



**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**SUIT NO. 354 OF 2013**

**REV. EPHRAIM WAIGANJO KARIANJAH**

***(Suing on behalf of the registered trustees FULL GOSPEL CHURCHES OF KENYA) .....***  
**PLAINTIFF**

**VERSUS**

**LUKA KOMU KARANJA .....DEFENDANT**

**RULING**

1. Before me is an application filed by the plaintiff for determination dated **9 May, 2013**. The application is opposed.
2. In a nutshell, the application seeks a temporary injunction to restrain the defendant by himself, his agents, servants from interfering, selling, trespassing and or dealing with 1/4 acre in **Nyandarua/ Njabini / 5048** ("suit land") in plaintiff's possession and or interfering with the plaintiff's church services on the suit land in any manner whatsoever pending the hearing and determination of the suit.
3. After several false starts, submissions were eventually filed. The rival parties filed well researched written submissions in support of their respective contentions which I have read and taken into consideration.
4. Briefly and as I understand from the pleadings and submissions, the plaintiff instituted this suit in his capacity as one of the trustees of Full Gospel Churches of Kenya on behalf of the church. The church is alleged to have acquired the suit land from the defendant through one of its former members **Joseph Kabugi Kuria** for Kshs 75,000 and upon payment, members of the full Gospel Church, South Kinangop took possession and built a temporary church where they worship to date. In 2007 differences arose among the church members and some left to form their own church including Joseph Kabugi Kuria.
5. The application is opposed. In his replying affidavit the defendant sets out the history of the suit land. He avers that he inherited the said parcel from his late father. In 2005 he was approached by Joseph Kabugi Kuria, by then a member of the plaintiff's church with a request to put up a building for worship purposes. In 2007, when Joseph Kabugi Kuria and his group were forcefully evicted from the land, some individuals laying claim over his land, forcefully entered therein and registered a caution against the title. He successfully removed the caution vide **Nyahururu Misc application No. 2 of 2010** and filed a suit against them. **Full Gospel Churches of Kenya** were enjoined as a party in **Nakuru HCC No. 267 of 2010** and the suit is still pending for hearing and determination.

6. It is his view that the current application and suit are an abuse of the court process and should be struck out as **Nakuru HCC No. 267 of 2010** which is still pending for determination involves the same subject matter and similar parties.

7. I have considered the written submissions by counsels of the respective parties dated **22<sup>nd</sup> November, 2013** by the applicant and **20<sup>th</sup> January, 2014** by the respondent and the authorities relied upon.

8. It is common ground that an earlier suit **Nakuru HCC No. 267 of 2010** involving the same subject matter and similar parties is still awaiting determination. What is not clear to me is why counsel for the plaintiff chose to file another suit with same subject matter and similar parties. The counsel however cannot be accused of material non disclosure as he revealed from the very beginning about the other suit and even annexed copies of the pleadings.

9. That notwithstanding **Section 6 of the Civil Procedure Act** is clear on the consequences of such a suit. Section 6 provides;

**No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.**

10. Under the circumstances I find I have no other alternative but to dismiss the application for injunction and stay this suit until **Nakuru HCC No. 267 of 2010** is concluded.

11. Costs are awarded to the defendant.

**Dated, signed and delivered on this 4<sup>th</sup> day of July 2014.**

**L N WAITHAKA**

**JUDGE.**

**PRESENT**

Mr Waiganjo for the plaintiff/Applicant

Ms Serling holding brief for Wanjiru for the Defendant

Emmanuel Maelo : Court Clerk

**L N WAITHAKA**

**JUDGE**