



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

**AT MALINDI**

**LAND CASE NO. 96 OF 2013**

**THOMAS CHARO MWAIVU.....PLAINTIFF**

**=VERSUS=**

**ABRAHAM MRAMBA *in his capacity as overseer of***

**PEFA CHURCH MALINDI  
SOUTH.....DEFENDANT**

**RULING**

1. What is before me is the Plaintiff's Application dated 13<sup>th</sup> June 2013 in which the Plaintiff/Applicant is seeking for the following orders:
  - a. **THAT pending the hearing and determination of this suit, there be issued an interim injunction restraining the Respondent, his employees, representatives, servants and/or agents from trespassing onto, alienating, or dealing in any manner with the Applicant's land known as Land Parcel No.264 situated in Mkangagani, Gede and the church premises thereon.**
  - b. **THAT the costs of this application be provided for.**
2. The Application is premised on the grounds that the Applicant is the owner of the suit land having purchased it in 1971 from the late Andrea Charo Mwarendo; that the Respondent has trespassed onto the said land and locked the Applicant's church premises and that the Respondent's acts will continue to cause him irreparable loss and damage unless restrained by this court.
3. The Application is supported by the affidavit of the Applicant who has deponed that he is the owner of one acre piece of land known as parcel number 264 having bought it in 1971.
4. The Applicant has further deponed that he bought the land in question for purposes of building a church known as Mkangagani Pentecostal Church and that he put up a temporary structure for the church in 1971 which collapsed in 1997 which prompted him to put up a permanent structure for his church.
5. It is the Applicant's deposition that in the year 1997, he approached Price Panga, the then general overseer of Pentecostal Evangelistic Fellowship Church of Africa (PEFA) in Coast Province and asked him to allow him to become part of the PEFA fellowship; that Mr. Panga issued him with a temporary permit and allowed him to join the PEFA fellowship and to operate his church as a PEFA branch.
6. The Applicant finally deponed that he sought and obtained the consent of another church namely Joyful Revival Ministries and he is operating his church as a branch of the said ministry; that the Respondent brought a group of people to the premises who disrupted the church service and the

Respondent has since locked the church.

7. The Respondent filed his Replying Affidavit on 21<sup>st</sup> June 2013 and deponed that he was the overseer, Malindi south District of the Pentecostal Evangelistic Fellowship of Africa (PEFA); that the Mkangagani PEFA Church, where the Applicant was a pastor falls within his area of jurisdiction and that the Applicant on his own volition resigned early this year as a pastor and went away to join another church ministry.
8. The Respondent deponed that it was not true that the Applicant bought the suit property as alleged; that the purported sale agreement is a forgery because the purported signatories of the sale agreement were either not yet born or were minors when the said agreement was drawn on 20<sup>th</sup> April 1971.
9. The Respondent finally deponed that the suit property belonged to the late Andrea Charo Mwarendo who freely gave it away to the PEFA Church Ministry in 1966 as a donation and a structure was put up by the members; that from 1997 to 2008, the members embarked on raising funds through their own contributions, offertories and assistance from visiting guests of the church and carried out the construction of the church and that the suit land and the building on it have always belonged to the PEFA Church Ministry.
10. The Applicant's and Respondent's advocates appeared before me on 15<sup>th</sup> July 2013 and made oral submissions. I have considered the said submissions.
11. The Plaintiff/Applicant has annexed on his supporting affidavit a document dated 20<sup>th</sup> April 1971 which is an agreement between Andrea Charo Mwarendo and Thomas Charo Mwaivu.
12. The Agreement has been signed by the Said Andrea Charo Mwarendo, Thomas Charo Mwarendo (the applicant) and nine other people. It is not clear from the document if the nine people were parties to the agreement or they were witnessing the signing of the agreement.
13. The Respondent has annexed on his supporting affidavit the national identity cards of Nathaniel Mukoli Charo who was born on 26<sup>th</sup> November 1980 and Thomas Charo Mwarendo who was born in 1966.
14. From the said national identity card of Nathaniel Makoli Charo, he could not have signed the agreement of 20<sup>th</sup> April 1971 in any capacity because he had not been born by then. Incidentally the correct identity Card number of Nathaniel Makoli Charo was indicated on the agreement dated 20<sup>th</sup> April 1971.
15. The national identity number of Thomas Charo Mwarendo who was born in 1960 has also been indicated on the agreement dated 20<sup>th</sup> April 1971. He was only ten years by the time the agreement is purported to have been entered into.
16. It obvious, prima facie, that the agreement dated 20<sup>th</sup> April, 1971 is either a forgery or it was signed much later and not in 1971. The Applicant did not give an explanation to this serious discrepancy.
17. I have looked at the agreement which the Applicant is relying on to claim that he bought the land on which the church is situated.
18. The Agreement dated 20<sup>th</sup> April 1971 clearly states that the purported seller, Andrea Charo Mwarendo, was selling the land to the Applicant for the construction of a church.
19. In the body of the Agreement, it is stated that the late Andrea Charo Mwarendo was selling the land to Mkangagani Pentecostal Church.
20. Even if the Applicant was to rely on the said agreement to claim the suit property and the building on it, it is clear that the land was being sold for the sole purpose of constructing the Pentecostal church.
21. In the circumstances, even if the Applicant used his money to purchase the suit property for the purpose of constructing a church, he cannot now claim that the land belongs to him.
22. He cannot even purport to have another church take over the suit property and the building when he has, from his own affidavit, had a church on the land known as PEFA on the suit property since 1997, or since 1971 when he purports to have bought the land for the "Pentecostal Church".
23. He has, by his own action, made the congregation believe that the suit property and the building thereon belongs to PEFA church and he is estopped from denying that fact after forty two years.
24. If indeed he bought the suit property and put up a building for PEFA church in 1997 as he states, then it is also proper that the church continues using the property pending the investigation of the legitimate owner of the suit property.

25. The Plaintiff will not suffer any irreparable damage considering that the property was bought or donated specifically for the purpose of putting up Mgangani Pentecostal Church, which officially became part of PEFA church family in 1997.
26. The balance of convenience also tilts in favour of PEFA church considering that they are the ones who have been using the church, where the Applicant has been a pastor. He cannot now form another church and purport to use the same premises for that purpose.
27. For the reasons I have given above, I dismiss the Plaintiff's Application dated 13<sup>th</sup> June 2013 with costs.

Dated and Delivered in Malindi this 26<sup>th</sup> day of **July**, 2013

**O. A. Angote**

**Judge**