went by the name Neighbours Aid Community Stores (whom we will refer to as “NACS”) for brevity) and that the human members of that organization whom they dealt with were Jesma Alexes O'hara and her husband. The defendant and his wife asserted that they intended to set up a church and a children's home, and that they looked for land. In their evidence they give the impression that they did this in their private capacity, and emphasize that the land sale agreement was made in the name of the defendant.

33. DW4 does not appear to acknowledge the role of the development partners in the purchase of land but she acknowledge their role in the construction of the children's home and school. However, later in his evidence her husband, the defendant himself acknowledged that the development partners sent Kshs.300,000/= which was used to purchase the land. He also acknowledged that the same development partners helped him construct the children's home and school.

34. It is only later that the defendant wrote to the Attorney General asking for permission to start a church going by the same name as the Community Based Organization under which the children's home and the school had been started, “Covenant of Holiness Ministries”, and subsequently obtained its registration on 30/8/2010. As I said before there is no evidence that the Community Based Organization was being changed into a church. The letter to the Attorney General does not reveal this.

35. The defendant avers that he then changed the sale agreement into the church's name by way of a Memorandum of Understanding dated 5/7/2010 between him, the 2nd and 4th plaintiffs and one Albert Onyango. However, that Memorandum of Understanding is dated 5/7/2010 while his church was registered on 30/8/2010. I also find that nothing in that Memorandum of Understanding intimates that the Covenant of Holiness Ministries envisaged by it was the society registered on 30/8/2010. Besides, by virtue of that Memorandum, the four signatories were bound to hold the land in trust for “Covenant of Holiness Ministries Kitale Family House of Hope” and the title deed was to issue in their favour in that behalf.

36. Notwithstanding the contents of the Memorandum of Understanding the defendant proceeded to obtain registration of the suit land in the name of “Covenant of Holiness Ministries”. The transfer document does not indicate which among the two organizations was intended to own the land; neither does the title document upon registration. However the defendant's evidence is a good pointer as to what his intention was; He stated under cross-examination that: -

“The C.B.O. was duly registered. It is not the name of the C.B.O which was used to process title”.

37. Therefore, the intention of the plaintiff in registering the land under the name of Covenant of Holiness Ministries was that the church that he started as a society, which was registered on 30/10/2010 be the owner of the suit land. However, the defendant also gave evidence as follows while under cross-examination:-

“I did not include the other trustees when I registered my church.....It is true that I was a trustee in the Memorandum. It is true my church had not been registered when the land was bought”.

38. In his defence he has also stated as follows:-

Paragraph 7: “The property comprised in Title Kwanza/Namanjalala Block 5/655 is solely owned by Covenant of Holiness Ministries, and whose Bishop is the defendant herein. It is reiterated that Kitale Family House of Hope is a project of Covenant of Holiness Ministries”.

39. At Paragraph 9 of the defence the defendant pleads as follows: -

Paragraph 9. “The defendant further contends that some of the donations towards the purchase of the land and developments standing on Kwanza/Namanjalala Block 5/655 were made to the Covenant of Holiness Ministries and which was initially registered as a Community Based Organization (CBO) and subsequently as a Society under the Societies Act”.

40. It is noteworthy that the defendant has omitted to explain why the Memorandum of Understanding which he apparently spearheaded the making of, was made and why it was necessary to include the other signatories to the transfer document while the other signatories were not part of the new church organization he was to register thereafter. The only conclusion that can be made from this is that the defendant only used the signatories to the transfer to effect the transfer because he could not transfer the land to his church without their participation. This is the one great inconsistency that arises in respect of the defence case. If the land were purely meant for the church registered by the plaintiff alone without the participation of the other signatories, then their execution of the transfer document may not have been necessary.

41. It is necessary to go back to the evidence of PW1 who to me appears a credible witness when he states as follows:-

“We intended that once the land is registered, the registration of the land was to be in the name of Covenant of Holiness Ministries as Community Based Organization and the four of us were to be trustees. We prepared the transfer from Trans-Nzoia Investment Company to Covenant of Holiness Ministries. The trustees were myself, Benson Wamalwa, Albert Okumu Onyango and Pastor Danson Mudenyo.

“.....we were surprised to notice that Covenant of Holiness Ministries had been changed from a Community Based Organization to a Society. The change from a Community Based Organization to a Society was not done in a proper manner”.

42. In the circumstances I find that the defendant’s act of procuring the three other persons to execute the transfer of land was meant to deceive them into having the land registered in the church’s name whereupon he would later have control of the suit land to their exclusion. However I find that the plaintiff shot himself in the foot by including the three other signatories in the transfer as that meant that they would have to have a role in the transferee organization as “trustees” if that registration could pass muster.

43. Secondly, if the defendant, as he admits, converted the original Community Based Organization into a church, he was in breach of one condition which has been emphasized throughout the suit: that the development partners do not fund churches. Indeed in her evidence, PW2 stated that NACS agreed to fund the Covenant of Holiness as a Community Based Organization. When NACS received a communication saying that a religious organization had taken over the CBO, they forwarded the letter to their lawyer because they did not enter into any arrangement with a religious organization by the name Covenant of Holiness Ministries. In the joint witness statement dated 27/1/2014 the witnesses (PW2 and her husband) state as follows:

“The three pastors, Edward Khaoya, Danson Mudenyo and Benson Wamalwa told us that they belonged to different denominations.....as a result of those talks we encouraged them to write a proposal we could present to our Board because our organization is not by law allowed to fund religious institutions”.

44. PW2 testified that when the donor team visited Kenya in 2007 they were told that a Community Based Organization called Covenant of Holiness Ministries had been registered. They therefore sent money for purchase of land and they were told that the land would be purchased in the pastor’s names until it could be transferred to Kitale Family House of Hope that “would administer it on behalf of the stakeholders - the people of Kenya”.

45. PW2’s statement further stated as follows:-

“We are not a religious organization. We are a Community Based Organization and as such may not be involved in the funding of Religious Institutions”.

46. The witness stated that when the children’s home and school commenced, the project was named Kitale Family House of Hope but the Covenant of Holiness Ministries was the official name until the Kitale Family House of Hope could be registered as an N.G.O. PW2 then produced a Certificate of Registration of a charitable children’s institution under the *Children Act No. 8 of 2001* issued by the “Ministry of Labour, Social Security and Services” on 27/3/2014 showing that Kitale Family House of Hope Children’s Home has been registered as a

charitable children's institution for a period of 3 years. However there is no indication of whether any renewal of such registration had been done as at the time of the conclusion of the hearing.

47. From the evidence on the record it can therefore be concluded that the acquisition of the suit land began long before the defendants' church was registered. I find that if the name by which the suit land is registered refers to the defendant's church, then such registration is wrongful and the suit land is therefore held in trust by the defendant's church for the Kitale Family House of Hope which is a project that was begun under a Community Based Organization called Covenant of Holiness Ministries.

(2) Whether 2 acres should be excised from Title No. Kwanza/Namanjalala Block 5/655 and transferred to the Kitale Family House of Hope.

48. I have already indicated that Kitale Family House of Hope was registered under the "Ministry of Labour Social Security and Services" on 27/3/2014. However the plaintiffs did not demonstrate that such registration was renewed. Their prayer in the plaint is that the 2 acres be excised out of Title No. Kwanza/Namanjalala Block 5/655 and be transferred to Kitale Family House of Hope. The question then would be whether the said organization has legal capacity to own and hold land in its own name.

49. In *Nairobi High Court Civil Case No. 5116 of 1992 (OS) Free Pentecostal Fellowship in Kenya -vs- Kenya Commercial Bank Ltd* an objection as raised to the effect that the suit was instituted in the name of a religious organization which is merely a society. The court held that that organization was not a body corporate and that it lacked capacity to institute the proceedings in its own name or hold property, movable or otherwise. It therefore lacked capacity to own land in its own name. Consequently the property which was bought on its behalf in a public auction which was held at the instance of the defendant could not under the law vest in it. The court dismissed the plaintiff's suit on those grounds. The court also held that it could not effect amendments pursuant to **Order 1 Rule 10** suo motu except in clear cases, that not being one.

50. In the case of *Nairobi ELC No. 969 of 2012 Josephat Kimani Mirara & Others suing as Officials of Githurai Victory Market S.H.O. -vs- Romano K. Mikigu* the court stated as follows: -

"It is my opinion that the plaintiffs need to bring evidence of official confirmation by the said Provincial Director of Social Services or equivalent regulating entity that they are indeed the bona fide officials of Githurai Victory Market Self Help Organization".

"This court cannot grant any orders to the plaintiffs until confirmation is given by the Government Regulating entity of the self-help group that they are the bona fide officials of Githurai Victory Market Self Help Organization. Such official confirmation is necessary to prevent impostors seeking interventions from the court in the name of self-help groups or other unincorporated groups and is also the law and practice in relation to corporate bodies. In the circumstances the court finds that at this moment in time the plaintiffs have no locus standi to be granted the orders sought".

51. In the light of the above mentioned cases, this court finds that Prayer No. (c) in the plaint dated 11th October, 2013 cannot be granted.

(3) Whether an injunction should issue restraining the defendant, or his agents from trespassing onto the premises of Kitale Family House of Hope or interfering with the running of the children's home, school or any other project thereof

52. I find that the development partners financed the purchase of the suit land and the erection of the infrastructure on the land in the belief that they were serving the public. I therefore find no justification in the claim laid on the suit land and the project thereon by the defendant and his church, the society going by the name of "Covenant of Holiness Ministries" registered on 30/8/2010. Though an order is sought by the plaintiffs herein to the effect that he be enjoined the plaintiffs themselves have not demonstrated the existence of any trusteeship into which the title to the land should vest. I would grant Prayer No. (a) in the plaint dated 11/10/2013., and thereafter deal with the next issue.

What Orders should issue?

53. I have found that the Prayer No. (c) of the plaint cannot be granted as the plaintiffs have not demonstrated the capacity of the Kitale Family House of Hope to hold the land in its own name. In view of the fact that there is a project of great public importance being run on the premises this court is of the view that merely dismissing the Prayer No. (c) would not do justice to the public, whom DW2 so passionately advocated for in her evidence.

54. I have therefore examined the circumstances in general in order to find a suitable solution. In **Section 17** of the **Public Trustee Act** the Public Trustee is empowered to act as an ordinary trustee. In **Section 18** of the **Public Trustee Act** it is provided for as follows:-

"If the property is the subject to a trust other than a trust which the Public Trustee is prohibited from accepting under this Act and there is no trustee within Kenya willing or capable to act in the trust the court may on application make or order for the appointment of the public trustee by that name with his consent to be the trustee of that property".

55. In my view it is the safeguards to the land and the infrastructure thereon that would guarantee the continuity of the project called Kitale Family House of Hope, and any threat from individuals or organizations targeting the said land and infrastructure could be eliminated by having a neutral person hold the land in trust for the project. In **Section 25(1)** of the **Public Trustee Act** the law provides as follows:-

"The Public Trustee shall be a corporation sole by the name of the Public Trustee and shall have perpetual succession and an official seal".

56. This court has inherent power to issue orders that would ensure justice is done in any suit. As stated before, the genuine stakeholders who would suffer if the project known as Kitale Family House of Hope collapsed would be the public. And I do not find any goodwill in the manner the parties in this suit have conducted themselves, yet the Attorney General of the Republic of Kenya has not been made a party herein. This does not prevent the court from issuing an appropriate order even if it has not been sought in the suit by either party as long as it is in the public interest. In my opinion the capacity of the Public Trustee to hold the suit land is covered by the statutory provisions mentioned above.

57. I therefore find that the suit land would be secure for charitable public purposes if it were registered in the name of the Public Trustee of the Republic of Kenya. The final orders of this court are therefore as follows:-

(a) Prayer No. (a) of the plaint is granted. However the said prayer does not preclude the plaintiffs and the project partners from reintegrating the defendant in the project if there is any rapprochement in that regard in future.

(b) Prayer No. (b) is granted to the extent that the suit land is now held in trust for Kitale Family House of Hope.

(c) Prayer No. (c) is hereby denied.

(d) The title to the suit land issued in the name of Covenant of Holiness Ministries is hereby cancelled and the Land Registrar shall call up the title in the possession of the defendant and/or his church and cancel it and issue a fresh title in the name of the Public Trustee of the Republic of Kenya to hold in trust the land and the infrastructure thereon on behalf of the Kitale Family House of Hope.

(e) The title deed so registered shall be submitted to the Public Trustee of the Republic of Kenya for safekeeping through the Deputy Registrar of this court and shall not be dealt with contrary to its original purpose by any person.

(f) The plaintiffs shall be at liberty to continue managing the Kitale Family House of Hope Project for public benefit and the orders herein do not in any manner curtail therein role or that of any person or persons who succeed them in that role.

(g) Each party shall bear its own costs.

Dated, signed and delivered at Kitale on this 1st day of **February, 2018.**

MWANGI NJOROGE

JUDGE

1/2/2018

Coram - before Mwangi Njoroge Judge

Court Assistant - Isabellah

Mr. Analo holding brief for Kraido for Plaintiff

Defendant in person - present

COURT

Ruling read in open court in the presence of the Defendant (in person) and Counsel for the Plaintiff.

MWANGI NJOROGE

JUDGE

1/2/2018