



Imbali & 3 others (Suing as Officials of African Divine Church) v Chabuga (Environment & Land Case 144 of 2016) [2024] KEELC 263 (KLR) (31 January 2024) (Judgment)

Neutral citation: [2024] KEELC 263 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 144 OF 2016**

**DO OHUNGO, J
JANUARY 31, 2024**

BETWEEN

**GABRIEL S IMBALI 1ST PLAINTIFF
JUMA CHESOLI 2ND PLAINTIFF
JACKSON MUNYOLE 3RD PLAINTIFF
JOHN CHACHI 4TH PLAINTIFF
SUING AS OFFICIALS OF AFRICAN DIVINE CHURCH**

AND

JOHN S J CHABUGA DEFENDANT

JUDGMENT

1. The plaintiffs moved the court through plaint dated 3rd August 2016, which they filed on 4th August 2016. That initial plaint was later replaced with amended plaint dated 24th August 2016. The first, second, third and fourth plaintiffs described themselves in the amended plaint as Archbishop, Bishop, General Secretary and Treasurer, respectively, of Chekalini African Divine Church and the defendant as Archbishop of African Divine Church Boyani. They averred that they had run their affairs separately from the defendant’s Boyani Branch and that the defendant and his agents had been interfering with the plaintiff’s places of worship at Plot Numbers 1 and 2 Chekalini Township in Lugari (the suit properties). They further averred that after the defendant’s agents had obtained an order in Kakamega CMCC No 177 of 2016, the defendant and his agents had planned to storm the plaintiff’s places of worship and to hold crusades therein from 7th to 14th August 2016. They therefore prayed for judgment against the defendant for a permanent injunction to restrain him, his agents, servants, and followers from interfering with prayer meetings, worship or in any other way accessing the suit properties or any places of worship established by the plaintiff.



2. The defendant filed a statement of defence in which he admitted the existence of Kakamega CMCC No 177 of 2016 but denied the plaintiffs' other allegations. He averred that this suit is an abuse of the court's process in view of existence of Kakamega CMCC No 177 of 2016 and urged this court to strike it out with costs to him.
3. The plaintiff's case was heard on 20th February 2020, before my sister N A Matheka, J. Jackson Munyole, the third plaintiff, testified as the sole witness in respect of the plaintiff's case. He adopted the first plaintiff's witness statement dated 3rd August 2016 and stated that the plaintiffs had brought this suit on behalf of the church whose headquarters were at Chekalini. That Boyani was a branch headed by the defendant and that the Chekalini used to be under the defendant until Chekalini broke away. He also stated that Kakamega CMCC No 177 of 2016 was still pending as of the date of his testimony. He produced, as exhibits, documents including copies of minutes of a meeting held on 27th December 1999, an allotment letter dated 20th May 2009, some correspondences and an application for consent addressed to Lugari Land Control Board.
4. The plaintiff's case was then closed.
5. I took over the matter from 3rd November 2021. Parties opted to proceed from where the matter had reached. Defence hearing was scheduled severally but did not proceed owing to applications for adjournment made by the parties. Ultimately, defence case was closed on 1st February 2023, without the defence calling any witness. Prior to that, counsel for the plaintiffs informed the court on 31st October 2022 that the first plaintiff had passed away in September 2022. The plaintiffs opted not to substitute him.
6. Directions were given that parties file and exchange written submissions. The plaintiffs filed submissions on 9th May 2023. Despite being granted more time, the defendant did not file any submissions.
7. I have considered the parties' pleadings, evidence, and submissions. The issues that arise for determination are whether the suit is an abuse of court's process and whether the reliefs sought should issue.
8. The defendant contended in his statement of defence that this suit is an abuse of the court's process in view of existence of Kakamega CMCC No 177 of 2016. There is no dispute that the said suit existed. The first plaintiff mentioned it in his witness statement while the third plaintiff stated in his testimony that it was still pending as of the date he testified. The defendant did not however testify to offer any evidence as to the nature of the case and the reliefs sought therein. A perusal of the record however shows that the defendant swore an affidavit on 11th August 2016 and filed it herein on 12th August 2016. Annexure JC-3 to the said affidavit is an order made on 6th June 2016 in Kakamega CMCC No 177 of 2016. It states that the first plaintiff herein was the defendant therein while Meshack Mulusa Opondo, Tom Salano, Amos Saidi and Elijah Okiru Olembo sued therein as the plaintiffs on behalf of African Divine Church. In essence therefore, African Divine Church is litigating both in Kakamega CMCC No 177 of 2016 and in the present suit as plaintiff. However, the defendant herein is not named as a party in Kakamega CMCC No 177 of 2016. Further, a perusal of the order shows that the suit properties in Kakamega CMCC No 177 of 2016 were Kakamega/Lugari/27 and Kakamega/Chekalini/1391 which are different from the suit properties herein. I find that the defendant failed to show that this suit is an abuse of court's process.
9. Are the plaintiffs entitled to the relief of permanent injunction which they have sought? To succeed in their quest to obtain a permanent injunction, the plaintiffs must demonstrate that their case is meritorious and that they will suffer damage if the order is not granted. See [*Nguruman Limited v Jan*](#)



Bonde Nielsen & 2 others [2014] eKLR and *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] eKLR.

10. The plaintiffs' case is built on the theory that they have a better claim to the places of worship on Plot Numbers 1 and 2 Chekalini Township in Lugari (the suit properties). They do not have any title documents. Instead, they produced a copy of an allotment letter dated 20th May 2009. A perusal of the letter shows that it does not state any particular plot number. Instead, it generically refers to "Existing African Divine Church – Chekaline." Even the application for consent addressed to Lugari Land Control Board which they produced does not state any plot number.
11. While I am aware that the standard of proof in civil proceedings is proof on a balance of probabilities, a party approaching the on the basis that it has a claim to a particular parcel of land must at the very minimum identify that parcel and demonstrate its claim to the specific parcel. The plaintiffs have failed that test. They have not shown that their claim in respect of the suit properties is meritorious or that they will suffer damage if the permanent injunction which is sought is not granted. They are not entitled to the relief sought.
12. In the result, I find no merit in the plaintiffs' case, and I therefore dismiss it. I do not award any costs to the defendant since he did not offer any evidence to challenge the plaintiffs' case.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 31ST DAY OF JANUARY 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:-

Ms Ogolla for the Plaintiffs

No appearance for the Defendant

Court Assistant: E. Juma

