



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 130 OF 2013

THE REGISTERED TRUSTEE OF

MAXIMUM MIRACLE CENTER.....PLAINTIFF

=VERSUS=

ANDREW MLEWA MKARE.....DEFENDANT

J U D G M E N T

1. The Plaintiff moved this court by way of a Plaint dated 1st August 2013 and filed on the same day.
2. In the Plaint, the Plaintiff averred that it is the beneficial owner of land known as plot no. 14 Watamu measuring approximately 100feet by 80 feet (the suit property) on which portion it has constructed a church operating as the Maximum Miracle Centre, Watamu Branch (the church).
3. It is the Plaintiff's averment that the suit premises were acquired on or about the year 2007 through donations from members of the church, the church members tithes and donations from well wishers.
4. According to the Plaintiff, the Defendant was entrusted by the Plaintiff with overseeing the process of acquisition of the suit premises and the construction of the church thereon after being ordained as a pastor on 10th August 2008; that without any right or consent, the Defendant begun to unlawfully operate his own Ministry from the church premises and that the Defendant has refused to hand over possession of the suit property with the assets thereon to the Plaintiff.
5. In the Plaint, the Plaintiff is praying for a declaration that it is the beneficial owner of the suit property, a mandatory injunction, a prohibitory injunction and damages for trespass.
6. In his Defence dated 19th August 2013 and on the same day, the Defendant averred that other than being a pastor in the Plaintiff's church, he was never entrusted by the Plaintiff with the process of acquisition of the suit premises and construction of the church or at all.
7. It is the Defendant's case that he founded his own church in the year 2000 but became affiliated to the Plaintiff in the year 2004; that the he took a personal loan in the year 2007 and purchased the suit property with his own funds and put up a structure; that he has since moved out of the Plaintiff's affiliation arrangement and that the Plaintiff wants to unjustly enrich itself.

The Plaintiff's case:

8. PW1 informed the court that the Plaintiff's head office is in Nairobi. It was his evidence that the Plaintiff has branches across the country and a constitution.
9. Being the Plaintiff's administrator in charge of the Coast region, PW1 informed the court that he works with all branch pastors in the region.

10. It was his evidence that the work of pastors include overseeing projects and developments.
11. PW1 informed the court that the Defendant was ordained as a pastor on 10th August 2008 having been vetted and signed their Ministry's Commitment Form.
12. PW1 stated that the initial allottee of the suit property was Baya Joha and that it is the Plaintiff which purchased it.
13. According to PW1, it is the Plaintiff's church members who contributed the money that was used to purchase the suit property.
14. PW1 informed the court that the land and the building thereon belongs to the Plaintiff and not the Defendant.
15. In cross examination, PW1 stated that the suit property was bought between the year 2006-2007 and that the Defendant was ordained as a pastor in the year 2008.
16. It was the evidence of PW1 that every property purchased by the members of the church belongs to the Plaintiff; that the Defendant was the Plaintiff's trustee and that the members of the church knew that the Defendant was acquiring the suit property for the church.
17. PW1 stated that the Plaintiff is managed by a board of trustees; that a branch church is always under the branch pastor and that every branch has a committee.
18. PW2, a member of the Plaintiff informed the court that he became a member of the Plaintiff in the year 2004.
19. It was the evidence of PW2 that when he arrived in Watamu, he found a church whose building was made of Makuti at Timboni Inn which was rented out. After moving from one premise to another, it was the evidence of PW2 that the members eventually acquired the suit property around the year 2007.
20. According to PW2, the members raised the money for the purchase of the suit property and also conducted fund-raising.
21. PW2 stated that he prepared a list of the contribution of the members and that a committee was established in which he was a member.
22. The evidence of PW2 is that the church members were never consulted by the Defendant before the purchase of the suit property and that they came to know later that the Defendant had paid Kshs.300,000 for the suit premises.
23. It was the evidence of PW2 that he was never shown the agreement of sale of the suit property.
24. According to PW2, the Defendant requested the committee to hand to him the contribution by the members to enable him increase the shares that he had with his Sacco which they did. According to PW2, the money that was raised by the members of the church was Kshs.150,000 which they gave to the Defendant.
25. In cross-examination, PW2 stated that the Plaintiff's church in Watamu had church leaders who were the same members that constituted the church committee.
26. It was his evidence that the committee was not involved in the purchase of the suit property although the Defendant informed them later that he had purchased the suit property.
27. It was the evidence of PW2 that he handed to the Defendant the members' contributions in the year 2006 in the presence of other church members.
28. Another member of the Plaintiff's church in Watamu, PW3, informed the court that the Defendant identified the suit property in the year 2006 whereafter the church members started contributing towards the purchase of the same.
29. It was his evidence that after the purchase of the land, the church leaders agreed to put up a house for the pastor and his family. The Minutes of the meetings that were held were produced in evidence.
30. In cross-examination, PW3 stated that the contribution of the members was handed over to the Defendant by the Treasurer.

The Defendant's case:

31. The Defendant, DW1, relied on his statement filed in court on 4th September 2013.
32. It was the evidence of DW1 that he was the registered pastor of Maximum Miracle Centre, Watamu, an affiliate of Maximum Miracle Center, Nairobi. According to the Defendant, his church became affiliated to the Plaintiff's church in the year 2004 although he had been a pastor of his church since the year 2000.

33. DW1 informed the court that being an employee at Hemmingsway Resort, he managed to raise Kshs.396,755 which he used to purchase the suit property for his personal use in the year 2007.
34. It was the evidence of DW1 that because the church did not have a permanent place of worship, he decided to allow the congregation to worship on the land that he had purchased pending the raising of the funds by the church members for the purpose of buying the land.
35. It was the evidence of DW1 that the suit property was solely obtained by him and that the church is only using it with his permission, having purchased it from Mr. Anderson on 6th June 2007.
36. In his oral testimony, the Defendant stated that he acquired a loan from Barclay Bank of Kenya and paid to the vendor the initial amount of Kshs.300,000 before clearing the balance in the year 2007 which he acquired from his sacco.
37. The evidence of DW1 is that he entered into a lease agreement with the church on 22nd November 2007 for six years.
38. According to DW1, he leased the land to the Plaintiff in accordance with Article 4 of the Plaintiff's Constitution.
39. The evidence of the Defendant was that as a pastor, he was not running the church. It was his evidence that according to clause 14 of the Plaintiff's constitution, the church was ran by a committee.
40. It was the evidence of DW1 that all the collection by the church members used to be handed over to the Treasurer in accordance with the constitution of the church and that it is only the committee of the church which had the mandate to initiate developments and buying of land belonging to the church.
41. In cross-examination, DW1 stated that he is the founder of the church which was operating under the banner of "Life Solutions Center" in the year 2000.
42. However, the said church was not registered and that is why he became affiliated to the Plaintiff's church in the year 2002 and started using its name.
43. It was the evidence of DW1 that after he was ordained as a pastor of the Plaintiff, he submitted himself to the constitution of the Plaintiff and that the church had committee whose members were appointed by him.
44. According to DW1, he entered into a lease agreement with the church after he purchased the suit property.
45. DW2 informed the court that he served as a pastor of Maximum Miracle Centre and was also the overseer of the Coastal region between the year 2001 until 2012.
46. It was his evidence that in the year 2003, the Defendant approached him and requested to use the Plaintiff's name for his church; that he allowed the Defendant, who already had his own church, to use the Plaintiff's name on condition that he pays tithes without expecting any financial aid from the Plaintiff and that the Defendant was therefore awarded a certificate of affiliation by the Plaintiff on 23rd December 2004.
47. It was the evidence of DW2 that the Defendant managed to obtain a personal loan and used the money to purchase the suit property in the year 2007; that the church has always operated on rented premises and that the members of the church contributed towards the construction of the structure of the church and not the land.
48. DW3 informed the court that he was a member of Maximum Miracle Centre, Watamu, an affiliate of Maximum Miracle Centre, Nairobi. DW3 was also the Treasurer.
49. It was his evidence that the church used to rent premises for worship until the year 2007 when the Defendant, who had obtained a personal loan and purchased the suit property, allowed the church to put a semi permanent structure on the land.
50. It was the evidence of DW3 that all the money that used to be collected by the church used to pay off debts and rent.
51. According to DW3, the members of the church began raising funds in the year 2007 by which time they had rented the suit property and that he signed the lease as a member of the committee of the church.
52. The Defendant's wife, DW4, informed the court that the Defendant became a resident pastor with Maximum Miracle Centre in the year 2004 although he founded the church in the year 2000.
53. It was her evidence that the Defendant managed to get loan of Kshs.396,755, which he used to buy the suit premises and then rented it to the church.

The Plaintiff's submissions:

54. The Plaintiff's advocate submitted that the Plaintiff's constitution allows the Plaintiff to establish branches all over the country and that Maximum Miracle Centre, Watamu, was one such branch. Counsel submitted that the Watamu Branch was not an independent organization or church which could qualify to have the full status of an affiliation as provided in the Plaintiff's constitution.
55. Counsel submitted that from the evidence, the suit land and the church building thereon had been used continuously for the purpose of promoting the principles and practices of the Plaintiff's church and that the Defendant was at all times in charge of the local affairs of the branch church.
56. The Plaintiff's counsel further submitted that any property dedicated in trust for religious purposes, such as the suit land, which was acquired using the church members' contributions, should rightly be held by the Plaintiff.
57. The Plaintiff's advocate submitted that the Defendant acted as an agent and a trustee of the Plaintiff's church in the acquisition of the suit land. Counsel relied on the case of **Dawkins Vs Dawkins, 183 Kan.323(1985) 328 P. 2d 346 and Church of God in Christ Inc. Vs Stone, Civ. A. No. 76-77.**

The Defendant's submissions:

58. The Defendant analyzed the evidence that was given by the witnesses herein which I have already summarised above. The Defendant submitted that the Plaintiff had not proved its case on a balance of probabilities.

Analysis and findings:

59. The Plaintiff is a registered trustee incorporated under the Trustees (Perpetual Succession) Act Cap 164. It is therefore a body corporate capable of suing and being sued.
60. The Plaintiff's case is that the suit property herein was purchased and developed by the money that was contributed by the members of Maximum Miracle Centre, Watamu Branch. On the other hand, the Defendant claims that he purchased the suit property using his own finances and thereafter leased the property to the church for a period of six years.
61. The evidence by PW1, the Plaintiff's administrator, Coast region, was that the Defendant was ordained as a pastor of Maximum Miracle Centre on 10th August 2008. PW1 produced the Certificate of Ordination in evidence.
62. It was the evidence of PW1 and PW2 that before the said ordination of the Defendant as a pastor of the Plaintiff's church, the Defendant was already the pastor of the Watamu branch.
63. The evidence of PW2, a member of the church committee in the Defendant's church informed the court that he became a member of the church in the year 2004. By then, the church was renting premises for worship at Timboni Inn. It was his evidence that in the year 2006, the church members contributed towards the purchase of the suit property and handed to the Defendant the money.
64. The Defendant denied the allegations that he was given any money, and specifically Kshs.150,000 by PW2, to purchase the suit property.
65. It was the evidence of DW1 that he is the one who identified the suit property and then borrowed money from his bank and co-operative society for the purpose of purchasing it. The Defendant produced in evidence the documents from Barclays Bank of Kenya and Chuchungi Sacco Ltd showing that he borrowed Kshs.195,000 and Kshs.200,000 respectively from the said institutions towards the purchase of the suit property.
66. The Defendant also produced in evidence the sale agreement dated 6th June, 2007 between the vendor and himself.
67. The sale agreement shows that the Defendant purchased the suit property from Mr. Anderson Maitha Katana at a consideration of Kshs.300,000.
68. The Defendant also produced in evidence the agreement that he entered into with Maximum Miracle Center, through its church committee members dated, 22nd November 2007.
69. In that agreement, the church, through the said committee members, agreed to lease the suit property for a period of six years. The consideration was stated to be "the blessings that would

- obtain for giving the premises for the worship of God for that period.”
70. The only issue that I am supposed to determine is whether the suit property was purchased by the members of Maximum Miracle Centre, Watamu branch or by the Defendant using his own resources. I am also supposed to determine whether the Plaintiff is entitled to the suit property.
 71. The Plaintiff is governed by its constitution which is dated 22nd February 1999.
 72. According to clause 25 of Article IV of the Plaintiff's constitution, one of the Plaintiff's objectives is to purchase or take on lease any land or buildings for the purpose of its objects.
 73. The Plaintiff's constitution allows the formation of branches, otherwise known as centres. The leaders of the centres are known as “pastors”.
 74. Article VIII clause D (9) of the Plaintiff's constitution provides that all pastors serving under the Maximum Miracle Centre Organization should be licenced. Clause 11 provides that the pastor of the local centre shall oversee the matters of the local centre in full consultation with the Board of Leaders, otherwise known as church leaders, within the same local centre (Branch).
 75. Article IX of the Plaintiff's constitution deals with the finances of the branches.
 76. According to the Article, the finance department of the branch is supposed to be led by a member of the church leaders whose responsibility is to ensure that the centers finances are collected and accounted for. The said leaders are supposed to keep all necessary documents in respect to the centers' finances.
 77. Article IX (d) and (e) of the Plaintiff's constitution provides that the head of the finance department is required to prepare the center's financial statement at the church leaders full meeting from time to time. The department is also required to make the center's financial estimates on any project of the centre.
 78. Article X of the Plaintiff's constitution provides that the projects department, which comprises of a chairman, manager, secretary, vice secretary, treasurer and three members of the finance department is the one which is supposed to oversee all the projects of the center and be involved in the day to day running of the projects activities.
 79. PW2 informed the court that he was the project manager of the Maximum Miracle Center, Watamu (the church). It was his evidence that he was also a member of the church committee and that the committee handed to the Defendant Kshs.150,000 to purchase the suit property.
 80. PW2 however did not produce any Minutes of the church Committee members or of the committee in charge of projects of the church to show that the church was ever involved in the purchase of the suit property.
 81. There were no Minutes of the project or finance committee, whose mandate is to over see the project of the church, to show the amount that had been contributed by the members of the church for the purpose of purchasing the suit property prior to the agreement of sale of 6th June, 2007 between the Defendant and Anderson Maitha Katana.
 82. None of the provisions of the Plaintiff's constitution seem to have been complied with by the church elders or the committee of the church viz-viz the provisions dealing with the keeping financial or minutes of records of the church and all the projects that the church was undertaking.
 83. Indeed, the Defendant, as a pastor in the church, was not allowed by the constitution to deal with the finances of the church or to oversee any of the church's projects.
 84. Consequently, and in the absence of any financial statement by the finance committee or the Minutes of the project committee, I find and hold that the church members did not make any contribution towards the purchase of the suit property. Indeed, no evidence was placed before the court that the Defendant received Kshs.150,000 from PW2 or from any other member of the church committee.
 85. In any event, by the time the Defendant purchased the suit property, the Plaintiff had not ordained him as a pastor, having ordained the Defendant as a pastor in August 2008. The Defendant cannot therefore be said to have acquired the suit property on behalf of the church as a pastor when the Plaintiff had not even recognized him as such in the year 2007.
 86. Evidence before this court shows that on 23rd May, 2007 the Defendant borrowed Kshs.195,000 from Barclays Bank of Kenya and Kshs.200,000 from Chuchungi Sacco Ltd which he used to purchase the suit property.
 87. There is also uncontroverted evidence that the church, through its committee, leased the suit property for a period of six years.
 88. If the members of the church had actually contributed towards the purchase of the suit property,

then the six church committee members, including the then overseer and treasurer, would not have signed the lease agreement of 22nd November 2007 in which they agreed to lease the suit property for six years.

89. In the absence of the evidence that the church members contributed any money towards the purchase of the suit property, or if they did, the money was never deposited in the Defendant's account, I hold and find that the Plaintiff has not proved its case on a balance of probabilities. The evidence before me clearly shows that the Defendant purchased the suit property using his own finances before he was ordained by the Plaintiff as a pastor, then leased the property to the church for six years.

90. For those reasons, I dismiss the Plaintiff's Plaint dated 1st August 2010 (sic) and filed on 1st August 2013 with costs.

Dated and Delivered in Malindi this **13th** day of **March**, 2015

O. A. Angote

Judge.