



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 483 OF 2015

NYAMOKENYE MARANATHA FAITH ASSEMBLIES.....PLAINTIFF

VERSUS

BOSCO MOGERE1ST DEFENDANT

FRANCIS MOCHACHE2ND DEFENDANT

JOSHUA OYARO3RD DEFENDANT

ALLOYS BOSIRE4TH DEFENDANT

GEORGE MOGERE5TH DEFENDANT

HEREN MOGERE6TH DEFENDANT

R U L I N G

1. The plaintiff, a registered church organization under the Societies Act, Cap 108 of the Laws of Kenya instituted the present suit vide a plaint (undated) but filed in court on 29th October 2015. The plaintiff claims the defendants have trespassed on land parcel number **West Kitutu/Bokingoina/2088** and seeks an order of eviction against the defendants and a permanent injunction restraining the defendants from entering the suit property.

2. The defendants in their statement of defence inter alia denied that the plaintiff has the legal capacity to institute the present suit. The defendants on 29th April 2016 filed a preliminary objection on points of law and raised the following grounds:-

1. The plaintiff lacks legal capacity.

2. Lack of jurisdiction of the court.

The court directed that the preliminary objection be argued by way of written submissions. Both the defendants and the plaintiff filed their respective submissions.

3. The defendants have submitted that the plaintiff lacks any legal standing in initiate court proceedings in its own name arguing that it can only do so through its officials and/or trustees. The defendants have placed reliance to support their submission on the cases of **Eritrea Orthodox Church –vs- Wariwax General Ltd [2007] eKLR** and **African Orthodox Church of Kenya –vs- Rev. Charles Omuroka &**

Another [2014] eKLR where the court emphatically stated that an unincorporated religious organization registered under the Societies Act, Cap 108 cannot initiate a civil suit in its own name.

4. Onyancha, J. in **Eritrea Orthodox Church –vs- Wariwax Generation Ltd** (supra) stated thus:-

“It is now trite law that a society registered under the said Act is not an incorporated body which can assume capacity to sue in its own name in any legal proceedings. It is an ordinary society whose members, if they wish to sue, can do so only under a representative capacity under Order 1 Rule 8 of the Civil Procedure Rules.”

5. In the said case the Judge cited with approval the holding by Bosire, J. (as he then was) in the case of **Free Pentecostal Fellowship in Kenya –vs- Kenya Commercial Bank in Nairobi HCCC No. 5116 of 1992 (OS)** (unreported) where the Judge stated:-

“The position in common law is that a suit by or against unincorporated bodies of persons must be brought in the names of, or against all the members of the body or bodies. Where there are numerous numbers, the suit may be instituted by or against one or more such persons in a representative capacity pursuant to the provisions of Order 1 Rule 8 of the Civil Procedure rules. In the instant matter the suit was instituted in the name of the religions organization. It is not a body corporate which would then mean it would sue as a legal personality. That being so it lacked the capacity to institute proceedings in its name.”

In the case of **African Orthodox Church of Kenya –vs- Rev. Charles Omuroka & Another** (supra) Mwita, J. upholding the decision by Onyancha, J. in the **Eritrea Orthodox Church** case (supra) equally held that churches being societies registered under the Societies Act have no capacity to sue or be sued in their own names.

6. The plaintiff for its part submitted that the suit property **LR No. West Kitutu/Bokingoina/2088** is registered in its name and thus that gives it the locus to institute this suit. It is debatable whether the plaintiff can hold immovable property in its name but that is not what concerns me in the present matter but rather whether or not the plaintiff can sue or be sued in its name. I agree with my colleague Judges in their exposition of the law and I have no intention of reinventing the wheel and I will content myself by making reference to Halsbury’s Laws of England, 3rd Edition Volume 18 paragraph 239 which I think fortifies the position and states:-

“The trustees of a registered society or branch or officers authorized by its rules may bring or defend actions of legal proceedings with respect to any property, right, or claim of the society or branch and may sue and be sued in their proper names without other description other than the title of their office.”

7. Thus in my view a registered society could only sue through registered trustees who may be incorporated under the provisions of the Trustees (Perpetual Succession) Act, Cap 164 Section 3 to acquire corporate identity or through the officials of the society in a representative capacity. In the instant suit the plaintiff has included a certificate of registration No. 4299 dated 7th July 2003 in the name of **“Maranatha Faith Assemblies”** among its documents although the suit is filed in the name of **“Nyamokenye Maranatha Faith Assemblies”**. It is not explained when or how the change of name occurred but paragraph 1 of the plaint is clear that the plaintiff is a church organization registered under the Societies Act. That being the case it is my holding that the plaintiff lacked the legal capacity to institute the suit in its name. The suit is incompetent and unsustainable.

8. I uphold the defendants’ preliminary objection and accordingly order the plaintiff’s suit struck out with costs to the defendants.

Ruling dated, signed and delivered at Kisii this 31st day of May, 2017.

J. M. MUTUNGI

JUDGE

In the presence of:

.....for the plaintiff

.....for the 1st to 6th defendants

.....court assistant

J. M. MUTUNGI

JUDGE