



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Environmental & Land Case 142 of 2012

CHRIST CHAPEL MINISTRIES.....PLAINTIFF

VERSUS

GLORIA NDUNGE KATEE..... DEFENDANT

RULING

1. The Plaintiff/Applicant hereinafter referred to as the applicant has filed a Notice of Motion dated 20/3/2012 pursuant to section 3A and 63(c) of the civil Procedure Act, and Order 40 rule 1(a) and order 51 rule 1 of the Civil Procedure rules, seeking the following orders against the defendant/respondent;

i. That pending the hearing and determination of the suit, this Honourable Court be pleased to issue a temporary injunction against the defendant by herself, her agents and/or anybody claiming through her from trespassing upon, alienating or interfering with the plaintiff's peaceful and quiet possession of the plaintiff's suit property.

ii. That at the hearing of this application inter-partes the plaintiff will seek a permanent injunction to issue against the defendant, her officers, servants, agents or any person laying claim through her from entering upon the suit land or in any other manner interfering with the suit land.

iii. That the costs of this application be borne by the defendant.

The application is based on the following grounds;

- a) That the plaintiff has at all material times been the owner and proprietor of all that parcel of land known as X42 situated at Huruma area within Nairobi and has been in possession thereof to date.
- b) That the plaintiff's title to Huruma Estate plot number X42 is the legitimate title and the same is indefeasible against the defendant or anyone claiming under her.
- c) That the defendant by herself, her agents, servants or otherwise howsoever have unlawfully trespassed upon the suit land and have been harassing, intimidating, threatening, provoking, inciting the plaintiff's members as they congregate for worship and also interfering with the quiet and peaceful enjoyment of their property known as Huruma X42.
- d) That the defendant threatens unless restrained by this Honourable Court, to continue and repeat the wrongful acts above complained of.

- e) That the actions of the defendant constitute a breach of the fundamental rights of the members of the church as enshrined in the constitution of freedom of worship.
- f) That the actions of the defendant is causing anxiety and fear among the members of the church and the church now faces the threat of losing its members.
- g) That the defendant intends unless restrained by this Honourable Court to continue interfering with the plaintiff's quiet and peaceful enjoyment of the suit property.
- h) That the defendant intends unless restrained by this Honourable Court to continue interfering with the plaintiff's quiet and peaceful enjoyment of the suit property.
- i) That under these circumstances it is only fair and just that this application be certified urgent.

2. The application is supported by the affidavits of Nicholas Masika Mulei dated 20th March 2012 and 18th June 2012.

This is what the applicant depones in brief; that he is an officer of the plaintiff. That on 18th May 1998, the City Council of Nairobi allocated the plaintiff the suit land vide allocation letter Ref No. CP & ARCH/02313. That on the 25th August 2003 the plaintiff society was registered under the name Christ Chapel Ministries and certificate of registration no. 19508 duly issued. That on the 8th November 2012, a Beacon Certificate was issued by the Nairobi City Council to the plaintiff defining the plot boundaries. That on the 4th March 2012, the defendant encroached on the suit land accompanied by a group of hooligans and harassed, intimidated and issued threats on the plaintiff's members who had congregated for worship claiming that she is the owner of the suit land and hence legally entitled to take possession of the same. That the plaintiff is apprehensive that if this Honourable Court does not grant the orders as sought, they are bound to lose their members as the unlawful actions of the defendant have caused the members of the plaintiff unnecessary fear and anxiety. That the plaintiff is apprehensive that unless the defendant is restrained vide a Court order, she intends to continue interfering with the quiet and peaceful enjoyment of the plaintiff and their members.

3. In the affidavits dated 18/6/2012 Mr. Mulei avers further that after allocation of the plot in June 2006, the church embarked on the construction of a School and Orphanage in pursuance of its objective and the church has not been able to carry out its activities due to the resistance from the defendant who has engaged the Chief and police officers to lock out the plaintiff from the precincts. That the defendant was appointed the director of the school by virtue of her position as Vice Chairperson of the plaintiff ministries and the church applied for registration of the Orphanage. That the funds to run the school has come from donors through presiding Bishop and that though the school and orphanage are ran by the defendant, the orphanage was registered in 2008, the plaintiff is in the process of registering the school. The applicant has averred the defendant's alleged unbecoming behavior which according to him resulted in the suspension of the defendants from the position of Director and Chairperson. That on 2/5/2009 the City Council of Nairobi planning Department approved the building plans which the plaintiff had applied for on the 17//2008. He reiterates that if the orders are not granted they are bound to lose their members as unlawful actions of the defendants have caused the members of the plaintiff church unnecessary fear and anxiety.

4. The respondent filed grounds of opposition dated 5/4/2012, an affidavit dated 2/4/2011 and further replying affidavit dated 27/6/2012. The grounds of opposition are, that the application and the suit offends the provisions of S. 5 of the Civil Procedure Act, the application and the suit is an abuse of the Court process as it duplicates issues raised in pending suits between the same parties, the application and the supporting affidavit conceal material facts and is intended to mislead the Court and that the applicant has come to Court with tainted hands and is not entitled to the orders sought. This is what she depones in the affidavit in brief; That Nicholas Masika Mulei is not competent and lacks the locus standi to swear the supporting affidavit as he has never to the best of her knowledge been an office bearer of the plaintiff. That she is an office bearer and a co-founder of Christ Chapel Ministries since 1997. That some of the

bonafide officials of the plaintiff are Benson Wambua Kimanzi, Obadiah N. Kimanzi and Boniface Kivunzi who filed a similar matter relating to the same subject matter vide civil suit no 4054 a matter that is still pending before the honourable Court and therefore that this application is an abuse of the process of Court. That there has not been worship services at the plaintiff sanctuary since June 2011 a reason that was not occasioned by her doing rather the church members left the ministry when they discovered that the presiding bishop who was then her legal husband Benson Wambua Kimanzi, had purported to marry the church secretary. That since the plaintiff's sanctuary has remained unused since June 2011, the children from the Christ Chapel Children's Home have been using it for their Sunday service. That some members of the community around them joined the children for Sunday worship and on realizing this the presiding Bishop to the plaintiff Benson Wambua Kimanzi tried to mobilize a group of people to come and throw them out of the church as was the case on the 25th day of March 2012. That there is non disclosure of material facts on the part of the deponent and the Honourable Court should not aid those who come to Court with unclean hands. That having failed in his mission to evict her and stop her from carrying out the duties at the orphanage the presiding Bishop to the plaintiff Benson Wambua Kimanzi has sought new ploys of purporting to allege that there are new office bearers of the ministry all without her knowledge and undue disregard to the plaintiff's constitution. That some of the office bears have been trying to use force and threats to evict the orphanage from the premises and to stop her from accessing the land. That the presiding Bishop Benson Wambua Kimanzi has threatened to sell the land known as X42. That on the same parcel of land known as X42 situated in Huruma is the plaintiff's sanctuary as well as an orphanage named Christ Chapel Children's Home which she established in 2006. That the land on where the orphanage stands was bought through monies obtained from donors to the orphanage which also helped upgrade the structures thereon. That in light of the fact that the plaintiff's church premises and the orphanage share the compound, it would be unjust to bar her entering the parcel of land known as X42. That she currently have 42 children in the orphanage and having such orders in place is detrimental to her smooth running of the same as well as the welfare of the children. That through a Court order dated the 12th day of October 2011 the Honourable Court injuncted the presiding Bishop of the plaintiff Benson Wambua Kimanzi from entering and interfering with the Christ Chapel Children's Home. That the children's Department vide a letter dated the 18th of October 2010 wrote a letter to the afore mentioned instruction that he ceases interfering with the orphanage,

5. In her further replying affidavit she reiterates her averments in her 1st affidavit and depones further that; it is untrue that she has been the reason for the failure of the plaintiff to carry out its activities as the true version of events is that the congregants ceased attending the church service when they found out that the presiding bishop Benson Kimanzi had deserted his family and married the church secretary one Diana Ndunge. That she is the one who began the Children's home and the church was not in any way involved in the day to day running of the children's home. That she was registered as the chairperson of the Children's home. That when the children's home was being registered in 2008, the children's department made it a condition of registration that there be a separation of the church and the children's home. That the church did not apply for the same. That she gets donors to donate money and since the children's home did not have a bank account the monies to the orphanage were sent through the bank account of the presiding Bishop Benson Kimanzi That the land adjacent to the plaintiff's church where the children's home is situate was bought using funds sourced from donors and forms part of the larger X42 which is the suit premises. That she is the one who was undertaking the expansion of the children's home in Mwingi and Kisumu but had to put a stop to the said expansion due to lack of funds as the presiding Bishop had interfered with the donors who were now unwilling to continue supporting the expansion. That the averments on her behavior are untrue and border on defamation of her otherwise good character and morals and the deponent is put to strict proof of the said allegations. That she had never threatened to break away from the ministry as she was committed to the Lord's work through this ministry and especially to the calling of the children's home and the nurturing of the children in all ways. That her suspension was occasioned due to the fact that she had reported the presiding bishop of interference with the running and operations of the children's home a fact that he was unhappy about and resulted into her purported suspension from the church. That it is the former bishop who has been hiring goons and suspicious looking people to come disrupt the normal operations of the orphanage by issuing threats to the effect that they would evict the orphanage from all that land X 42 in Huruma and she has reported the said threats at Huruma police station. The OB No's as reported to the police are 64/3/3/2012 and 45/15/2/2012. That the allegations that the defendant has on the 4th day of March harassed, intimidated

and issued threats to the congregants of the plaintiff is an outright lie as there has been any service held at the plaintiff's church since June 2011 and the children from the orphanage had been using the church to hold their Sunday service. That the Court should not be used to justify dishonest and underhand dealings by the alleged applicants to the detriment of the defendant. That she is a pastor with the plaintiff Ministry and she has only been carrying out her Christ given role of pasturing and nourishing whosoever comes to the church. That the plaintiff church and the orphanage share the compound, it would be unjust to bar her entering the parcel of land known as X42. That due to the propensity for violence by the purported applicants and their evil designs on her person and the orphanage it would be unsafe to allow them on the compound of the church.

6. Counsel filed written submissions which I have carefully read and considered together with the affidavits filed by the parties and the annexures thereon. In the plaintiff's submissions they argued that they have made out a prima facie case as they are the proprietor of the suit land yet they had been denied access by the defendant and that the existence of the orphanage came as a result of the applicant and it is one of their projects and would not have been registered without the applicant's active participation. That both the respondent and her husband Benson Kimanzi were officials of the applicant and were removed due domestic squabbles and their removal was lawful and legal for the benefit of the ministry.

7. The respondents in their submissions have raised the issue of the plaintiff's locus. Counsel submitted that the purported applicant lacks locus because the plaint at paragraph 1 states that the plaintiff is suing through its registered trustees and the trustees are not named. That registered Trustees are a legal persons by virtue of registration under the Trustees Act Cap 164 and a certificate of incorporation is issued to that effect. That nowhere has the purported applicant Nicholas Masika Mulei, shown such registration to warrant authority to bring this suit. Mr. Nicholas Masika Mulei purports to be the treasurer of the plaintiff yet he does not give any evidence in proof say by way of returns or a letter by the Registrar of Societies which he could have obtained in view of the letter dated 15th of April 2011 annexed as part of his list of exhibits filed in the suit. The respondent who is not only the vice chairperson of the plaintiff but also a pastor in the said church has controverted this allegation in her Annexure GNK 1 of Gloria's replying sworn on 2/4/12 which shows one Boniface Kivunzi as the Treasure of the plaintiff. That no authorization has been filed as requires by Order 1 rule 13(1) and (2) of the Civil Procedure rules. That Section 6 of the Civil Procedure Act bars this Court from proceedings with this suit. The plaintiff had filed a similar suit vide 404/1 annexure GNK 2 affidavit sworn by Gloria Ndunge Katee on 2nd April 2012 based on similar facts and seeking similar orders which is still pending unprosecuted by the plaintiff. This is an attempt by the applicant to obtain by non disclosure of a material fact what he failed to obtain the previous suit. The respondent submits that this is an abuse of the court process.

8. I have considered all that has been submitted by the parties by way of affidavits and written submissions. The plaintiff in this case is Christ Chapel Ministries. The submissions raised by counsel for the respondent that the applicant lacks locus is correct. In the plaint the plaintiff states that it is suing through registered trustees yet the trustees are not named. As correctly submitted a Registered Trustee is a legal person by virtue of Registration under the Trustee Act. Mr. Nicholals Masika Mulei has not demonstrated that he is a trustee of the said ministry. In his affidavit in support of the application he states he is an officer of the plaintiff and in the verifying affidavit he states he the Vice Treasurer of the ministry. For one to file to suit he must have the locus to do so especially in a suit where they are suing through its registered trustees. The respondent has demonstrated through annexure GNK1 a copy of annual return that she is the vice chairman of the said ministry. There is no contrary evidence from the registrar of societies that the records have been changed. I agree with the respondent's counsel submission that Mr. Nicholas does not have locus to bring this suit and the application seeking to bar the respondent. I also note that there was no authorization filed as required by order 1 rule 13(1) and (2) of the Civil Procedure Rules. Having noted that the applicant lacks the locus to file the application, in my view I need not to get into the merits of the application and I therefore strike out the application dated 20/3/2012 with costs to the respondent.

Orders accordingly.

Dated, Signed and delivered this 24th day of September 2012

R. OUGO

JUDGE

In the Presence of:-

..... For the Applicant

..... For the Respondent

..... Court Clerk