



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**ELC CASE NO. 601 OF 2013**

**MARALAL VILLAGE POLYTECHNIC (Suing through its chairman,  
secretary and treasurer namely Jeremiah Muhia, Jesse  
Mwangi and George Maina respectively).....PLAINTIFF/ APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF SAMBURU....1<sup>ST</sup> DEFENDANT /RESPONDENT**

**MUSA ABDILE.....2<sup>ND</sup> DEFENDANT /RESPONDENT**

**RULING**

1. The Plaintiff/ Applicant filed a **Notice of Motion** under **Order 40 Rules 1, 2 and 4, Order 51 Rule 1** of the **Civil Procedure Rules, Section 13(7) (a)** of the **Environment and Land Court Act No. 19 of 2011, Sections 68 and 69** of the **Land Registration Act No. 3 of 2012** and all enabling provisions of the Law dated **20<sup>th</sup> November, 2013** seeking the following orders *inter alia*:-

- a) **That pending the hearing and determination of this suit, an order of injunction do issue against the respondents restraining them by themselves or their servants, agents, employees or anybody claiming either in or under their names from in any manner whatsoever entering, depositing materials, demolishing structures, staying or in any other manner interfering with the plaintiff *unsurveyed* plot No 181 Maralal Township ("suit property")**
- b) **That pending the hearing and determination of this suit, an order of inhibition be made and issued to inhibit any and all dealings related to the suit property**
- c) **Those costs of the application be provided for.**

2. The application is premised on the grounds set out therein and is supported by an affidavit sworn by **Jeremiah Muhia Letiwa**, the chairman of the Maralal village Polytechnic ("Polytechnic") as well as chairman of the **P.C.E.A Maralal town church**. He depones that the plot was verbally allocated to the church by the Samburu County Council in **1974**; that in **1979** the Polytechnic as a subsidiary of the church was allocated the suit property vide a letter of allotment **No 30581/11/7** dated **15th August, 1979** and thereafter the church proceeded to operate the Polytechnic as its subsidiary.

3. In **2003**, due to lack of students, the Polytechnic was converted into an Academy until **2008** when some Government officials in cahoots with purported private developers, started laying claim on the suit property; that as a result they approached the District Commissioner Samburu District and the defunct Town Council of Maralal who requested for a report from the District Physical planning office. In his response, the District Physical planning officer confirmed that the church was the owner of the suit property and that there was encroachment therein (**JKC4**).

4. The applicant contends that despite being diligent in paying rates for the suit property to date, this did not stop the 1<sup>st</sup> respondent from writing to them on **17<sup>th</sup> March, 2009** demanding that they move out of the suit property neither did it stop the 2<sup>nd</sup> respondent in **September, 2013** from entering into a portion of the suit property claiming that he had been allocated the same by the defunct town council of Maralal, nor the respondents on **18<sup>th</sup> November, 2013** through their agents from entering the suit property and demolishing structures and thereafter depositing building materials therein.

5. The application was opposed by the 1<sup>st</sup> respondent vide a replying affidavit dated **7<sup>th</sup> February, 2014** sworn by **Stephen Siringa Letinina**, the County Secretary of the 1st respondent. It was his contention that the said **Jeremiah Muhia Letiwa** is not the Chairman of the Polytechnic, nor is the Polytechnic a subsidiary of the P.C.E.A Church.

6. He alluded to the fact that the Commissioner of Lands did allot an un surveyed plot to the Polytechnic (**SSL 11**) but the allotment was not pursuant to any application by the P.C.E.A church or on behalf of P.C.E.A church) therefore the Polytechnic was not a subsidiary of the Presbyterian foundation; that **plot No. 181** rightfully belonged to P.C.E.A church (**SSL 111**) but the Polytechnic had a different plot number from the church as confirmed by the District Physical Planning officer (**SSL V (a) and (b)**)

7. He further deponed that the plaintiffs who are carrying themselves out as officials of the Polytechnic could not be representing the Polytechnic because the same was a Government Institution run and managed by the Government and was never built or managed by the P.C.E.A Church; that all quarterly reports, tuition programmes, staff salaries, and expenditure were all approved and catered for by the Government (**SSL XL**). It was also a requirement that the polytechnic should have a duly constituted Board of Governors to which the persons bringing this suit were not members: that members of the board of Governors of Mararal Village Polytechnic were Government officials as clearly set out in **SSL VI, VII and VIII**.

8. The Polytechnic being a public institution, had many sponsors including the P.C.E.A Church (**SSL XII**) but none of the other sponsors had come to lay claim on its land and buildings; that in 2009 different officials of the P.C.E.A church had filed an application for judicial review (**No 46 of 2009**) making similar claims, but the same was dismissed by the High Court (**SSL XIV**); that it is after the dismissal of that suit, that the board of Governors of the Polytechnic approached the County Government to help renovate it so as to admit students in 2014; that the County Government accepted and have stepped in to renovate the Polytechnic which renovations have led to the current suit.

9. The 2nd respondent also opposed the application vide a replying affidavit sworn on **10th February, 2014** in which he denied encroaching onto the suit property. He deponed that he was allocated **Plot No 2** by the Town Council of Maralal in **2008** which plot was behind the polytechnic; that he had made all the requisite payments for the plot including rates and had developed it.

10. The applicant filed a supplementary affidavit sworn on **4<sup>th</sup> April, 2014** by the same **Jeremiah Muhia**. In a rejoinder, he denied that the Polytechnic was run by a Board of Governors as alleged by the 1<sup>st</sup> respondent appointed by the Minister of Education but rather deponed that the Polytechnic was run by a committee of which he was the duly elected chairman; that the land on which the Polytechnic was built belonged to the Government and not the 1st respondent; that the exhibits by the 1st respondent were irrelevant and had no bearing on this matter and that the Polytechnic was not bound by Government circulars and directives as it was not a Government owned institution.

11. On 13<sup>th</sup> February, 2014 parties agreed to dispose of the application by way of written submissions. Both parties filed their written submissions on 8<sup>th</sup> April, 2014 reiterating what was contained in their affidavits which I have taken into consideration.

12. The issue that stands out for determination is whether on the facts and circumstances of this case, the applicant is entitled to the orders of injunction sought at this interlocutory stage.

13. The principles upon which the court will grant an injunction are well settled and articulated in the decision of **Giella vs Cassman Brown & Co. Ltd (1973) EA 358**. The plaintiff needs to show that they have a *prima facie* case with probability of success; that they stand to suffer irreparable damage that cannot be compensated by an award in damages and if the court is in doubt, it will determine the application on a balance of convenience. These principles are to be applied sequentially in that the court need not consider the second and third principles if it finds that the applicant has a *prima facie* case.

14. A *prima facie* case as described in the decision of **Mrao vs First American Bank of Kenya Limited & 2 Others** (2003) KLR 125

**"... includes but is not confined to a 'genuine and arguable case'. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."**

15. In the instant case, the plaintiff has tried to convince this court that the Polytechnic is part and parcel of the P.C.E.A. church. They have exhibited a letter dated 15<sup>th</sup> February 1974 (**JMLI**) addressed to Rev.D. Nduati inviting him to attend a meeting, Ref; **P.C.E.A Church Village Polytechnic Official Meeting**. What is interesting about this letter is that it is written on the letter head of the Ministry of Cooperatives and Social services. It is authored by a Government officer who was acting as the secretary of the Polytechnic at that time. It can therefore be inferred that even as way back as **1974**, the Government was involved in the affairs of the Polytechnic contrary to what the plaintiff's wishes this court to believe.

16. The letter of allotment dated **15<sup>th</sup> August, 1979** was issued to Maralal Village Polytechnic for a term of 99 years. The plot number is described as un surveyed plot Maralal. In my view, the plaintiffs have failed to establish a nexus between the P.C.E.A Church un surveyed plot No. 181 and the Polytechnic's un surveyed plot Maralal. Further they have failed to establish an ownership relationship between the church and the Polytechnic.

17. As regards the 2<sup>nd</sup> defendant, the plaintiffs have failed to demonstrate how the 2<sup>nd</sup> defendant has encroached onto the P.C.E.A Church plot No. 181 and/ or the Polytechnic's plot. The 2<sup>nd</sup> defendant has exhibited a letter from the Town Council Maralal dated **27<sup>th</sup> March, 2008** allocating him plot No. 2 (behind Maralal Polytechnic). It is clear from the letter that this plot is not the same as plot No. 181 belonging to the Church.

18. On its part, the 1<sup>st</sup> respondent has demonstrated that the Polytechnic is a Government institution (**SSL VI, VII and VIII**). It has exhibited minutes of various meetings that have taken place in relation to the Polytechnic. In one such meeting held at the District Commissioner's boardroom on **16<sup>th</sup> March, 2009**; MIN 3I 1/09 subheading; Establishment of youth Polytechnic, it is recorded in part as follows;

**"The secretary told members that PCEA Academy was occupying land belonging to youth Polytechnic which was under the Ministry of Youth. He told them about a Quality Assurance and standards officers report carried out by the officers from his office. The report stated that this Academy had occupied land belonging to the Polytechnic and therefore, would not be registered unless the issue of the land ownership is sorted out. "**

**The P.C.E.A leaders had accepted that the land belonged to the Ministry of Youth and they were ready to move....."**

At another meeting held on **9<sup>th</sup> June, 2011** by the Nomination panel of Maralal Youth Polytechnic Board of Governors, at the District Youth office Samburu Central, Under MIN 2/6/11 Subheading; **Briefing On Youth Polytechnic BOG Nomination Process**, it is stated in part;

**" Mr Fredrick Kiragu pointed out that Maralal Youth polytechnic could be operational two years ago had the court process of determining title ownership of the youth Polytechnic land and buildings been speeded up. He said that despite title documents showing that the land and building belong to the Maralal Youth polytechnic, the P.C.E.A church leaders had frustrated the establishment of the Youth Polytechnic by going to court to obtain court order stopping their eviction".**

The following were in attendance; the District officer, Samburu Central, District Training officer Samburu Zone, Area Education Officer- Samburu Central, area Councilor and representative of Member of Parliament Samburu Central/ CDF.

19. In yet another letter dated **24<sup>th</sup> April, 2009 (EX SSL IV)**, addressed to the Pastor P.C.E.A church, the town clerk **Dorcas Lekesanyal** in reference to payments for land rates on plot No. 181 registered under P.C.E.A Church via receipt No. B49724 dated **8<sup>th</sup> October, 2007** stated, " **The council wishes to clarify to you that the above payments made to our office via receipt No. B49724 dated 8<sup>th</sup> October 2007, were in respect of plot number 181 registered under the name P.C.E.A church according to Council's part development plan.**

**The Council further wishes to inform you that plot number 181 belongs to P.C.E.A. church while Zone NO. 22 belongs to Maralal Youth Polytechnic.**

**The above two plots have no material connection. 181 is registered under the church name, while zone 22 is a public utility."**

20. The District Physical planning officer in a letter dated **7<sup>th</sup> July, 2008 (Ex SSL V(a))**, reversing a position he had earlier taken in a letter dated **12<sup>th</sup> June, 2008 (EX SSL V (b))** in part wrote ".....**Refer to my letter Ref. PPD/SAM/308/Vol.7 /48 dated 12<sup>th</sup> June, 2008. I stated that part of the PCEA church plot has been reallocated. After going through the records, it has come to my attention that the PDP in question apply to the village polytechnic land which is actually not an extension of the church plot. Thus the church plot has not been encroached or reallocated as earlier stated.**"

21. With the facts and evidence placed before me, I am of the view that a prima facie case with a probability of success has not been established. From the numerous exhibits by both the 1<sup>st</sup> and 2<sup>nd</sup> respondents, it is clear that none of the respondents have entered, deposited, demolished structures or are in any other manner interfering with un surveyed plot No 181 Maralal Township belonging to the P.C.E.A church. The officials of the church at this interlocutory stage have failed to establish how the Polytechnic is its subsidiary and how **Jeremiah Muhia Letiwa, Jesse Mwangi, and George Maina** are officials of the Polytechnic. They have not exhibited any certificate of registration for the Polytechnic and neither have they exhibited any document recognizing them as the registered office bearers of the same.

24. For the above reasons, I find no merit in the Notice of Motion dated **20<sup>th</sup> November, 2013** and dismiss it with costs to the respondents.

**Dated, signed and delivered at Nakuru this 3<sup>rd</sup> day of October 2014.**

**L N WAITHAKA**

**JUDGE**

**PRESENT**

N /A for the applicants

Mr Mugambi for the respondents

Emmanuel Maelo: Court Assistant

**L N WAITHAKA**

**JUDGE**