



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. PETITION NO. 6 OF 2017

REV.HANNINGTON KYENGO MUNYAO.....1STPETITIONER/RESPONDENT

JOEL MUTUKU MBITHI2ND PETITIONER/RESPONDENT

MARGARET KANINI KISILA.....3RD PETITIONER/RESPONDENT

DAVID MUEMA NGINDA.....4TH PETITIONER/RESPONDENT

STEPHEN MUTHWII KITONGA.....5TH PETITIONER/RESPONDENT

JIMMY NTHENGE MWAKA.....6TH PETITIONER/RESPONDENT

SAMUEL WAMBUA KITUNA.....7TH PETITIONER/RESPONDENT

AGNES SYOKAU MULWA.....8TH PETITIONER/RESPONDENT

(All petitioning on their behalf and on behalf of 206 others

as members of AFRICA INLAND CHURCH, MUISUNI)

VERSUS

BENARD NGUYO1ST RESPONDENT/APPLICANT

JAPHETH ITUMO.....2ND RESPONDENT/APPLICANT

JACOB MUSILA.....3RD RESPONDENT/APPLICANT

SHADRACK MUTHAMA.....4TH RESPONDENT/APPLICANT

PHILIP NGATA MUIA.....5TH RESPONDENT/APPLICANT

JACKSON KAINDE.....6TH RESPONDENT/APPLICANT

GEORGE MUTUNE.....7TH RESPONDENT/APPLICANT

JONATHAN MUTETI.....8TH RESPONDENT/APPLICANT

SILVANUS NZIOKA.....9TH RESPONDENT/APPLICANT

JOSEPH KIMANI KARIUKI.....10TH RESPONDENT/APPLICANT

RULING

1. In the Notice of Motion dated 5th December, 2017, the Respondents/Applicants have sought for the following orders:

a. That this Honourable Court be pleased to review and/or set aside the Ruling dated 23rd November, 2017 and consequent orders, pending inter-partes hearing and final determination of the Application herein.

b. That this Honourable Court be pleased to review and/or set aside the Ruling dated 23rd November, 2017 and consequent orders, pending inter-partes hearing and final determination of the Petition.

c. That this Honourable Court be pleased to issue an injunction restraining the Petitioners, either by themselves, their servants, agents, employees and/or followers, from interfering with the running of the AIC Kangundo Children's Home, pending the hearing and determination of this Application.

d. That this Honourable Court be pleased to issue an injunction restraining the Petitioners, either by themselves, their servants, agents, employees and/or followers, from interfering with the running of the AIC Kangundo Children's Home, pending the hearing and determination of the Petition.

e. That this Honourable Court be pleased to issue any other and/or further orders as it may deem fit and just to grant in the interest of justice.

f. That the costs of this Application be provided for.

2. The Bishop and Head of Africa Inland Church (AIC) Machakos, who is also a Trustee of the AIC Kenya Trustees Registered, and also the 1st Respondent, deponed that the AIC Kangundo Children's Home is located within parcels of land numbers Kangundo/Muisuni/945 and 1009 (*the suit land*); that the Home is run by a Third Party, the Kenya Kids Organization, and that the Petitioners have threatened to interfere and take over the running and operations of AIC Kangundo Children's Home.

3. According to the 1st Respondent, the threatened action by the Petitioners will adversely affect the lives of the children under the care of the Home; that there is a Judgment in High Court Petition Number 395 of 2012 restraining one David Mbuvi and his followers from interfering with the running of the AIC Kenya affairs and that unless the orders sought are granted, the operations at the AIC Children's Home are at risk of being adversely affected.

4. In response, the 1st Petitioner/Respondent deponed that there is nothing new or mistake apparent on the face of the record; that the issues raised in the Application are *res judicata* those raised in the Application dated 14th March, 2017; that Kenya Kids are not a party to the Application and that if it feels aggrieved by the orders of the court, it can seek a remedy on its own.

5. The 1st Respondent finally deponed that it is the Petitioners who have been running the affairs of the Children's Home and that the Application should be dismissed.

6. The law pertaining to review of an order or decree is provided for under Order 45 Rule 1 of the Civil Procedure Rules. The trial court can only review an order where the Applicant has discovered new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. The Applicant should also have been filed without unreasonable delay.

7. The only reason that the Respondents/Applicants have given for the review of the order of injunction that was granted by the court is that "AIC Kangundo Children's Home" is located on the suit land, and that the said Home is run by a Third Party known as "Kenya Kids". According to the Applicants, the Appellants are likely to interfere with the running and operations of the said Children's Home.

8. To support the allegation that the Appellants are likely to affect the running of the Children's Home, the 1st Respondent annexed a letter dated 30th November, 2017 addressed to the Respondents/Applicants. In the said letter, the Appellants/Respondents stated as follows:

"Following the court Ruling and orders of ELC Petition No. 6 of 2017 given on 23rd November, 2017... AIC Muisuni both as Local and a Church District is ready to take full responsibility of her facilities and institutions as well as start operating AIC Kangundo Children's Home beginning January, 2018..."

9. It is obvious from the above letter that the Petitioners, while purporting to use the order of this court, intent to take over the running of an already existing Children's Home. The order of this court only restrained the Respondents from evicting the Petitioners from the suit land or preventing the Petitioners from the use of the suit land. The order did not mandate the Petitioners to take over the running of the Children's Home situated on the suit land. Consequently, the Respondents/Applicants have given to this court sufficient reasons why the order of 23rd November, 2017 should be reviewed or clarified. Consequently, this court reviews the orders of 23rd November, 2017 as follows:

a. In addition to the orders of this court of 23rd November, 2017, the Petitioners are hereby restrained from taking over or interfering with the running and management of AIC Kangundo Children's Home located on parcel numbers Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 pending the hearing and determination of the Petition.

b. Each party to pay his/her costs.

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

O.A. ANGOTE

JUDGE