



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 594 OF 2012

INTERNATIONAL PENTECOSTAL HOLINESS CHURCH

(SOULD RESTORATION WORSHIP CENTRE).....1ST PLAINTIFF

SIMON NYABERA.....2ND PLAINTIFF

EZEKIEL KEARI GIDEON.....3RD PLAINTIFF

ISAIAH M. MOGUCHE ARORI.....4TH PLAINTIFF

MOSES PETER OKERIO.....5TH PLAINTIFF

KENNETH CHESEREK SANG.....6TH PLAINTIFF

CHARLES MWALIMU OKERIO.....7TH PLAINTIFF

VERSUS

STAR-LAND COMPANY LTD.....1ST DEFENDANT

GREENVILLE PLANTATIONS LIMITED.....2ND DEFENDANT

PANCAS OYATSL.....3RD DEFENDANT

RULING

The 1st defendant has filed the application dated 13.6.2018 seeking orders that the plaintiffs' claim be struck out with costs to the 1st defendant for being incompetent on the grounds that the 1st plaintiff did not transact any business with the 1st defendant and that the 1st plaintiff is not a legal person capable of suing or being sued. According to the 1st defendant, the only entity in existence is the International Pentecostal Holiness Church.

In the supporting affidavit of Francis Pius Omweri Nyaberi, the Director of the 1st defendant, his lawyer sought to know whether the 1st plaintiff is registered and or exists but the Registrar of Societies responded and confirmed that the only entity in existence is the International Pentecostal Holiness Church Africa and not the plaintiff. The 1st defendant states that costs should be paid by the Rev. Daniel Kwatuha.

The plaintiff through Rev. Daniel Kwatuha, the Secretary General of the Highlands Conference of the 1st plaintiff states that the plaintiff was incorporated under guarantors in Oklohoma, U.S.A. and operates in Kenya as a company under guarantee. The International Pentecostal Holiness Church board decided to extend its religious activities to Kenya and it had it registered as a company in Kenya.

The company under guarantee applied for tax exemption in Kenya and has advised that Companies affiliated to religious organization registered under the Societies Act are considered for tax exemption. The company lodged a constitution and had its religious wing registered as a Society.

According to the deponent, the plaintiff is a company under guarantee and hence capable of transacting business in its own name as a legal entity. He was a witness in the agreement made between the plaintiff and the 1st defendant.

Section 366 of the Companies Act Cap 486 Laws of Kenya (repealed) provided that where a foreign company had delivered to the registrar the documents and particulars mentioned in section 366 thereof, the registrar was, if such documents and particulars were so delivered after the appointed day, to certify under his hand that the company had complied with the provisions of the said section; and such certificate, and any certificate given by the registrar of companies before the appointed day that a foreign company had delivered to him the documents and particulars required by any provision of any of the repealed Acts corresponding to the said section and to the like effect, was conclusive evidence that the company was registered as a foreign company for the purposes of the repealed Act. Where a foreign company had, after the appointed day, delivered to the registrar the documents and particulars mentioned in section 366, it had the same power to hold land in Kenya as if it were a company incorporated under the Act. Where a foreign company had, before the appointed day, delivered to the registrar of companies the documents and particulars required by any provision of any of the repealed Acts corresponding to section 366 of the Act and to the like effect, it was, subject to the provisions of that one of the repealed Acts in accordance with which such documents and particulars were so delivered and of the Act, to have the same power to hold land in Kenya as if it were a company incorporated under this Act.

Moreover, the International Pentecostal Holiness Church Africa was registered as a Society by the Registrar of **Societies under Section 10 of the Societies Act Cap 108 Laws of Kenya.**

Section 10 of the Societies Act provides for the manner of effecting registration or exemption from registration thus upon application being made in the prescribed manner for registration of a society, the Registrar shall, subject to this Act, register the society by entering in the register of societies, kept for the purpose, the prescribed particulars and the date of the entry and that upon application being made in the prescribed manner for exemption of a society from registration, the Registrar may, with the approval of the Minister, so exempt the society, and if he does not so exempt the society he shall treat the application as an application for registration and shall, subject to the provisions of this Act, register the society.

Upon registering a society or exempting it from registration, the Registrar shall issue to the society a certificate of registration or exemption from registration in the prescribed form.

I have considered the application by the 1st defendant and the response by the plaintiff and do find that the International Pentecostal Holiness Church is described as a church organization registered as a company under guarantee. A certificate of compliance with section 366 of the Companies Act, Cap. 486, Laws of Kenya was issued to the company. It was certified that the company which is incorporated in Oklahoma, U.S.A. delivered for registration to the Registrar of Companies, the documents and particulars specified in Section 366 of the Companies Act, Cap. 486, Laws of Kenya. I am satisfied that the plaintiff is a legal person and therefore, the application dated 13.6.2018 is not merited and is dismissed with costs.

Dated and delivered at Eldoret this 21st day of November, 2018.

OMBWAYO

JUDGE