



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC CASE NO. 142 OF 2012

CHRIST CHAPEL MINISTRIESPLAINTIFF

=VERSUS

GLORIA NDUNGE KATEE.....DEFENDANT

RULING:

The Plaintiff /Applicant herein, the Registered Trustee of Christ Chapel Ministries have brought this Notice of Motion dated 24/6/2013 under **Sections 1A, 1,3 and 63(e) of the Civil Procedure Act Cap 21 of the Laws of Kenya** and Order 51 of the **Civil Procedure Rules** and all other enabling provisions of the Law for Orders that:

- i. The Court be pleased to reinstate and extend the injunctive orders issued on the 19th February 2013 till the hearing and the final determination of the case.***
- ii. That the Court be pleased to direct that this matter be heard on priority basis.***
- iii. Cost of the application be provided for.***

The application was premised on the following grounds:-

- i. That on 19/2/2013, the court granted an injunction to restrain the Respondent from disrupting the worship services conducted on the suit premises on Christ Chapel Ministries.***
- ii. That on 12/3/2012, the Defendant filed a preliminary objection that was heard by this Court.***
 - i. That on 24/5/2013, a ruling was delivered whereby the preliminary objection was dismissed in the absence of the Plaintiff's counsel.***
 - ii. That the interim orders were not extended as the court was not moved appropriately.***
 - iii. That the Defendant has refused to allow the Plaintiff conduct their services and the area OCS is reluctant to involve to the police in the matter in the absence of a Court Order.***

The application was supported by the affidavit of **Nicholas Masika Mulei**, one of the Registered Trustees of Christ Chapel Ministries. He averred that the Plaintiff is the rightful allottee of **Plot No. x42**

situated in Huruma Estate, Nairobi. Further in the said plot, they have erected a church for which the members conduct their masses and prayers.

He further stated that on 23/1/2013, their advocate **Mr Khalwale** filed an application seeking to amend the Plaintiff. However, on 12/3/2013, the Respondent filed a Preliminary objection seeking to strike out the entire suit. The Court delivered a Ruling on the Preliminary objection on 24th May, 2013 in the absence of Counsel for the Plaintiff. For that reason, the interim Order was not extended.

That the Defendant has blocked the Plaintiff from conducting prayers in the premises and the OCS Huruma Police Station cannot issue any protection without the Court Order. Applicant further alleged that the main application dated 23/1/2013 was supposed to come for hearing on 3/10/2013.

The application was opposed. **Gloria Ndunge Katee**, the Respondent filed a Replying Affidavit and opposed the reinstatement of the ex parte interim orders.

That the Plaintiff is only interested in obtaining Interim Orders which they use to oppress and victimize the respondent instead of having the matter determined on merit after ventilating the issues in court. That the Plaintiff suit was dismissed on 29/9/2012 and they have now sought similar orders in the Notice of Motion dated 23/1/2013. The Defendant denied harassing the applicant herein.

The parties herein canvassed the application through written submissions which I have considered. The application is premised under **Sections 1A, 13, and 63(a)** of the **Civil Procedure Act**.

Section 1A deals with the overriding objective of the Act. The applicant in his submissions relied on **Section 3A** of the **Civil Procedure Act** which gives the Court wide discretion to make such order as may be necessary for the ends of justice.

I have perused the entire file. I have indeed noted that the Plaintiff first filed the suit on 21/3/2012.

Interim orders were granted then by the court. On 24/9/2012 the applicant's application dated 20/3/2012 was dismissed with costs to the Respondent.

On 23/1/2013, the applicant filed another Notice of Motion seeking restraining Orders. The same was granted on interim basis. A preliminary objection was raised by the Defendant and was argued on 16/4/2013. Ruling was delivered on 24/5/2013 in the absence of counsel for the Plaintiff /Applicant. Interim Orders were not extended.

Failure to extend the said Interim orders issued culminated in the filing of the instant application by the applicant. Meanwhile on 22/3/2013 the Respondent had filed an application seeking discharge of the interim orders issued on 18/2/2013. The same has never been argued. It has now been overtaken by events.

This is a claim over a parcel of land known as Huruma X42. The dispute was first brought to court on 20/3/2012. The parties herein have brought several applications.

Though the Interim Orders issued to the Plaintiff were not extended on 24/5/2012, the interest of justice demanded that the main application filed on 23/1/2013 should be disposed off expeditiously so that parties can ventilate their issues fully in court.

The Court relies on the provisions of Section 1A, and 3A of the Civil Procedure Act, which deals with overriding objective and that Court has wide discretion to make orders that would ensure end of justice is met.

In the instant case, I find that the end of justice will be met if interim orders are not reinstated or extended. However, the applicant is ordered to get down the notice of motion dated 23/1/2013 for hearing immediately so that the Court can decide the application on merit.

Alternatively, the Plaintiff should set down the main suit for hearing the soonest possible for the interest of justice. The parties should also desist from filing numerous interlocutory applications as they impede on the expeditious disposal of this matter.

Application dated 24/6/2013 is disallowed and dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered this 6th day of March 2014.

L.N. GACHERU

JUDGE