



**Loiteo (Suing on Behalf of Africa Inland Church Kenya Ilmasin)
v Ntimeri & another (Environment & Land Case E053 of 2023)
[2023] KEELC 20894 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20894 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E053 OF 2023
LC KOMINGOI, J
OCTOBER 19, 2023**

BETWEEN

**BENSON LENAYIA LOITEO (SUING ON BEHALF OF AFRICA INLAND
CHURCH KENYA ILMASIN) PLAINTIFF**

AND

DANIEL LONTUNO NTIMERI 1ST DEFENDANT

MEMBER OF DIVINE WINNERS INTERNATIONAL 2ND DEFENDANT

RULING

1. This is the Notice of Motion dated 16th June 2023 brought under;

(Under Order 40 Rules 1,2,3,4, Order 51 rules 1 of the [Civil Procedure Rules](#) and Section 1A, 1B, 3A of the [Civil Procedure Act](#), Article 50 of the [Constitution](#) of Kenya 2010 and any enabling provisions of the law).
2. It seeks orders;
 1. Spent.
 2. An order directing the Defendants to deliver vacant possession of the portion of land known as Plot No 493 Olchorro Onyorre T. Centre (Suit land) illegally occupied by the Defendants to the Plaintiffs.
 3. That this Honourable Court be pleased to grant orders of temporary injunction against the 2nd and 3rd defendants jointly and severally to restrain them, their agents, servants, employees from trespassing, encroaching, holding services, praying and holding conferences and meetings,



and/or doing anything that is prejudicial to the rights of the plaintiff in respect of the suit land Plot 493 Olchorro Onyorre T. Centre pending the hearing of the suit herein.

4. That pending the hearing and determination of this application and main suit herein, an order of eviction from the suit property known as Plot No 493 Olchorro Onyorre T. Centre be issued against the Defendants, their agents, servants, workers and/or employees.
5. That the Officer Commanding Police Station (OCS) Kajiado Ilmasin Police Station be ordered to effect the court order to ensure peaceful compliance of any orders that may be issued by the Court.
6. That costs of this application be provided for.
3. The grounds are on the face of the Application and are set out in paragraph's (a) to (i).
4. The Application is supported by the affidavit of Reverend Benson Lenayia Loiteo Chairman of AIC Kajiado West Region, sworn on the 16th June 2023.
5. The Application is opposed. There is a Replying Affidavit sworn by Reverend Daniel Lontuno Ntimeri, the 1st Defendant/Respondent, sworn on the 11th July 2023.
6. There is also a replying Affidavit sworn by Katiana Koitee, a member of the 2nd Defendant/Respondent on the 11th July 2023.
7. On the 13th July 2023, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.
8. I have considered the Notice of Motion, the affidavit in support, the responses thereto, the written submissions and the authorities cited. The issues for determination are;
 - a. Whether the Plaintiff's/Applicant's application meets the threshold for grant of temporary injunction.
 - b. Has the Plaintiff/Applicant made out a case for grant of a mandatory injunction?
 - c. Who should bear costs of this application?
9. In their submissions, counsel have substantiated their clients' respective positions stated in their respective affidavits. It is now appropriate to consider the facts that have emerged and the legal principles applicable.
10. The Principles were laid down in the precedent setting case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358. In the case of *Mrao Ltd v First American Bank Ltd & 2 others* (2003) KLR 125 the Court of Appeal stated what amounts to a *prima facie* case.
11. It is not in dispute that the suit property Plot No 493 Olchorro Onyorre Trading Centre was allocated to the Plaintiff/Applicant by the then Olkejuado County Council in the year 2002. The letter of Allotment is dated 9th October 2002. The same is annexed to the affidavit of Reverend Benson Lenaiya.
12. It is also not in dispute that the 1st Defendant/Respondent was ordained as a Pastor with the Plaintiff/Applicant on 3rd November 2013 at Africa Inland Church Il Masin Kaputiei DCC.

By a letter dated 4th March 2022 by Duncan M. Sakimpa Administrative Secretary, Africa Inland Church Kajiado Area Church Council, the Africa Inland Church Kenya was requested to cancel the ordination certificate of the 1st Defendant/Respondent on the grounds that he had abandoned the Plaintiff/Applicant and joined another denomination.



13. It appears that on 6th April 2022 the 1st Defendant/Respondent surrendered the ordination certificate among other items to the Administrative Secretary.

There is a letter dated 25th April 2023 by the County Government of Kajiado to the 2nd Defendant/Respondent through the 1st Defendant ordering it to stop construction of the suit property as the same belongs to the Plaintiff/Applicant. It was ordered to surrender the suit property to its rightful owner (the Plaintiff/Applicant).

14. On the other hand, the 2nd Defendant/Respondent through Katiana Koitee a member of the Church, has annexed two cash sale receipts of Kshs 112,050/= and Kshs 10,400/= to demonstrate that they put up the construction. I find no connection of the receipts to the suit property.

Why would the 2nd Defendant construct on the Plaintiff's/Applicant's suit property?

The 2nd Defendant's/Respondent's has not demonstrated that it is registered.

15. I find that the 1st Defendant upon being defrocked has no basis of holding on to the Plaintiff's/Applicant's suit property.

16. I am satisfied that the Plaintiff/Applicant has established a *prima facie* case on a probability of success at the trial. It is the owner of the suit property.

In the case of *Njenga v Njenga* (1991) KLR 401 Bosire J (as he then was) held that;

“On injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles”.

I am persuaded by the facts presented by the Plaintiff/Applicant that it deserves the orders sought.

17. In *Kenleb Cons Ltd v New Gatitu Services Station & another* (1990) KLR 557 Bosire J (as he then was) held that;

“To succeed in an application for injunction an applicant, must not only make a full and frank disclosure of all relevant facts to the just determination of the application but must also show he has alright, legal on equitable, which requires protection by injunction”.

I am satisfied that the Plaintiff/Applicant deserves this kind of protection.

18. I also find that the Plaintiff/Applicant has demonstrated that it will suffer irreparably if these orders are not granted.

This is because the Defendants/Respondents will continue with their acts of trespass, occupation, conversion and destruction of the suit property. Hence violating the Plaintiff's right to ownership of property under Article 40 of the *Constitution* of Kenya.

19. I find that the balance of convenience tilts in favour of the Plaintiff/Applicant who is the lawful and registered proprietor of the suit property.

20. The Plaintiff/Applicant also seeks that the Defendants/Respondents be evicted from the suit property.

In *Halsbury's Laws of England* 4th Edition paragraph 948; it is stated;

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing.....if the defendant attempted to steal a match on the plaintiff.....a mandatory injunction will be granted on an interlocutory injunction”.



In the case of *Washington Jalango Okumu v Boffar Ltd* (2005) eKLR the court stated thus;

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied on where the defendant has attempted to steal a match on the Plaintiff. Moreover before granting a mandatory interlocutory injunction, the court had to feel a high degree of assurance that at the trial it would appear that the injunction has rightly been granted and that being a different and higher standard than was required for prohibitory injunction.”

21. In the instant case, I find that the Defendant/Respondents have no basis to continue being on the suit property. They became trespassers when the 1st Defendant's/Respondent's ordination certificate was cancelled. There is urgent need to surrender the suit property to the Plaintiff/Applicant so that it can continue with its activities.
22. In conclusion I find merit in this application and I grant the orders sought namely;
 - a. That an order of temporary injunction is hereby issued restraining the Defendants/ Respondents, their agents, servants and or employees from trespassing, encroaching, holding services, praying and holding conferences, meetings and/or doing anything that is prejudicial to the rights of the plaintiff in the suit property Plot No 493 Ol Choro Onyorre T. Centre pending the hearing and determination of this suit.
 - b. That an order of eviction is hereby issued directed at the Defendants and or their agents, servants, workers and or employees from the suit property Plot No 493 Olchoro Onyorre T. Centre.
 - c. That the OCS Kajiado Ilmasin Police Station is hereby ordered to ensure compliance of the orders in (a) & (b).
 - d. That cost by this application do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF OCTOBER 2023.

L. KOMINGOI

JUDGE.

In the presence of;

Mr. P. Cheptumo for the Plaintiff.

Mr. Taliti for the Defendants.

Court Assistant – Mutisya.

