



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION

ELC NO. 1015 OF 2012

BISHOP GEOFFREY MURIUNGI

**KIRAITHE&STEPEHEN MUTETI MOLOLO (SUING AS TRUSTEES OF
AFRICAN MISSION HOLY GHOST CHURCH OF KENYA.....PLAINTIFF**

VERSUS

EDWARD MUSA MATIRU KARUGA.....DEFENDANT

RULING.

1. The Applicants herein ***Bishop Geoffrey Muriungi Kirathe*** and ***Stephen Muteti Mulolo*** (suing as trustees of ***African Mission Holy Ghost Church of Kenya***) have brought this Notice of Motion dated 17th December, 2012 brought under ***Order 40 Rule 1 & 2 of the Civil Procedure Rules, Section 3A, 63 (e) and all other enabling provisions of the law for orders that :***

- a. A temporary Injunction be issued restraining the Defendant whether by himself, his servants and/or agents from trespassing on, making use of, staying in or in any manner whatsoever from interfering with, entering, taking possession, constructing or dealing with the property plot **No Block J Komarock South Shopping Centre** also known as **Plot No. 523 Patanisho Phase II** pending the hearing and determination of the suit.
- b. That the Defendant do forthwith vacate or surrender to the Plaintiff or be evicted from the property plot **No. Block J** also Known as **Plot No. 523 Patanisho Phase II.**
- c. That the Officer Commanding Kayole Police Station to enforce the orders herein.
- d. Costs of the application be provided for.

2.The application was supported by these grounds:

That the plaintiff was legally allocated the suit property by the City Council of Nairobi in the year 1994 and Plaintiff have been in exclusive possession of the suit property.Further, the Defendant in a group of armed youth invaded the suit property on 11th February, 2012 and encroached on the same after carrying massive destruction on the properties and the developments thereon.That the Defendant by his illegal action has effectively deprived the Plaintiff of the use and enjoyment of the suit property which he is now letting out.

That the Defendant has refused to vacate, surrender or deliver possession of the suit property to the plaintiff despite being ordered to do so by the plaintiff and despite reports having been made to the

police. It was contended that the Defendant is a trespasser to the suit property and unless an injunction is issued the plaintiffs will suffer loss and damages.

3. The application was supported by the annexed affidavit of Joseph Mwangi Recho the deponent averred that he is a pastor at Africa Mission Holy Ghost Church of Kenya and had been authorized to swear the affidavit. He further alleged that in 1994, the City Council of Nairobi allocated **Block J in Komarock South Shopping Centre** to the applicant herein.

He further contended that Plaintiff paid all the City Council dues and constructed a church on the plot and took possession of it. On the other hand, the Defendant was a Pastor in the church until 1998 when he left and formed a rival church **Africa Mission Community Centre**. Thereafter, the Defendant started to claim ownership of the suit property is evidenced by JMR 2. To actuate his threat, the Defendant filed a suit CMCC 7800 of 2008 claiming ownership of the suit premises. However, the suit was dismissed with costs on 11/10/2012. Surprisingly, the Defendant invaded the suit premises on 11th February, 2012 in a company of armed youth. They destroyed the church building and other buildings and occupied the premises. Defendant further sold some building materials on the premises. The matter was reported to the police and is under investigations. The Defendant continues to trespass on the suit premises and his action has caused untold suffering to the Plaintiff and its congregation. The Plaintiff/Applicant has sought for these orders in the interest of Justice.

4. The application herein was vehemently opposed by the Defendant **Edward Musa Matiru Karuga**. Respondent filed a Replying Affidavit sworn on 15/2/2013. The Respondent averred that their plot in issue is plot no 4/420 at Soweto Resettlement Scheme as evidenced by MKI. That their plot is not Block J in Komarock but No. 4/420 in Soweto. He further contended that only the original documents from City Council can confirm that. Respondent denied ever closing the plaintiff church as alleged. The Respondent admitted existence of CMCC 7800/2008 but averred that the parties therein were different.

He also denied attacking members of the plaintiff's church or destroying the said church. He also denied ever occupying the plaintiff's plot and he admitted existence of a dispute in respect of plot No. 4/420 Soweto Resettlement Scheme. He also alleged that he is not in occupation of the Plaintiffs plot and that the plaintiff application is bad in law and it is untenable and ought to be dismissed with costs.

5. The parties herein, canvassed the application through oral submissions. The court has now considered the current application, the annexures therein, the oral submission and the provisions of law and makes these findings:

The applicant has come to court to seek for injunctive orders. The applicant must therefore satisfy the three principles to warrant him/her to obtain the injunctive orders. These principles were laid out in the case of **Giella Vs Cassman Brown Co. Ltd (1973) EA 358**. Firstly, the applicant should establish that he/she has a prima facie case with high probability of success. Secondly, that applicant would suffer irreparable loss or injury which may not be compensable by damages.

If orders not granted and thirdly, if the court is in doubt to decide the case on a balance of convenience.

6. The applicant herein has annexed several documents in his application. Applicant alleged that the African Mission Holy Ghost church of Kenya was allocated Plot No. Block J South Shopping Centre in 1992. He annexed JMR1 to confirm that. Applicant further alleged that Defendant herein trespassed on their plot in question. The City Council of Nairobi gave the Defendant an eviction Notice on 7/10/2008. Through various correspondences, the city Council of Nairobi confirmed that African Mission Holy Ghost Church of Kenya is the true owner of Plot Block J Komarock South Shopping Centre as evidenced by annexure [JMR 2]. Considering the available documents, there is no doubt that the African Mission Holy Ghost Church of Kenya is the bonafide owner of the suit plot.

The Defendant has alleged that he is not in possession of the suit plot and that his church African Mission Community Centre owns plot No. 4/420 on Soweto Resettlement Scheme. The applicant herein is not claiming ownership of plot No. 4/420 but Block J South Shopping Centre Komarock. The City Council of

Nairobi gave Musa Karanja the Defendant herein eviction Notice over Block J Komarock South Shopping Centre but not Plot 4/420 Soweto settlement scheme. Why did Nairobi City Council give the Defendant such eviction? The Defendant was given eviction Notice because it was evident Plot No Block J Kimarock, belonged to African Mission Holy Ghost Church of Kenya.

7. If defendant was indeed occupying his plot No. 4/420 Soweto settlement scheme as alleged by him in his Replied Affidavit, the City Council of Nairobi would not have issued him with an eviction notice. The applicant alleged that Defendant continues to occupy the suit property. The defendant has not denied that allegation. Defendant only contends that he is in occupation of Plot No. 4/420 belonging to African Mission Community Centre. However, the various correspondences annexed to the application point to the contrary.

8. The applicant having established that African Mission Holy Ghost Church of Kenya owns plot No. Block J Komarock south shopping centre and having convinced the court that the Defendant had encroached on it, has therefore satisfied the Court that it has a prima facie case with high probability of success. The suit property has housed a church where the members of the plaintiff have been worshipping. By the action of the Defendant, these worshipers have nowhere to worship in. The applicant is therefore suffering and he will continue to suffer irreparable loss and injury which cannot be compensated by way of damages.

The City Council of Nairobi has confirmed that the Plaintiff owns the suit land and had even given Defendant eviction notice. For that reason, the balance of convenience tilts in favour of the application.

9. Having now carefully considered the application in totality and the oral submissions herein, the Court finds that, applicant's application is merited. The Court allows the Notice of Motion dated 17th December, 2012 in terms of *Prayer No. 3, 4 and 5*.

- Costs of this application in the cause.

However, the applicant to set the main suit for hearing within the next 12 months failure to do so, this interim orders will be discharged automatically.

It is so ordered.

Dated, Signed and delivered this **14th day of June, 2013.**

L. N. GACHERU

JUDGE

In the presence of:

Ms Atieno holding brief Wainaina for the Plaintiff/Applicant

None Attendance for the Defendant/Respondent

Anne: Court Clerk.

L. N. GACHERU

JUDGE