



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

**ELC CASE NO.233 OF 2014**

**AFRICA INLAND CHURCH, KENYA**

**TRUSTEES REGISTERED.....PLAINTIFF**

**VERSUS**

**SHADRACK SILA..... 1<sup>ST</sup> DEFENDANT**

**BERNARD WAMBUA.....2<sup>ND</sup> DEFENDANT**

**DAVID NGANGA.....3<sup>RD</sup> DEFENDANT**

**ARON MUTUNDU.....4<sup>TH</sup> DEFENDANT**

**PETER SILAS.....5<sup>TH</sup> DEFENDANT**

**PAUL MUNYAO.....6<sup>TH</sup> DEFENDANT**

**JUSTUS M. MUINDE t/a KANDE AUCTIONEERS.....7<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff seeks injunctive orders in **motion** dated **23.12.2014** against Defendants over parcels **No. Mwala/Muthunthini/665** and **677** and the OCS Masii to ensure compliance. The application is based on the provisions of Oder 40 Rule 1 Civil Procedure Rules, 2010, Section 1A, 1B and 3A Civil Procedure Act Cap 21. The application is based on grounds **A – D** on the face of the motion. The application is supported by the Affidavit of Bishop Musyoki Nguyo sworn on 23.12.2014.

2. The Applicant's case is that the Plaintiff is the legal custodian of parcels **No. Mwala/Muthunthini/1570, 665** and **677**. The Makutano Boarding Primary School is the owner of No.677. The Defendant obtained an order in CMCC.354/014 for eviction of and entry into parcel No.570 above and did evict employees of the Plaintiffs who are the Defendants in the same case. However, the Defendants evicted employees and servants of the Plaintiff from Parcels No.665 and 667 which were not and are not subject of the suit nor in the order of eviction.

3. The said Nos.665 and 677 are owned by the Plaintiff and hosts children's home, schools and residential houses occupied by pastor's and their families from across AIC in Machakos through the AIC District

church council. The Defendants/Respondents oppose the application and Shadrack Sila 1<sup>st</sup> Defendant has sworn an affidavit on 13.1.2015. The Respondents case is that the Applicant has come to court with unclean hands and is misleading court by stating that the eviction was carried out on Parcel No.665 and 677. The Respondents aver that parcel 665 is a playground and there are no structures on which the eviction could be carried out since nobody was in occupation.

4. Parcel No.677 is AIC Makutano Boarding Primary School and no evictions could be carried out in the school as the evictees were not in school but church compound. The Respondent aver that the eviction was carried out in 570 which the Defendants in CMCC 354/2013 Machakos had invaded illegally being a children's home and renting it out to 3<sup>rd</sup> parties unknown to A.I.C Muthunthini church.

5. The 3<sup>rd</sup> parties were illegally on the premises and it is blatant falsehood for Bernard Nguyo to suggest that the evictee were pastors and their families who were evicted were employees of the the A.I.C. District Council within Machakos area. The Respondent avers that Article 39 of A.I.C Constitution of 1981 grants exclusive Supervisory mandate to the 1<sup>st</sup> – 6<sup>th</sup> Defendants over local church property. The Respondent Bishop Bernard Nguyo to prove he is duly elected as the Bishop of A.I.C Kenya. The Respondents argue that injunction cannot issue where eviction has already been carried out and evictees out of land 570.

6. After going through the material placed before the court, I make the following findings:

- The genesis of the action herein is the execution of eviction order in CMCC No.354/2013 in which the Defendants therein are alleged to be the employees, servants and pastors of the Plaintiff in the instant suit over parcel No.570.
- The pleadings and proceedings in above case were not availed to court to observe and assess the terrain and the contours of the said case and extent it has a bearing on the cause of action herein.

7. The Defendants in the above case who were alleged to be employees, servants and pastors of the Plaintiff are not involved in the instant case. None of the said Defendants in magistrate court case has sworn an Affidavit to support the case herein. The Defendants in the above case who were alleged to be employees, servants and pastors of the Plaintiff are not involved in the instant case. None of the said Defendants in Magistrate court case has sworn an Affidavit to support the case herein.

8. The replying affidavit by the Respondents side has made various allegations including the facts that evictees were removed and the eviction was carried out in parcel No.570 but not in 665 and 677 and there is no contemplated eviction on the 2 parcels of land. The capacity of the Nguyo to purport to act for the Plaintiff has been raised. The Applicant never replied to result or controvert the averments.

9. The documents presented as annexures for parcels No.570 and 677 do not show any being registered in Plaintiff's names or show registrable interest of the Plaintiff. There are no documents on parcel No.665. There is no reason advanced as to why the Plaintiff did not question the orders alleged to be executed against its agents, servants, employees and pastors. The Plaintiff seems not to give the whole situation surrounding the alleged leadership wrangle in A.I.C which has been alluded to by the Respondents and accusations leveled against him.

10. The court finds that the materials placed before the court does not meet the threshold of the **GIELLA –VS- CASSMAN BROWN LTD. 1973 EA** in that a *prima facie* case has not been established. There is no harm demonstrated to be suffered by the Plaintiff if orders are not granted since the Respondents aver that eviction was carried out and the evictees removed and there is nothing to be stopped.

11. In the premises, the court finds no merit in the application and makes the following orders:

1. The application dated 23.12.2014 is dismissed.

2. Costs in the main cause.

**Dated and Delivered at Machakos this 20<sup>th</sup> day of February, 2015.**

**CHARLES KARIUKI**

**JUDGE**