



**PETER OCHIENG OKORE  
MILICENT AKINYI WAO t/a  
SIG TUNES COMMUNICATIONS.....PLAINTIFFS**

**VERSUS**

**BISHOP GEORGE BARACK .....1<sup>ST</sup> DEFENDANT  
REGISTERED TRUSTEES EVANGELISM  
HARVEST FELLOWSHIP MINISTRY .....2<sup>ND</sup> DEFENDANT  
MUNICIPAL COUNCIL OF KISUMU.....3<sup>RD</sup> DEFENDANT**

**RULING**

The applicants application dated 9<sup>th</sup> February 2011 prays for the following orders:-

- 1. That this Honourable court be pleased to hear this application ex-parte in the first instance.**
- 2. That pending the hearing and determination of this application inter – parties there be a temporary injunction against the defendants/respondents, their agents, representatives, assigns or any other person acting through their direction from trespassing, conducting prayers upon the land, destroying fence, destroying property or in any way interfering with the plaintiff's parcel of land number KISUMU / MUNICIPALITY / BLOCK 12 / 118.**
- 3. That pending the hearing and determination of this suit there be a temporary injunction against the defendants / respondents, their agents, representatives, assigns or any other person acting through their direction from trespassing, conducting prayers upon the land, destroying fence, destroying property or in any way interfering with the plaintiff's parcel of land number KISUMU / MUNICIPLAITY / BLOCK 12 / 118.**
- 4. That costs of this application be provided for.**

The same is supported by the supporting affidavit of **Peter Ochieng Okore** and **Millicent Akinyo Wao**. They have averred that they are the registered proprietors of the suit land namely Kisumu / Municipality Block 12 / 118 and have attached a copy of the Title Deed which they obtained on 15<sup>th</sup> September 2007. It was their argument that the defendants have trespassed therein and are busy conducting prayers in their land without their authority.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants have sworn a replying affidavit through the 1<sup>st</sup> defendant dated 8<sup>th</sup> March 2011. According to them they sought the 3<sup>rd</sup> defendant's permission to occupy the suit land way back in 15<sup>th</sup> December 2009. From the annexures to their affidavits it appears that the defendants were simply promised by the 3<sup>rd</sup> defendant that their request shall be considered among others.

The 3<sup>rd</sup> defendant has equally respondent vide the replying affidavit of Daniel S. Okere, the clerk. The upshot of the affidavit is that they have got no business in this case. The only time they were involved was when responding to the plaintiff's letter requesting for land and when they sought to have the illegal

structures removed on the suit land as whoever was constructing them didn't have its approval. The 3<sup>rd</sup> defendant didn't exhibit any document showing that it had granted the suit land to the plaintiff.

I have perused the pleadings herein together with the able submissions by the respective counsels. What is apparent is that the plaintiffs are the current registered owners of the suit property. The 1<sup>st</sup> and 2<sup>nd</sup> defendants are not.

It is further clear that the 2<sup>nd</sup> defendant requested for land for purposes of conducting their worship from the 3<sup>rd</sup> defendant. The 3<sup>rd</sup> defendant acknowledged their request but its response was that their request was being considered.

It appears equally from the pleadings as well as the submission by the counsel that the defendants are already in occupation of the suit premise. The principles of granting a temporary injunction are now well settled, namely:-

- (a) **If a prima facie case has been established.**
- (b) **If irreparable loss shall be suffered that damages cannot be an adequate compensation.**
- (c) **If in doubt on a balance of convenience.**

See **Giella vs= Cassman Brown & Co Ltd [1973] E. A. 358** I am persuaded that a prima facie case has been established by the plaintiffs herein. They are the current legitimate holders of the title. Under the provisions of Section 27 and 28 of the Registered Land Act Chapter 300, their title is indefeasible unless by fraud or misrepresentation. At the moment none of the defendants is alleging that the plaintiffs fraudulently obtained the title. In fact the 3<sup>rd</sup> defendant is disassociating itself from the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The 3<sup>rd</sup> defendant case is that it never granted permission or authority to the defendants to occupy the land. As a matter of fact its letter date 29<sup>th</sup> September 2010 is written to a stranger.

The balance of convenient tilts in the plaintiff favour. The defendants are mere trespassers. They were not permitted by the plaintiffs least of all the 3<sup>rd</sup> defendants to occupy the plaintiff parcel of land. They cannot therefore be allowed to use the land save with the plaintiffs permission. This court cannot aid their illegal trespass.

It has been alleged by the 3<sup>rd</sup> defendant that according to records from lands office the title deed is registered in the names of one Manoham Singh Chawlan. The said person has not come forth to claim such ownership. In any event that is an issue left for trial.

For the foregoing reasons I shall order that:-

**(a) Pending the hearing and determination of this suit there be a temporary injunction against the defendants, their agents, representatives, assigns or any other person acting through their direction from trespassing, conducting prayers upon the land, destroying fence, destroying property or in any way interfering with the plaintiffs parcel number Kisumu Municipality Block 12/ 118.**

**(b) Cost of this application to the plaintiff.**

**Dated, signed and delivered at Kisumu this 29<sup>th</sup> of February 2012**

**H. K. CHEMITEI**  
**JUDGE**

**In the presence of:**

.....Advocate for Applicant

..... for Respondent