



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO.103 OF 2007**

**ROBERTMUKARANI SIMITI.....1<sup>ST</sup> PLAINTIFF**

**JOSEPH WANDAKA.....2<sup>ND</sup> PLAINTIFF**

**FRED WANGILA.....3<sup>RD</sup> PLAINTIFF**

**=VERSUS=**

**PETER BADHIA .....1<sup>ST</sup> DEFENDANT**

**PETER WEKESA.....2<sup>ND</sup> DEFENDANT**

**ANNE WEKESA.....3<sup>RD</sup> DEFENDANT**

**DR TIMOTHY PIERCE .....4<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

**INTRODUCTION.**

1. The three Plaintiffs are officials of Hope Centre Children's Home (Hope Centre) a community based organization operating a children's home for the less fortunate at Kiminini area of Kitale in Trans-Nzoia County. Hope centre was started in the 90's at a place called Kipsongo within Kitale Municipality.

2. The Defendants were initially associated with Hope Centre but due to differences mainly caused by the first plaintiff, who was the pioneer of Hope Centre and a key player, the defendants pulled out of Hope Centre and some of them are now operating a separate children's Home called Faith Centre Children's Home near Kitale town (Faith Centre).

3. The 4<sup>th</sup> Defendant (Dr Pierce) is a resident of Alabama state of the United States of America (USA). He has been engaged in missionary work for most of his life. He was mostly based in India. While on his missionary work in India, he met the first Defendant. The first Defendant introduced him to their common friend **Robert Mukarani Simiti** (Pastor Simiti) a Pastor who was operating Hope Centre.

4. When Dr Pierce visited Kenya in 2006, he was taken to Hope Centre which was then based at Kipsongo an area which is like a slum within Kitale Municipality. Dr Pierce did not like the location of Hope Centre. He promised to go and look for funds to purchase land where Hope Centre could be moved to.

5. Dr Pierce solely raised funds for purchase of land for hope Centre. On 24<sup>th</sup> March 2006, two parcels of land namely **LR No. Kiminini/ Kinyoro Block 4/ Rafiki/27** and **28** measuring five and one acre each were purchased from one **Richard Gichia Njau** at a consideration of **Kshs.4,035,000/=**. Hope Centre in the transaction was represented by second defendant and Dr Pierce .

6. The two parcels were then registered under the trustees of Hope Centre. After the purchase of the two parcels, Pastor Simiti initially showed reluctance to move Hope Centre to the new premises. Dr Pierce renovated a house which lay on **LR No.Kiminini/Kinyoro Block 4/Rafiki/28** Pastor Simiti later relocated some of the children to the new premises. However as at the time, the relationship between Pastor Simiti and the defendants had been seriously strained that they could not work together.

7. Pastor Simiti wrote e-mail to Dr Pierce advising him to work with him rather than working with other people like **Peter Badhia**, the first defendant. Pastor Simiti even started soliciting for people from USA to purchase the two properties which had been purchased for Hope Centre.

8. When Faith Centre was established, its trustees tried to have the two properties registered in the name of Faith Centre. This move was strongly resisted by the officials of Hope Centre led by Pastor Simiti. This is what prompted the plaintiff to file this suit in which they seek the following reliefs.

***(a) A declaration that Hope Centre is the sole proprietor of all those parcels of land known as Kiminini/ Kinyoro Block 4/Rafiki/27 and 28 and that the defendants, their agents, servants and/or all those claiming through them have no interest in those parcels.***

***(b) A permanent injunction against the defendants jointly and severally restraining the defendants, their agents, servants, agents and/or all those claiming through the defendant from entering or dealing in any manner with the two parcels.***

#### **PLAINTIFFS CASE.**

9. It is the plaintiffs' case that the two properties solely belong to Hope Centre. That Dr Pierce was just one of the donors of Hope Centre and that there was no intention that Dr Pierce and others like **Peter Badhia** ( first defendant) were to have a stake in Hope Centre.

#### **DEFENDANTS CASE.**

10. It is the defendant's case that the two properties now registered under Hope Centre were solely bought through funds provided by Dr Pierce. That Pastor Simiti and his group are out to grab the two properties. That Pastor Simiti had at some stage tried to solicit for people from USA to purchase the properties. That Pastor Simiti is the cause of problems between the plaintiffs and the defendant. That Pastor Simiti had been dissuading Dr Pierce from working with other defendants like **Peter Badhia** the first defendant. The defendants now want the plaintiff's case dismissed and that the properties in the name of Hope Centre transferred to Faith Centre.

#### **ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION**

11. There is no contention that the two properties namely **Kiminini/ Kinyoro Block 4/Rafiki/ 27** and **28** (suit properties) are registered in the name of Hope Centre. The issue for determination in this suit is whether the suit properties solely belong to Hope Centre.

12. It is not contested that the entire purchase price for the suit properties was raised by Dr Pierce. The initial deposit was paid by Dr. Pierce. The balance of the purchase price was paid through funds wired into the account of Hope Centre by Dr Peirce's mother at the request of Dr Pierce. A receipt of transfer of **50,000 US dollars** was produced as defence **exhibit 9**. An e-mail communication of the transfer of the amount was also produced as defence **exhibit No.10**. An international funds transfer was produced as defence **exhibit 8**.

13. When the funds were received at Co-operative Bank of Kenya Limited, a sale agreement was made. The purchaser was Hope Centre represented by Pastor Simiti Dr Pierce , the first and second defendants. The sale agreement was produced as defence exhibit 1. The purchased properties were later registered in the name of Hope Centre as per copies of title deed produced as defence exhibit **2 (a) and (b)**.

14. From the beginning, it is clear that the intention of the plaintiffs and the defendants was to work together. The problem started when Pastor Simiti expressed reluctance to relocate from Kipsongo to the suit properties. This caused friction between Pastor Simiti on the one hand and Peter Badhia ( first defendant) and Dr Pierce on the other hand. There is an e-mail produced as defence exhibit 7. This e-mail is from Pastor Simiti to Dr. Pierce asking him not to work with the first and second defendants whom he refers in the e-mail as the two Peters. Pastor Simiti expressed his dislike for the two and vowed to go to Court. He however said in the e-mail that he was not averse to working with Dr. Pierce .

15. Dr Pierce sent a contractor to Hope Centre to go and drill a borehole. The contractor was paid **Kshs.600,000/-** but he was not allowed to do so because he was prevented by employees of Hope Centre. An acknowledgement of **Kshs.600,000/=** by the contractor was produced as defence exhibit 6.

16. It is clear that Pastor Simiti was out to make money using the property which had already been purchased. An e-mail dated 30<sup>th</sup> August 2006, was produced as defence exhibit 3. In this e-mail, Peter Simiti asked foreign donors to purchase six acres for a children's home. He told the donors that he had identified six acres which had a house on it. The six acres he was referring to in his e-mail is the suit properties one of which had a house on it. Even though in his evidence, he tried to deny that this was a different property it is clear that he wanted to make money through fraudulent means. He wanted to convince the donors to buy the very property which had already been purchased.

17. The defendants produced minutes and resolutions in which it was resolved that Peter Simiti had been removed as trustee of Hope Centre. There is no evidence whether this was done in accordance to the rules governing Hope Centre. The convenors of the meetings were **Dr Pierce, Peter Badhia** and **Peter Wekesa**. I therefore have no basis of finding that Pastor Simiti was properly removed as a trustee.

18. There were attempts to have one of the properties transferred to Faith Centre. This did not work as the properties are still in the name of Hope Centre. The differences between the two groups escalated. There were even reports to police station and accusations of mismanagement. What is clear however is that the intention of the plaintiff and the defendants was to work together. This was not possible because of friction caused by the actions of Pastor Simiti.

19. What happened between the plaintiff and the defendants is what is commonly afflicting most donor funded projects. People have their own selfish interests and they want to benefit under the guise of helping the less fortunate in the society. Regrettably, most of the cases of such kind of behaviours fall on innocent children who end up being used to enrich some people.

## **CONCLUSION**

20. This case is a clear example of people who want to use donors and then dump them. It is clear that Dr Pierce was brought on board not just as donor but a person with stake in Hope Centre. He solely provided funds for purchase of the suit properties. He found himself in the crossfire involving Pastor **Simiti ,Peter Wekesa** and **Peter Badhia** on the Management Hope Centre. I therefore find that the plaintiff's suit against the defendants is misconceived. The same is hereby dismissed with costs to the defendants.

It is so ordered.

Signed at **Nairobi**.

**E.O.OBAGA**

**JUDGE**

Dated, and delivered at *Kitale* on this *8<sup>th</sup>* day of *March 2017*.

**F.M.NJOROGE**

**JUDGE**

In the presence of ;-

Mr Bisonga for the Plaintiffs

M/s Kiplangat for Mr Samba for Defendants

Court Assistant : Isabella

**F.M.NJOROGE**

**JUDGE**