



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 114 OF 2011

REGISTERED TRUSTEE GOSPEL OF GOD CHURCH.....PLAINTIFF

VERSUS

ELIAS RIMBERIA MBOROTHI.....1ST DEFENDANT

ZAVERIO NGURU MBOROTHI..... 2ND DEFENDANT

MOSES KAMUNDI3RD DEFENDANT

GEDIEL KIRIMI4TH DEFENDANT

FRANCIS MUCHERU 5TH DEFENDANT

REGISTERED TRUSTEE,

GOSPEL OF GOD CHURCH INTERNATIONAL 6TH DEFENDANT

NORA NTUI MUTAI 7TH DEFENDANT

THE LAND REGISTRAR, MERU 8TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL9TH DEFENDANT

RULING

1. On 28.2.2018, counsel for 3rd and 4th defendants made an application seeking leave to file a further list of documents. The basis upon which the application was made was that the said defendants had discovered the existence of a letter dated 26.8.1968 addressed to the secretary of Gospel of God made by assistant registrar of society Mr. R.N Maclean. It is averred that this letter is very crucial to determine the distinction and existence of two societies that is Gospel of God and Gospel of God Church.

2. The other document that 3rd and 4th defendants desire to avail is to substitute the certificate of exemption dated 20.8.1968 which is item 1 in defence list of documents. It is contended that 3rd and 4th defendants have discovered that they annexed the wrong document which is the one referring to Gospel of God Church instead of the one for Gospel of God. It is averred that the confusion arose because both documents are dated the same day and are purportedly issued by the same registrars.

3. Counsel for plaintiff has opposed the application averring that pre-trial direction had already been

taken.

4. The provisions of article 50 (1) of the constitution provide that; ***“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”.***

5. This provision envisages a situation where all parties are aware of each other’s case (through exchange of documents and statements of witnesses) by the time the hearing of a case is taking off.

6. The present application was only made after the court gave a ruling on 28.2.2018 regarding production of plaintiff’s documents. Why was the present application not made earlier on?. Why is it that there is discovery of documents of **1968** at this stage of the trial? Where were those documents by the time pre-trial directions were being conducted. I find that 3rd and 4th defendants have not laid a proper basis for the production of the aforesaid documents. It would not be fair and just to avail documents which are 50 or so years old yet such documents have hitherto never been seen by the plaintiff’s side.

7. I disallow the application by the 3rd and 4th defendants to avail further documents.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 18th APRIL, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Mugo for plaintiff

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

Munene holding brief for Kiara for 7th defendants

Gichunge holding brief for Muriithi for 1st and 2nd defendants

Kiongo for 8th and 9th defendants

HON. LUCY. N. MBUGUA

ELC JUDGE