



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CIVIL SUIT NO. 184 OF 2016

PATRICK MUTIA MALOMBE

POLYCAP MAITHYA NGAU

TITUS KALAMBA MASUMBA (Suing in their official capacity as

Treasurer, Secretary and Vice-chairman (devt.) respectively

of Believers Deliverance ministries.....PLAINTIFFS/APPLICANTS

VERSUS

PETER MUKORA CHEGE

DANIEL CHEGE KARANJA alias AMANI

NICHOLAS NYORO GIOGO.....DEFENDANTS/RESPONDENTS

RULING

1. For determination is the application dated 8th July 2016 in which the applicant seeks for the following orders: -

a) Spent

b) Spent

c) That an injunction do issue restraining the defendants by themselves or their servants or agents from entering, evicting, demolishing or in any other manner whatsoever interfering with the plaintiffs and other ministry members occupation and use of plot No. Msa/West/2557 pending the hearing and determination of this application inter parties.

d) Costs of the suit to be paid by the defendants.

2. The applicant avers that it purchased a portion of the suit plot from Salome Gathoni Chege and thereafter developed the same. That the defendants on 6th July 2016 without any notice or Court order descended on the applicant's premises and began demolishing their properties. The applicant fears that unless the defendants are restrained by an order of this Court, they will continue with the demolitions

which action is unlawful. It is their prayer that the orders sought be granted. To support their application, they have annexed a sale agreement dated 31st October 2011 and pictures of their structures.

3. The application is opposed by the Respondents through a replying affidavit sworn by the 1st Respondent Peter Mukora Chege. He deposed that the application is based on misrepresentation of facts and ought to be dismissed. That he is the co-administrators of the estate of Daniel Chege who is the registered owner of the suit property. Mr Chege deposed that he discovered the plaintiffs' presence in the suit property in 2009 and immediately served them with a demand notice to vacate.

4. In reply to the demand notice, the applicants wrote through their previous advocates annexing a lease agreement signed between them and Salome Gathoni the other administrator. The Respondent contend that his mother could not legally enter the lease agreement without his consent and or involvement. That the applicants ignored the counsel of their advocate then and continues to be unlawfully in possession of the suit premises. The Respondents also dispute the alleged sale. Lastly that they are the ones in possession therefore this application ought to be dismissed. He annexed copies of the letters of administration title, demand letter and the lease agreement.

5. The plaintiff filed a supplementary affidavit in which it annexed copies of hand written notes acknowledging payments made towards purchase of the suit property. The applicant thus denies it has come to Court with unclean hands instead stating that the 1st defendant all along from 2009 knew of their interest on the land but did nothing. The applicant says it has a good case and urged the Court to grant the orders sought.

6. The advocates for the parties filed written submissions which I have read and considered. The defendants attack the application on the basis that the sale agreement displayed by the applicant was entered into by a single administrator when they were joint administrators hence null and void. The applicants on their part submit they have shown a prima facie case because they entered the premises legally through a lease and subsequently bought the same.

7. The facts brought out in the pleadings does show the applicants is in possession. The initial possession was obtained through a lease annexed by the Respondent which lease was for a period of 5 years from 2007. By the contents of the applicant's previous advocate's letter, the applicant admitted that they were unaware of the joint administration of the estate of Daniel Chege who is the owner of the suit property. Further by a letter dated 1.12.2009 written by Omondi Waweru & Co Advocates to the current advocates of the Respondents, they advised the applicant to stay put in the premises until the matter is resolved as between the co-administrators.

8. The 1st Respondent did not in the replying affidavit disclose to this Court if this issue was resolved given that Salome Gathoni the co-administrator was his mother. Besides the correspondences of 2009, there is no notice or Court order served on the applicant to vacate the suit property. The defendants have not denied descending on the suit property on 6th July 2016 demolishing the church property with an intention to obtain vacant possession. In my view this was not the lawful way to remove the applicant from the premises having been aware of their presence from 2009. On this account of adopting an unlawful process to evict the plaintiff, I am obliged to grant the applicant the orders sought.

9. Further, the applicant has annexed copies of documents of payment for the portion they occupy and a sale agreement dated 31st October 2011 alleging purchase of portion of the suit property measuring 156 feet by 41 feet. The agreement may be null and void as is deposed to and submitted by the Respondents but they have not moved the Court to nullify it so that they can safely say the applicant is a trespasser on the land. For this reason, I am satisfied that the applicant has laid out a prima facie case. Whether it would succeed or not is not a matter that can be determined at this interlocutory stage. The decision in the case of **Koto Kamwe Amoni vs Gello & Company Ltd, C. A in Ghana** was reached after the case was heard on merits and is therefore distinguishable.

10. For the reasons given above, I am satisfied the application has merit and do grant it in terms of

prayer(c). The order shall apply in respect to the portion of the suit premises occupied by the applicant measuring 156 feet by 41 feet. The Respondents are at liberty to deal with the remainder of the plot (if any) as they deem fit. The costs of the application abide the outcome of the suit.

Dated, signed and delivered at Mombasa this 11th day of April 2017.

A. OMOLLO

JUDGE