



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 115 OF 2013

KITALE PENTECOSTAL CHURCH

THROUGH ITS BOARD OF TRUSTEES

JOSEPHAT OGOLE ELEGWA,

MICHAEL WAMALWA NALWELISIE,PLAINTIFFS

RUTH SUKOLIA MAKONJO,

MARGARET MASITSA MUHALIA AND

HUMPHREY MWOLE EGOSANGWA

VERSUS

BERNARD AYEKA

ALLAN LIDAMBITSA

SHEM LUYAI DEFENDANTS

JOHN JUMA

J U D G M E N T

1. The five plaintiffs are the current registered trustees of Kitale Pentecostal Church (KPC). The defendants are also registered trustees of KPC. KPC was duly registered as a church under the Societies Act on 15/5/2012. Prior to its formal registration in 2012 KPC had been in existence for decades.
2. The plaintiffs brought this suit against the defendants seeking an order compelling the defendants to surrender certificate of lease for **Title No. Kitale Municipality Block 3/11**. The title to the above property is still registered in the names of the defendants as trustees.

PLAINTIFFS CASE

3. The plaintiffs through one of the trustees Michael Wamalwa Nalwelisie testified that KPC was registered on 15/5/2012. A certificate of registration [Exhibit 1] was produced. He also produced a certified copy of trust deed [Exhibit 2]. This witness is the one who was given authority to plead on behalf of the other trustees as per Exhibit 3 which is letter of authority. He stated that all the defendants save for the third defendant Shem Luyai are not members of KPC.
4. The plaintiffs contend that KPC is not an affiliate of Pentecostal Assemblies of God Kenya (PAGK) and that the first defendant who was a pastor of KPC had resigned and that the title of KPC should be surrendered to the current trustees. A resignation letter written by the first defendant was produced as Exhibit 4 and a copy of the certificate of lease as Exhibit 5. The plaintiffs further contend that the letter of allotment in respect of KPC land was given in the name of PAG(K) which then surrendered the same to KPC. The plaintiffs state that upon the first defendant resigning as pastor of KPC, he handed all properties of KPC except the certificate of lease which they now want surrendered to them.

DEFENDANTS CASE

5. The defendants case was stated by the first defendant and Reverend Patrick Lihanda who is from the headquarters of PAG(K) churches. The first defendant stated that the property in issue is registered in the name of KPC which is an affiliate of PAG (K). He testified that he is currently pastor in charge of PAG(K) Lavington church. He was trustee of KPC. Under the constitution of PAG(K) all church property documents for all churches affiliated to PAG(K) are kept at the headquarters of PAG(K) at Nyangori. The title in issue is kept at Nyangori and is not with him or any of his co-defendants.
6. DW2 Reverend Patrick Lihanda from PAG(K) headquarters at Nyangori testified that in 2000, the PAG(K) decided to create ten pentecostal churches across Kenya under its umbrella. One of the ten pentecostal churches is KPC. Others are Nakuru Pentecostal, Kisii Pentecostal among others. The property in issue was allotted to PAG(K) in 1971. He produced a copy of letter of allotment as Defence Exhibit 1. He confirmed that the title in respect of the property of KPC is kept at Nyangori which is the headquarters of PAG(K) churches of which KPC is one of them.

ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION

7. I have gone through the evidence adduced by the plaintiffs and the defendants. There is no contention that the title in respect of Kitale Municipality Block 3/11 is in the name of KPC. The issues which emerge for determination are firstly whether KPC is an affiliate of PAG(K) or not. Secondly whether the title to the property is kept by the defendant and if they can be compelled to surrender the same. Thirdly and lastly who are the lawful recognized trustee of KPC.
8. On the issue as to whether KPC is an affiliate of PAG(K) there is evidence that the letter of allotment of the property in issue was given to PAG(K). It is PAG(K) who directed that the property be registered in the name of KPC. This was because KPC was a church under the umbrella of PAG (K). The letter authorising the commissioner of lands to process title documents in the name of KPC was produced as Exhibit 6 by the plaintiffs. The letter was written by PAG(K). A copy of the allotment letter was produced as Defence Exhibit 1. The letter is clear that the allotment was made to PAG(K). There is no evidence that KPC broke from the parent church PAG(K) or that it has its own independence. I therefore find that KPC is still an affiliate of PAG(K).
9. On the second issue as to whether the certificate of title is kept by the defendants and if they can be compelled to surrender it, there is evidence that the certificate of title is kept at the PAG(K) headquarters at Nyangori. DW2 is from Nyangori the headquarters of PAG(K) churches. He confirmed that the title to KPC property is kept at the headquarters in accordance with the constitution of PAG(K). It therefore follows that the certificate of title is not kept by the defendants and as such, they cannot be compelled to surrender that which they do not have.

10. On the last issue as to who are the recognized trustees of KPC, evidence adduced show that the recognized trustee of KPC are the four defendants. They are the ones recognized by PAG(K). There is no evidence adduced to show that they were lawfully replaced. KPC was formally registered on 15/5/2012. A trust was created on 3/6/ 2013 when the trust deed was registered. There is no evidence to show that the initial trustees were replaced with the sanction of the PAG (K) which is the parent church. DW2 who comes from the headquarters testified that the trustees who are known by the headquarters are the defendants. Unless there is any evidence to the contrary I find that the trustees of KPC who are recognized are the defendants.

DISPOSITION

11. It is now clear that the plaintiffs have failed to prove a case against the defendants. The plaintiffs case is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Kitale on this 27th day of October, 2015.

E. OBAGA

JUDGE

In the presence of Mr. Kaosa for Plaintiffs and Mr. Wanyama for Defendants.

Court Assistant – Winnie.

E. OBAGA

JUDGE

27/10/15