



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 25 OF 2018

AFRICA INLAND CHURCH KENYA

TRUSTEES REGISTERED.....1ST PLAINTIFF/APPLICANT

BISHOP REV. BERNARD NGUYO.....2ND PLAINTIFF/APPLICANT

(Suing a Chairman and Bishop of Africa Inland Church (Machakos Area))

VERSUS

THE CHIEF LAND REGISTRAR.....1ST DEFENDANT/RESPONDENT

THE COUNTY LAND

REGISTRAR, MACHAKOS.....2ND DEFENDANT/RESPONDENT

SHADRACK SILA.....3RD DEFENDANT/RESPONDENT

BERNARD WAMBUA.....4TH DEFENDANT/RESPONDENT

ARON MUTUNDU.....5TH DEFENDANT/RESPONDENT

RULING

1. In the Notice of Motion dated 7th February, 2018, the Plaintiffs have sought for the following reliefs:

a. That pending the hearing and determination of the suit, this Honourable Court be pleased to issue an injunction to restrain the Defendants, their agents, assigns, servants, employees and/or representatives from in any way alienating, disposing or otherwise dealing in the suit property more specifically known as Title No. Mwala/Mathunthini/570.

b. That costs of this Application be provided for.

2. In support of the Application, the 2nd Plaintiff swore an Affidavit in which he deponed that a Title Deed in respect of a parcel of land known as Mwala/Mathunthini/570 (*the suit land*) to an unknown entity calling itself A.I.C Mathunthini LCC; that the suit land is the property of the Africa Inland Church Kenya (AIC) and that within the suit property is a church and a Children's home and offices.

3. It is the deposition of the 2nd Plaintiff that all properties of the church are held by its Board of Trustees (*the 1st Plaintiff*); that he is apprehensive that the 3rd to 5th Respondents or their followers will carry out evictions of the Plaintiffs' employees from the suit and that the orders of injunction should issue.

4. In response, the 3rd Defendant deponed that this suit should be struck out because there is a similar suit by the same parties on the same subject matter which is ELC No. 233 of 2014; that the Plaintiffs do not have the requisite *locus standi* to institute the current suit and that the Plaintiffs have failed to disclose that there is a leadership dispute between A.I.C Kenya under the 2008 Constitution and A.I.C under the 1981 Constitution which is pending in court.

5. The 3rd Defendant finally deponed that the suit land was lawfully set apart by Masaku County Council for A.I.C Mwala, Mathunthini in 1981; that A.I.C Mathunthini L.C.C was issued with a Certificate of Registration number 1152 on 17th August, 1981 and that the Plaintiffs have not demonstrated that they purchased that suit land.

6. In his Further Affidavit, the 2nd Plaintiff deponed that the leadership dispute alluded to by the deponent is not in dispute in this suit; that the A.I.C Makutano Local Church Council is the only local church council recognized by the A.I.C and that the registration of the suit land in favour of the Defendants was irregularly done. The parties filed brief written submissions which I have considered.

7. The evidence before this court shows that parcel of land known as Mwala/Mathunthini/570 (*the suit land*) was registered in favour of Masaku County Council on 6th October, 1972. According to the Plaintiffs' Affidavit, the land was transferred to A.I.C Mathunthini L.C.C on 24th June, 2016. The Plaintiffs are challenging the said registration on the ground that all properties of A.I.C are to be registered in the name of the 1st Plaintiff.

8. The Defendants have deponed that this suit is sub-judice Machakos ELC. No. 233 of 2014 in which the court delivered a Ruling for injunction. I have perused the Ruling that was delivered in ELC. No. 233 of 2014 on 20th February, 2015. In the said Ruling, the court referred to the suit land as follows:

“9. The documents presented for parcels No. 570 and 677 do not show any being registered in the Plaintiffs' names or show registrable interest of the Plaintiffs. There are no documents on parcel number 665. There is no reason advanced as to why the Plaintiff did not question the orders alleged to be executed against its agents, servants, employees and pastors.”

9. The court in ELC No. 233 of 2014 dismissed the Plaintiffs' Application for injunction in respect to parcels number 665 and 677. In the same matter, the court considered the Plaintiffs' claim in respect of parcel number 570 which is the subject of the current suit and found that they had not established a prima facie case with chances of success. In the circumstances, I agree with the Defendants that this Application is sub-judice ELC. No. 233 of 2014. The court having found that the Plaintiffs had not established a prima facie case in respect of parcel number 570, it would be a mockery of justice for this court to find otherwise.

10. Indeed, the suit property herein was also a subject of litigation in Machakos CMCC No. 354 of 2013 in which the parties herein were also parties in that suit. In the said suit, the Plaintiffs' employees were evicted from the suit land by the court. The Plaintiffs herein were also permanently enjoined from interfering with the Defendants' fellowship, worship or programmes at the A.I.C Mathunthini situated on parcel number Mwala/Mathunthini/570.

11. The Decree annexed on the 2nd Plaintiff's Affidavit does not show that the suit in Machakos CMCC No. 354 of 2013 was struck out by the court. Rather, the said Decree shows that the suit was decided in favour of the Defendants herein. Having not appealed against the decisions of the courts in Machakos CMCC No. 354 of 2013 and Machakos ELC. No. 233 of 2014, the Plaintiffs are abusing the process of this court in filing the present suit and Application.

12. In any event, the suit land is currently registered in favour of A.I.C Mathunthini L.C.C. Until the said registration is cancelled by this court, it is the registered proprietor of the land who is entitled to use the land. For those reasons, I dismiss the Application dated 7th February, 2018 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2018.

O.A. ANGOTE

JUDGE