



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 781 OF 2012

ST. ANDREWS CHURCH NAIROBI

REGISTERED TRUSTEES.....PLAINTIFF/APPLICANT

VERSUS

METHODIST CHURCH MISSIONS

KENYA REGISTERED TRUSTEES RESPONDENT

RULING

Coming upon me for determination is the Notice of Motion dated 24th November 2015 in which the Applicant seeks for the following orders:

1. Spent.
2. That leave be granted to the Applicant to amend the Originating Summons dated 31st October 2012 as per the Amended Originating Summons annexed.
3. That temporary injunction do issue restraining and preventing the Respondent, its servants/agents or anybody acting through it or by it from wasting, alienating, meddling, transferring, attempting to transfer, dealing with and/or in any other manner howsoever and whatsoever interfering with the parcels of land known as L.R. No. 3734/1381, L.R. No. 3734/1382 and L.R. No. 3734/1383 (formerly known as L.R. No. 3734/613) and L.R. No. 3734/627 pending the hearing and determination of the suit.
4. That an order of temporary injunction be issued against the Respondent, its servants/agents or anybody acting through it or by it, from erecting any temporary or permanent structures, residential or otherwise, settling in, subdividing, fencing or in any way interfering with the suit parcels of land pending the hearing and determination of this suit.
5. That costs of this Application be provided for.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of Prof. Christopher Karue, the Chairperson of the Applicant's Board of Trustees, filed on 24th November

2015, in which he averred that by a Trust Deed dated 20th December 1959 executed by and between the parties to this suit it was agreed that the land parcels known as L.R. No. 3734/613 and 3734/627 situate in Lavington, Nairobi would be used on a cooperative basis for the mutual benefit of the Applicant, Respondent and Interested Party. He further averred that the implication of the Trust Deed was that the title to those parcels of land be held by the Respondent as Trustees for the Applicant and Interested Party, that the properties were jointly owned with no party having exclusive right of ownership or rights of usage and that the Respondent was specifically obligated to consult the Applicant and the Interested Party on all matters concerning the parcels of land. He further averred that in October 2015, he discovered that land parcel L.R. No. 3734/613 is non-existent and was amalgamated with two other parcels of land to create land parcel L.R. No. 3734/991. He further stated that they engaged the services of a Surveyor who, after the necessary investigations, came to discover that in August 1955, L.R. No. 3734/613 existed as a separate title but this status changed in May 1975 when it was amalgamated with L.R. No. 3734/614 and 3734/3/R to create L.R. No. 3734/991. He added that in January 2012, amalgamated parcel No. 3734/991 was subdivided into three parcels being L.R. No. 3734/1381, L.R. No. 3734/1382 and L.R. No. 3734/1383. He added that in light of this subdivision, he wished to amend the Originating Summons to record the correct land reference numbers being L.R. No. 3734/627, L.R. No. 3734/1381, L.R. No. 3734/1382 and L.R. No. 3734/1383. He further added that the Respondent conducted this subdivision without putting the Applicant and the Interested Party on notice. He further stated that the Respondent was even constructing a new sanctuary on one of the parcels forming the subject matter of this suit. He expressed concern that the trust property is in jeopardy unless the court grants the prayers sought in this Application.

The Application is contested. The Respondent filed the Replying Affidavit of Rev. Joseph Ntombura, its Presiding Bishop, sworn on 25th January 2016, in which he averred that the Applicant is fully aware of the circumstances under which the Lavington United Church sought to have L.R. No. 3734/613 subdivided so that one acre could be exchanged with 0.75 of an acre known as L.R. No. 3734/809 owed by Concord Insurance Co. Ltd next to the Respondent's property known as L.R. No. 3734/627. He added that the subdivision yielded three plots being L.R. No. 3734/1381, L.R. No. 3734/1382 and L.R. No. 3734/1383. He stated further that this plan to exchange the parcels of land fell through and has not been implemented to date therefore the subdivisions are still intact. He added that as at present, the Respondent holds only the original title for L.R. No. 3734/613 and L.R. No. 3734/627 and that no separate titles have ever been issued to them showing that they own L.R. No. 3734/1381, L.R. No. 3734/1382 and L.R. No. 3734/1383. He further averred that pursuant to powers conferred upon it by clause 2 of the Trust Deed, due to the great demands made on it by increase in its congregation, the Respondent has embarked on an expansion of the facilities on the suit property.

Both the Applicant and the Respondent filed their respective written submissions.

The first prayer sought by the Applicant is to be allowed to amend the Originating Summons filed herein to include subdivisions of L.R. No. 3734/613 namely L.R. No. 3734/1381, L.R. No. 3734/1382 and L.R. No. 3734/1383 as part of the suit properties in this suit. Firstly, going by the Survey Report annexed to the Applicant's Supporting Affidavit, the alleged subdivisions were conducted in January 2012 while the Applicant filed this suit on 1st November 2012. The alleged subdivisions are not a recent event as implied by the Applicant. Secondly, the Respondent states that the subdivisions were not completed to the extent of issuance of separate title deeds. They have stated that they still hold the original title for L.R. No. 3734/613. That being the case, the reference to L.R. No. 3734/613 in the Originating Summons appears to suffice. Thirdly, this suit is parheard. Allowing an amendment of the Originating summons at this stage will serve no useful purpose and is unnecessary. I decline to allow the amendment.

The other prayers seek an order of temporary injunction directed at the Respondent. The Respondent opposes the developments on the suit properties that are presently being conducted by the Respondent citing lack of consultation. This prayer was the subject of an earlier application by the Applicant that this court declined to allow. In that Ruling, the court had this to say:

“The applicant’s prayers if granted would have such far reaching impact upon the Church and place the 1000+ membership in a state of uncertainty and even confusion should this Court

grant the said prayers in the interim period and later make a different finding on the same issues after the hearing of the Originating Summons and consideration of all evidence presented at that juncture.“

The issue of granting a temporary injunction is therefore res judicata.

This Application is in the premises dismissed. Costs shall be in the cause.

The court shall give a date for the further hearing of this suit so that all the issues arising herein may be laid to rest once and for all.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF MARCH 2017.

MARY M. GITUMBI

JUDGE