



REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT  
AT KERUGOYA  
ELC CASE NO. 86 OF 2015

AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF KENYA.....1<sup>ST</sup> PLAINTIFF  
ZACHARY GATIMU KAROKI.....2<sup>ND</sup> PLAINTIFF  
SIMON MATHU GIKUNJU.....3<sup>RD</sup> PLAINTIFF

VERSUS

AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF AFRICA.....1<sup>ST</sup> DEFENDANT  
WILLIAM KAMOCERE KIBUCHI.....2<sup>ND</sup> DEFENDANT  
JOHN WANJOHI MURIMI.....3<sup>RD</sup> DEFENDANT  
ELIZABETH WAMBURA WANJOHI.....4<sup>TH</sup> DEFENDANT  
SAMUEL MATHENGE KANJA.....5<sup>TH</sup> DEFENDANT  
NANCY WAMBUI MURAGE.....6<sup>TH</sup> DEFENDANT

**JUDGMENT**

By their plaint filed herein on 23rd July 2015, the plaintiffs seek for the following orders against the defendants:-

- a. A declaration that plot No. MWERUA/KABIRIRI/66 belongs to the plaintiffs and they are the ones supposed to develop it.*
- b. A permanent injunction restraining the defendants by themselves, their servants, employees or agents or any one claiming through them from interfering, harassing, intimidating the plaintiffs' member KIGANJO A.I.P.C.K Church.*
- c. Costs of the suit.*
- d. Any other relief the Court deems fit and proper to grant.*

The basis of the plaintiffs claim is that they have built a house of worship on plot No.

MWERUA/KABIRIRI/66 which was given to them by **IRUNGU NA MWANGI GROVE SELF HELP GROUP** but the defendants keep demolishing it claiming that they own the said plot.

In their defence however, the defendants have pleaded that the plaintiffs have no locus standi to institute this suit adding that although the plaintiffs were members of the 1st defendant church, they have since left and built their own church at Kianyaga. The defendants further add that the plot in dispute was given to them 40 years ago by the then Kirinyaga County Council.

The 1st plaintiff called the Church Secretary **ZACHARY GATIMU KAROKI** (PW1) and its Chairman **SIMON MATHU GIKUNJU** (PW2) as witnesses. It was their evidence that the plot No. MWERUA/KABIRIRI/66 (the suit plot) was allocated to the 1st plaintiff church by a group known as the **MUTITHI/IRUNGU NA MWANGI SELF HELP GROUP** in 2001. However, the defendants demolished their church and so **KERUGOYA CHIEF MAGISTRATE'S COURT CIVIL CASE No. 211 of 2001** was filed to restrain the defendants from interfering with the plaintiff's church. Following disagreements between the Church membership, the 1st plaintiff church now conduct their prayers in the house of their secretary.

Their witnesses **CYRUS KIAMA** (PW3) and **TIMOTHY KARIUKI** (PW4) testified that the suit plot was given to the plaintiff church by the **MUTITHI/IRUNGU NA MWANGI SELF HELP GROUP** before a conflict emerged in the church.

**JOHN WANJOHI MURIMI** the 3rd defendant testified on behalf of the defendants and said he has been a preacher at the 1st defendant church since 1979. He said the church was constructed in the 1980's when it was known as the African Independent Pentecostal Church of Africa and was given the suit plot by the then County Council of Kirinyaga. He produced the application made by the church for the plot, the certificate of registration and photographs of the church – see defence Exhibits 1 to 3. He therefore asked the Court to dismiss the plaintiff's case with costs.

Submissions have been filed both by the 1st plaintiff's Secretary and Chairman and also by **Mr. NDANA** advocate for the defendants.

I have considered the evidence by both sides and the submissions.

The plaintiff's main prayer is a declaration that they are the owners of the suit plot. As part of their evidence, they have produced the certificate of official search in respect of the said plot (Plaintiff's Exhibit 1). The said certificate clearly shows that the suit plot is registered in the names of the **COUNTY COUNCIL OF KIRINYAGA**. In the circumstances, neither the **MUTITHI/IRUNGU NA MWANGI SELF HELP GROUP** nor any other person or body had any right to pass any interest in the suit plot to the plaintiffs. In other words, the plaintiffs do not have any interest in the suit plot recognized under the land law regime in this country.

On the other hand, the defendants have produced as part of their evidence a letter dated 25th August 1986 (Defence Exhibit 1) approving the application by the 1st defendant church for one acre for the construction of a church. Assuming that the one acre of land which the 1st defendant was allowed to develop is the suit plot, then the same plot could not be available for allocation in 2003 when the 1st plaintiff church was registered. Clearly therefore, the plaintiffs are not the owners of the suit plot and therefore this Court cannot issue a declaration to that effect.

The plaintiffs also seek a permanent injunction to restrain the defendants by themselves, their agents, servants or employees from interfering, harassing or intimidating them. It is clear from the plaintiffs own evidence that following differences between the church membership, two factions arose being the 1st plaintiff and the 1st defendant. However, it is the 1st defendant that occupies and utilizes the house of worship on the suit plot. During cross-examination, the 1st plaintiff's Chairman **SIMON MATHU GIKUNJU** said as follows:-

*“When the Church was given the land, it was known as A.I.P.C.A and not A.I.P.C.K. I confirm*

***that when the suit land was given to the Church, it was known as A.I.P.C.A i.e. African Independent Pentecostal Church of Africa which is the 1st defendant herein. Currently, it is the 1st defendant Church which is occupying the land. The plaintiffs i.e. African Independent Pentecostal Church of Kenya utilizes the home of our Secretary for prayers”***

Indeed the 1st plaintiff’s Secretary **ZACHARY GATIMU KAROKI** (PW1) testified in cross-examination as follows:-

***“The 1st plaintiff did not construct any church on the land in dispute. It is the defendants who are utilizing the land subject of this suit”***

The same witness went on to state that:-

***“Currently, the 1st plaintiff church members meet at my home”***

Coupled with that is the evidence of the 3rd defendant **JOHN WANJOHI MURIMI** who is a preacher at the 1st defendant church. He testified that the 1st plaintiff church broke away from the 1st defendant church in 2003 and its members worship elsewhere. Under those circumstances, there would be no basis upon which this Court can issue the order of permanent injunction sought by the plaintiffs herein since the defendants are the ones who have always been in possession of the house of worship on the suit land since its inception.

Ultimately therefore, there is no merit in the plaintiffs’ suit. It is hereby dismissed with costs to the defendants.

**B.N. OLAO**

**JUDGE**

**4<sup>TH</sup> NOVEMBER, 2016**

Judgment delivered, dated and signed in open Court this 4<sup>th</sup> day of November 2016.

1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs present

3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants present

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**4<sup>TH</sup> NOVEMBER, 2016**