



**REPUBLIC OF KENYA**

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

**ELC. PETITION NO. 6 OF 2017**

**REV. HANNINGTON KYENGO MUNYAO.....1<sup>ST</sup> PETITIONER**

**JOEL MUTUKU MBITHI .....2<sup>ND</sup> PETITIONER**

**MARGARET KANINI KISILA .....3<sup>RD</sup> PETITIONER**

**DAVID MUEMA NGINDA .....4<sup>TH</sup> PETITIONER**

**STEPHEN MUTHWII KITONGA.....5<sup>TH</sup> PETITIONER**

**JIMMY NTHENGE MWAKA .....6<sup>TH</sup> PETITIONER**

**SAMUEL WAMBUA KITUNA .....7<sup>TH</sup> PETITIONER**

**AGNES SYOKAU MULWA .....8<sup>TH</sup> PETITIONER**

***(ALL PETITIONING ON THEIR BEHALF AND ON BEHALF OF***

***206 OTHERS AS MEMBERS OF AFRICA INLAND CHURCH MUISUNI)***

**VERSUS**

**BENARD NGUYO ..... 1<sup>ST</sup> RESPONDENT**

**JAPHETH ITUMO .....2<sup>ND</sup> RESPONDENT**

**JACOB MUSILA.....3<sup>RD</sup> RESPONDENT**

**SHADRACK MUTHAMA.....4<sup>TH</sup> RESPONDENT**

**PHILIP NGATA MUIA .....5<sup>TH</sup> RESPONDENT**

**JACKSON KAINDE .....6<sup>TH</sup> RESPONDENT**

**GEORGE MUTUNE .....7<sup>TH</sup> RESPONDENT**

**JONATHAN MUTETI .....8<sup>TH</sup> RESPONDENT**

SILVANUS NZIOKA .....9<sup>TH</sup> RESPONDENT

JOSEPH KIMANI KARIUKI .....10<sup>TH</sup> RESPONDENT

## RULING

1. What is before me is the Petitioners' Notice of Motion dated 14<sup>th</sup> March, 2017 and the Respondents' Application dated 23<sup>rd</sup> March, 2017. The Respondents also filed a Notice of Preliminary Objection dated 17<sup>th</sup> May, 2017.
2. In the Application dated 14<sup>th</sup> March, 2017, the Petitioners are seeking for the following orders:
  - a. That pending hearing and determination of the Petition, a conservatory order be issued restraining the Respondents either by themselves or through their agents, employees, servants or principal from evicting the Petitioners or any other members of African Inland Church Muisuni, from land parcels numbers Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 or in any other way preventing the Petitioners and other members of the church from using, occupying or carrying on activities on the aforesaid land.*
  - b. That pending hearing and determination of this Petition, a conservatory order be issued restraining the Respondents either by themselves or through their agents, employees, servants or principal from evicting the Petitioners or any other members of Africa Inland Church Muisuni, from land parcels numbers Kangundo/Muisuni/945 and Kangundo/Muisuni/1009 or in any other way preventing the Petitioners and other members of the church from using, occupying or carrying on activities on the aforesaid land.**
  - c. That the Respondents do pay costs of this Application.*
3. The Application is premised on the grounds that the Petitioners are members of Africa Inland Church who are the owners of the suit land; that on the suit land, there is a church and a children's home; that the Respondents have been interrupting the Petitioners and the members of the church such that they cannot worship in peace and that the Respondents have no claim over the suit land.
4. In his Affidavit, the 1<sup>st</sup> Petitioner deponed that the Petitioners are members and leaders of Africa Inland Church Muisuni; that the church is an affiliate of the Africa Inland Church, Kenya whose organizational structure has the Local Church Council (LCC) and that the Local Church Council (LCC) officials are elected from the leaders of a station amongst its members.
5. According to the Petitioners, the church held its elections in October, 2013 and elected its official in the Local Church Council (LCC); that the Local Church Council (LCC) has been running the church programs including the Management of the Children's home and that the 1<sup>st</sup> Respondent purported to suspend the Local Church Council (LCC) and the Children's home manager.
6. It is the Petitioners' case that since 22<sup>nd</sup> January, 2017 to 12<sup>th</sup> March, 2017 the Respondents have been interrupting all the Sunday Services and that the land on which the church and the children's home stand was lobbied for by the members who have the right to use and occupy the same.
7. In the Application dated 23<sup>rd</sup> March, 2017, the Respondents are seeking for an order that the ex-parte orders granted on 17<sup>th</sup> March, 2007 be set aside and for the striking out of the Petition.
8. According to the Affidavit of the 1<sup>st</sup> Respondent, he is the Bishop of the Africa Inland Church (AIC) Kenya, Machakos; that the 1<sup>st</sup> to the 9<sup>th</sup> Respondents are the registered officials of Africa Inland Church (AIC) and that under the organizational structure of the church, he is the one in charge of the church in Machakos of which Kangundo is a branch.

9. The 1<sup>st</sup> Respondent deponed that Africa Inland Church (AIC) is organized into five administrative councils: the Local Church Council (LCC), the District Church Council (DCC), The Regional Church Council (RCC), the Area Church Council (ACC) and the Central Church Council (CCC).
10. The 1<sup>st</sup> Respondent deponed that the Petitioners do not have any evidence of proprietary interest in the suit properties; that the suit properties belong to the Africa Inland Church (AIC), Kenya and that under the church's Constitution, all the properties of the church are held by its Board of Trustees-the Africa Inland Church Kenya Trustees Registered and that the Petitioners are not the trustees of the church.
11. It is the Respondents' case that the church runs several Children's Homes including Africa Inland Church (AIC) Kangundo Children's Home situated on parcel of land known as Kangundo/Muisuni/1009 and that under Article 7.11(3), the Children's Home fall under the Central Church Council (CCC), the top most organ of the church; that the Central Church Council (CCC) has mandated the Area Church Councils (ACC) countrywide to run the homes in their respective regions and that the Africa Inland Church (AIC) Kangundo Children's Home is run jointly by the Africa Inland Church (AIC) Machakos, Area Church Council (ACC) and a third party, the Kenya Kids Organization.
12. The 1<sup>st</sup> Respondent finally deponed that the 2008 Constitution of the Church and the By-laws set out how a dispute shall be commenced through the church ranks and that the Petition was pre-maturely filed.
13. In his Replying Affidavit, the 1<sup>st</sup> Petitioner deponed that the official searches shows that the suit properties were set aside for Africa Inland Church (AIC) Muisuni; that if the land was held by trustees as alleged, the same would have been registered in their names and that the issue of the leadership of the church is not the subject of the Petition.
14. In the Notice of Preliminary Objection, the Respondents have averred that the Petitioners have not exhausted the dispute resolution process as provided for under the Constitution and By-laws of the church and that the Petitioners did not have the legal capacity to commence the proceedings.
15. In his submissions, the Petitioners' advocate submitted that the dispute before the court involves ownership, use and occupation of parcels of land known as Kangundo/Muisuni/945 and 1009; that the suit properties were set aside by the County Government of Machakos for use by Africa Inland Church (AIC) Muisuni and that the dispute herein has nothing to do with the leadership wrangles.
16. Counsel submitted that it is the leaders of the local church that have the mandate and responsibility to take care of and secure the property of the church.
17. Counsel submitted that the Petitioners have the freedom of worship and that even if the land belongs to the trustees of Africa Inland Church (AIC) Kenya, the said trustees can only hold the suit properties in trust for the members of the church.
18. The Petitioners' advocate finally submitted that the beneficiaries of a trust have a right to make a claim or sue the trustees in respect of property belonging to a trust and that the suit property herein belongs to the members of the church and not the Respondent.
19. The Respondents' advocate submitted that this court does not have jurisdiction to adjudicate the suit; that the Constitution and the rules of the church provides for dispute resolution procedures and that it is this procedure that should be followed.
20. Counsel submitted that being not trustees, the Petitioners do not have the *locus standi* to institute the suit.
21. The Respondents' counsel submitted that the Petitioners have failed to state with precision the alleged violations of their rights and that in any event, the Petitioners have not demonstrated a prima facie case to

warrant conservatory orders.

22. In their Petition and Supporting Affidavit, the Petitioners have averred that they were elected as members of the Local Church Council (LCC), and effectively became the trustees of the Africa Inland Church (AIC), Muisuni, for a period of five (5) years.

23. It is the Petitioners' case that none of the Respondents are members of the local church and that it is the Petitioners who have the right to occupy and use the suit properties without any interference from the Respondents.

24. The Respondents have argued that the suit land does not belong to the Petitioners and that in any event, this court does not have the requisite jurisdiction to handle the dispute. I shall therefore deal with the issues raised in the Notice of Preliminary Objection first.

25. It is not clear whether it is the Constitution of 1981 or the amended Constitution of 2008 of the church that is applicable in this case. However, for the purpose of this Ruling, I shall look at 2008 Constitution and the 2015 By-laws.

26. The Constitution of the church provides that the Central Church Council (CCC), which is the top organ of the church, shall "*from time to time make By-laws to compliment this Constitution*" which shall "*act as the standards for the administration of the entire Ministry of the Africa Inland Church –Kenya.*"

27. Chapter XII of the 2015 By-laws establishes the Area Church Councils Tribunals whose mandate is to handle all disciplinary matters within the area, and the decisions of the Tribunals are appealable to the Central Church Council.

28. It is therefore obvious from the provision of Clause (d) of Chapter XII of the By-laws of the church that the dispute resolution mechanism provided for in the By-laws is limited to handling "*all disciplinary matters within the Area.*"

29. The dispute before me is on the issue of ownership and user of parcels of land known as Kangundo/Muisuni/945 and 1009 and not a disciplinary issue amongst the members of the church.

30. In the circumstances, the dispute could not be subjected to the internal dispute resolution mechanism provided for in the By-laws as argued by the Respondents.

31. The Respondents have not denied that the Petitioners are members of the Africa Inland Church (AIC), Muisuni and that some of them were elected in the Local Church Council pursuant to the Church's Constitution and the By-laws. The Respondents have also not denied that the Africa Inland Church (AIC) Muisuni is an affiliate church of Africa Inland Church (AIC) Kenya.

32. According to the Respondents, the suit properties herein are held by a Board of Trustees, the Africa Inland Church Kenya Trustees Registered and that the Petitioners have no *locus standi* to bring this suit in respect to the suit land.

33. As I have stated above, the Respondents have not denied that the Petitioners are members of Africa Inland Church (AIC), Muisuni. If indeed it is true that the Respondents are holding the suit property as trustees of the church, then the Petitioners, who would be beneficiaries of such a property, have every right to challenge any illegal dealings pertaining to the suit land by the Respondents.

34. It is trite that a trustee is anyone in a position of trust, who holds property, authority, or a position of trust for the benefit of another, known as a beneficiary. A beneficiary always has a legal standing to challenge the manner in which a trustee is managing the property under trust. The Petitioners in this matter therefore have the *locus standi* to file the Petition even in a situation where it is shown that the suit land is owned by the Respondents as trustees of the church.

35. The Petitioners have annexed a copy of the official search showing that parcel of land known as Kangundo/Muisuni/945 and 1009 was registered in favour of Masaku County Council in 1997. The said land was then reserved for Muisuni Africa Inland Church.

36. The official searches do not show that the land is registered in favour of the Africa Inland Church Kenya Trustees Registered. Consequently, the Petitioners, being the members and officials of Africa Inland Church (AIC), Muisuni, are, prima facie, entitled to the land and not the trustees of Africa Inland Church (AIC) Kenya.

37. In the absence of evidence to show that indeed the land is owned by the trustees of Africa Inland Church (AIC), and in view of the fact that Africa Inland Church (AIC) Muisuni has duly appointed officials to manage the land and the institutions standing on the land, I find that the Petitioners have established a prima facie case with chances of success.

38. For those reasons, I allow the Application dated 14<sup>th</sup> March, 2017 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2017.**

**O. A. ANGOTE**

**JUDGE**