



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 37 OF 2010

THE BOARD OF TRUSTEES AFRICAN INLAND CHURCH
.....**PLAINTIFF**

VERSUS

ATHANAS KISILU NGANDA
.....**DEFENDANT**

RULING

1. The Notice of Motion dated 29th February, 2012 is brought under provisions of Order 40 rule 6 and 7 of the Civil Procedure Rules; Section 1A 1B and 3A of the Civil Procedure Act.
2. The applicant seeks orders as follows;-
 - i. Discharging and or setting aside an injunction order granted on the 22nd February, 2010
 - ii. A declaration that the order of injunction granted on 22nd February, 2012 has lapsed.
3. The application is premised on grounds that twelve months have lapsed from the time the injunctive order was granted; and as result of the injunction issued the community is suffering as it cannot access the medical clinic.
4. The application is supported by an affidavit deponed by **Athanas Kisilu Nganda** who avers that the injunction order was granted after the plaintiff/respondent purported to be the owners of Land Parcel Number Mbuvo/Kiangini/460 where the dispensary is situated; the title in respect of the parcel of land was recalled by the relevant Ministry and cancelled; the land therefore belongs to the community and he is aggrieved by the injunctive orders in force.
5. The respondents have failed to file a response to the application.
6. Order 40 rule 6 of the Civil Procedure Rules states thus;-

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise”.

7. The suit herein was filed on 22nd February, 2010. Injunctive orders were granted on the same day. 2 ½ years have since lapsed from the date the order was made. The respondent’s counsel having failed to respond to the application, no reason whatsoever has been given by the injunction order should subsist.
8. In the premises, I find that the injunction order issued herein lapsed. Consequently, I discharge and/or set it aside.

9. Costs to the applicant.

DATED, SIGNED and DELIVERED at MACHAKOS this 25th day of SEPTEMBER, 2013.

L.N. MUTENDE

JUDGE