



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ELC NO. 256 OF 2010**

**PHILEMON CHAMWADA OTIENDE.....1<sup>ST</sup>  
PLAINTIFF**

**PATRICIA MUHATI.....2<sup>ND</sup> PLAINTIFF**

**PASTOR PIUS MBUTSI.....3<sup>RD</sup> PLAINTIFF**

**(Suing as the Registered Trustees and representatives of**

**Gethsemane Ministry)**

**V E R S U S**

**JOSEPH MATHENGE.....1<sup>ST</sup> DEFENDANT**

**JOSEPH MUNYIRI.....2<sup>ND</sup> DEFENDANT**

**JOHN MUCHIRI.....3<sup>RD</sup> DEFENDANT**

**DOUGLAS MATHENGE.....4<sup>TH</sup> DEFENDANT**

**MR. MUREITHI.....5<sup>TH</sup> DEFENDANT**

**JOHN NDIRANGU.....6<sup>TH</sup> DEFENDANT**

**R U L I N G**

The Plaintiff church has shown certificate of registration (“PCO 1”) showing it is registered as a society. It brought this suit through its trustees to say it is the registered proprietor of Nairobi/Block 107/1128, the suit land, and annexed a Certificate of Lease (“PCO2A”) issued on 23<sup>rd</sup> November 2007. It bought the suit land from the previous registered owners Esther Mwangi, Andrew Maina and Samuel Kariuki (“PCO 2C”) and have been paying rates to the City Council of Nairobi. While preparing to develop the property, the Defendants came onto the same to also begin to develop and pulled down and damages structures thereon. The suit was filed for a declaration that the Plaintiff was legal owner of the suit land, and for a permanent injunction to restrain the Defendants who were making a claim of ownership over the same property. With the suit was filed a chamber application for a temporary injunction to restrain the Defendants, their contractors, agents and/or servants from interfering with, building on, subdividing, digging trenches, selling, disposing of or in any other way dealing with the suit land. The application was supported by the affidavit sworn by Philemon Chamwada Otiende, a trustee of the church.

The evidence placed on record by the Plaintiff was not controverted. The application was served on the Defendants who made no response. I find that the Plaintiff has shown that it is the *prima facie* registered proprietor of the suit land which the Defendants are interfering with without any legal or equitable basis. A registered proprietor of land is, under sections 27 and 28 of the Registered Land Act (Cap. 300), entitled to absolute and indefeasible claim to the same. Such claim includes the right to possess, occupy, use and develop. It further includes the right to quiet enjoyment. This is the claim that the Plaintiff has shown the Defendants are interfering with. They have to be restrained as the resolution of the dispute is awaited.

On basis of **Giella –Vs- Cassman Brown & Co. Ltd [1973] EA 358**, I allow the application dated 17<sup>th</sup> August 2010 in terms of prayers 3, 4 and 5.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MARCH 2011**

**A. O. MUCHELULE**

**J U D G E**