



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**

R U L I N G

1. Before me is the Plaintiff's Notice of Motion dated 1st August 2013. The Application seeks for the following orders;

(a) **THAT** this honourable court do issue a temporary injunction restraining the Defendant whether by himself, or through his agents, servants and/or employees from further using, occupying, leasing, transferring, charging, selling or in any manner whatsoever dealing with and/or interfering with all that portion of land forming part of Plot No.114,

Watamu measuring approximately 100 by 80 feet together with the developments and assets thereon pending the hearing and determination of this suit.

(b) Or in the alternative, this honourable court do issue a mandatory injunction compelling the defendant to hand over to the plaintiff possession of all that portion of land forming part of Plot N.114, Watamu measuring approximately 100 by 80 feet together with the developments and assets thereon pending the hearing and determination of this suit.

(c) **THAT** this honourable court do grant an injunction restraining the defendant by himself, or through his agents, servants and/or employees from causing and/or participating in any activities intended to, or which may cause violence or breach of the peace at the suit premises.

(d) **THAT** the O.C.S Watamu Police Station be directed to assist and ensure compliance by the defendant.

(e) **THAT** the costs of this Application be awarded to the Plaintiff/Applicant

2. The Application is supported by the Affidavit of Njenga Njoroge, the Plaintiff's Administrator, Coast Province.
3. According to the Plaintiff's representatives, the Plaintiff is a body corporate registered under the Trustees (Perpetual Succession) Act, Cap 164 and it has its headquarters in Nairobi; that the Plaintiff is involved in evangelical works and programmes throughout Kenya in accordance with its constitution and to achieve its objectives, it has opened various branches throughout the country.
4. The Plaintiff's representative deponed that in the year 2004, the Plaintiff purchased a portion of land forming part of Plot No.114, Watamu measuring approximately 100 feet by 80 feet for Kshs.300,000 (the suit property).
5. It is the Plaintiff's position that it constructed a church on the suit premises which has been operating as the Maximum Miracle Center (MMC), Watamu Branch whose maxim is "Kuna Nuru Gizani"; that the funds for the acquisition of the suit premises and for the construction of the church were raised through donations from the members of the church, the church members' tithes and donations from well-wishers.
6. According to the Plaintiff's representative, the Defendant was a pastor serving as a minister in the church having been ordained as a pastor by the Plaintiff's Bishop on 10th August 2008; that the Defendant was entrusted by the Plaintiff with overseeing the process of acquisition of the suit premises and the construction of the church and that the Defendant was acting as an agent of the Plaintiff in the management and administration of the church in accordance with the Plaintiff's constitution.
7. The Plaintiff's representative finally deponed that the Defendant, without the Plaintiff's consent began to unlawfully operate his own church from the suit premises; that the Defendant was subsequently suspended and that he has no authority to use the church premises.
8. The Defendant filed his Replying Affidavit on 19th August 2013 and deponed that although it is true that the Plaintiff owned various church branches throughout the country, the church at Watamu where he operates as a pastor was not a branch of the Plaintiff as alleged but an affiliation of the church which affiliation the church at Watamu has since pulled out.
9. The Defendant denied that it is the Plaintiff which build the church or purchased the suit premises; that the Plaintiff has failed to show how much was contributed by the church members and that in any event, the alleged amount contributed by the congregation does not even amount to half of the purchase price of the suit property.
10. The Defendant deponed that in the year 2000, he single handedly founded a church with the idea of registering it as "Life Solutions Center"; that he set up a committee and due to the complex requirements for registering a church, a meeting was held by the church committee and a resolution was passed where it was agreed that the church should be affiliated to "Maximum Miracle Center".
11. The church commenced its operation by renting out several places in Watamu until the year 2007 when the Defendant managed to secure a personal loan of Kshs.396,755 from Barclays Bank of Kenya and Chuchungi Sacco Ltd.
12. The Defendant further deponed that out of the kindness of his heart as the founder of the church, he offered his private plot for the construction of a semi-permanent structure which his congregation would use pending the church buying its own land; that the property the Applicant claims to be the church property is in fact his own property which he purchased through a loan and that the ordination granted on 10th August 2008 did not pass the ownership of the suit premises to the Plaintiff.
13. The Defendant finally deponed that on 13th July 2013, the Church committee passed a resolution whereof it was agreed that the church in Watamu would pull out of the affiliation with the Plaintiff; that since the pulling out of the Plaintiff's affiliation, the church has been operating under "Yesu ni Jibu-Maximum Celebration Center, Watamu"; that the Plaintiff has failed to prove its entitlement on the suit premises and that the Plaintiff did not contribute to the construction of the church.
14. The Plaintiff filed a supplementary affidavit on 2nd September 2013 in which it stated that the certificate of affiliation exhibited by the Defendant is not genuine; that the Watamu church is not

- an affiliation but a branch of the Plaintiff because the Defendant was ordained as a pastor of the Plaintiff and he agreed to be governed or bound by the Plaintiff's constitution.
15. The Plaintiff deposed that in the year 2006, the members of the Plaintiffs' church raised an initial sum of Kshs.154,000 for purposes of acquiring the suit property; that the money was handed over to the Defendant who offered to deposit it with his SACCO to enable him obtain a loan-sum amount of Kshs.300,000 for purposes of purchasing the land which he purchased on behalf of the Plaintiff in the year 2000 and that the Defendant made the Plaintiff and its members to believe that he was doing everything in their interest.
 16. The Defendant filed a Further Affidavit on 23rd September 2013 which I have considered.
 17. The parties' advocates appeared before me on 23rd September 2013 and made oral submissions. I have considered the said submissions.
 18. Although the parties went into great length to show how they related with each other, the only issue for determination by this court at the time of the trial is the ownership of the suit property.
 19. It is not for the court at this stage to make a definite finding on the ownership of the suit property. However, for the Plaintiff to succeed in the current Application, it must show that it has a prima facie case with chances of success and that it will suffer irreparable damage that cannot be compensated by an award of damages if the orders are not granted. If the court is in doubt about the two, then it will decide the Application on a balance of convenience.
 20. A prima facie case was defined in the Mrao case as follows:

“In Civil Cases it is a case in which on the material presented to the court or 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..”

21. The Plaintiff annexed on its Affidavit the certificate of the Registered Trustees of Maximum Miracle Center and the photographs of the church on the suit property known as “Maximum Miracle Center” with a slogan of “Kuna Nuru Gizani.”
22. The Defendant does not deny that indeed that is the name that the church has been using but maintains that it was an affiliation of the church known as “Maximum Miracle Center” whose headquarter is in Nairobi and not a branch as claimed by the Plaintiff.
23. The **Blacks Law Dictionary, 9th Edition** has defined an *affiliate* as follows:

“A corporation that is related to another corporation by shareholding or other means of controls; a subsidiary, parent or sibling corporation”

24. The same dictionary has defined a branch as follows:

“An offshoot, lateral extension, or division of an institution”

25. The two words are therefore distinct and cannot be used interchangeably.
26. Article IV(4) of the constitution of “Maximum Miracle Centre” allows the establishment or building of churches, chapels or any other place of christian worship in any part of Kenya to be known as Maximum Miracle Center. That provision, in a nut shell, allows the Plaintiff to establish branches all over the country with a similar name.
27. Article 5 of the same constitution allows the Plaintiff to confer or permit to be conferred on the ministers or staff of the centre such titles, honour, names, awards, rights or privileges.
28. The Plaintiff recognised the Defendant as a pastor on 10th August 2008 a fact which the Defendant has not denied. Indeed, the Defendant annexed on the Replying Affidavit the certificate of that recognition. It therefore follows that he was ordained as a pastor of “Maximum Miracle Center” pursuant to the provisions of Article 5 which I have quoted above.
29. For one to become a pastor of a local centre of the Plaintiff, Article D (8) of the Plaintiff's Constitution provides that one must have served for a period of not less than two years under a pastor of a senior centre within the centres organisation.
30. It is the Plaintiff's case that the suit property was purchased using contributions from members whereafter a church known as “Maximum Miracle Centre” was constructed.

31. According to the Defendant, the church which was “affiliated” to Maximum Miracle Centre commenced its operations after being affiliated to the main church with him being the pastor. They started by renting premises before he purchased the suit property.
32. The suit property was therefore purchased after the commencement of the operation of the church.
33. Although the Defendant's case is that “his” church was an affiliation of the “Maximum Miracle Centre”; he admits that he never registered another church.
34. Article 15 of the constitution of “Maximum Miracle Centre” provides that the “Centre” may work in corporation with any organization as all christian churches of like faith so long as such affiliation does not distinct the attainment of the Maximum Miracle Centre's objectives and faith.
35. The Defendant did not have any organization so as to be affiliated with the Maximum Miracle Centres.
36. From the evidence before me, I find and hold that, prima facie, the church that was built on the suit property was a branch of the Plaintiff. Consequently, the said branch together with its members and the defendant who was a pastor in the said church is bound by the constitution of the Plaintiff.
37. According to the Plaintiff's constitution it is the Plaintiff and its members who are supposed to establish or build churches. In the circumstances, I find, prima facie, that the suit property and the church thereon must have been purchased by the Plaintiff's members, including the Defendant herein.
38. It may be true that the Defendant contributed either wholly or partly towards the purchase of the suit land on which the Plaintiff's church was constructed on.
39. However, having represented to the Plaintiff and its members that the land on which the church stands on belongs to the Plaintiff by using the Plaintiff's name and slogan, the Defendant is at this stage estopped from denying such representation or to claim that his church was just an affiliate of the Plaintiff without tendering proof of the organisation that was affiliated to the Plaintiff.
40. Even if the Defendant was ordained as a pastor by the Plaintiff after the purchase of the suit property in the year 2007, the Defendant admitted in his Replying Affidavit that “his” church was “affiliated” to the Plaintiff's church in December 2004 and was granted a certificate of affiliation. According to the said certificate, the church was to be known as Maximum Miracle Center, Watamu Branch.
41. That is the church, with its members, that the Defendant moved with to the suit property. The status quo therefore is that the Plaintiff has been on the suit property since 2007 and its members have always known that the premises belong to them.
42. In the circumstances, I am of the view that the Plaintiff has established a prima facie case with chances of success.
43. Considering that the Plaintiff's members having been using the premises on the suit property to the exclusion of any other organization since the year 2007, it is the Plaintiff and its members who will suffer irreparable damage in the event that the Defendant turns them away from using the premises on the suit property for worship.
44. The court can issue injunction with a view of maintaining status quo which does not include the circumstances existing after an intruder's illegal acts, but which existed before hand (**See Mucuku Vs Ripples Ltd (1990-1994) EA 388.**)
45. For the reasons I have stated above, I allow the Plaintiff's Application dated 1st August 2013 in terms of prayers number (c), (e), (f) and (g).

Dated and Delivered in Malindi this 17th day of October, 2013

O. A. Angote

Judge.