



Muchuma v Nzioki (t/a Jesus is Victory Worship Centre) (Environment and Land Case Civil Suit E073 of 2022) [2022] KEELC 15424 (KLR) (15 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15424 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E073 OF 2022
AA OMOLLO, J
DECEMBER 15, 2022**

BETWEEN

IRENE LUTIA MUCHUMA PLAINTIFF

AND

THOMAS NZIOKI DEFENDANT

T/A JESUS IS VICTORY WORSHIP CENTRE

RULING

1. The plaintiff filed the notice of motion dated May 4, 2022 seeking for three orders that are spent. The motion was supported by a supporting affidavit sworn by Irene Lutia Muchuma on May 4, 2022 which interestingly sought for the following prayers;
 - a. Spent
 - b. That pending hearing and determination of this application, the defendants/respondents either by himself/themselves, their employees, his/their servants or agents or assignees or any one acting or claiming through or under the defendants be restrained by way of temporary injunction from operation of the church.
 - c. Cost of this application be provided.
2. The applicant's motion is based on the grounds *inter alia*;
 - i. That defendant has been operating an unregistered church since 2014, causing unnecessary noise in the neighbourhood to the plaintiff and pushing tenants away.
 - ii. The applicant has attempted without success to engage the defendant to stop the noise
 - iii. The noise emitted by the church is causing adverse psychological and physiological effects to the plaintiff.



3. In support of the motion, the applicant deposed that she is the registered owner of land Nairobi/Block 21190/d/117 comprised a residential house in Tasia while the defendant's church is located 3 metres away from it. That the defendant has been operating the church since 2014, causing harm to the occupants of her houses. That the plaintiff's mother pleaded with the applicant to put an end to the noise disturbance so she held face to face meetings with the defendant in the presence of the area chief and NMS noise officers which did not yield any fruit. The applicant argues that unless the defendant is restrained, they will continue to cause physical, mental anguish, and psychosocial trauma to her and the residents of Tasia.
4. The defendant opposed the applicant's motion *vide* replying affidavit sworn by Thomas Kilute Nzioki on October 25, 2022 stating that order 2 sought in the application is similar to prayer 2 in the plaint and is mandatory order which if granted at the preliminary stage of the suit will cause drastic consequences on him hence the issues raised should be canvassed at the hearing of the main suit.
5. The defendant further stated that the church is registered under God's plan pentecostal church from 2014 when it started and that there have been meetings between him and the plaintiff, chief, police and NMS Noise officials and they have visited the defendant's remises and confirmed that the church is not noisy and none of the church's next door neighbors have raised a complaint as to the noise levels.
6. The defendant stated that the plaintiff has since vacated her house and that the orders sought are spent and they should proceed to the hearing of the main suit.
7. The applicant is asking this court to grant her orders worded to read temporary injunction. However, the order if granted will impact the defendant as if it was a mandatory order that was granted since the applicant want the court to issue an order stopping the defendant from operating a church. Hence, the applicant needed to satisfy the court that their application meets the threshold for granting an order of mandatory objection, for instance, that this is a clear case. The applicant did not make any arguments on this line.
8. Secondly, injunction is an equitable remedy hence whoever seeks equity must comply with the equitable doctrines, in this instance, that equity aids the vigilant not the indolent. The applicant pleads that the defendant has been operating the church from the year 2014, but now filed this suit in 2022 and wants the court to stop the church from operating before the suit is heard some eight (8) years later. The application was made after undue delay considering the duration taken before moving the court for a stop order. On these two fronts, the application fails.
9. Under the principles for granting injunctions, the applicant was under a duty to demonstrate that she has a *prima facie* case, or will suffer irreparable loss or that the balance of convenience tilts in their favour. There is evidence of *prima facie* case going by the pleadings on record which reveal there was some noise emanating from the defendant's premises as there were meetings to try to resolve the applicant's complaints. The issue to be determined is whether the noise levels are beyond the minimum permissible under the noise regulations.
10. On the heading of balance of convenience, I find the same to tilt in favour of the defendant on the basis that the operations of the church have been going on for more than five (5) years. There is no evidence that the tenants who moved out if any, moved out due to the noise from the defendant's church.
11. In view of the observations made, I find that the orders sought cannot be granted at this interlocutory stage. The application is dismissed with costs to the defendant/respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 15TH DAY OF DECEMBER, 2022.



A. OMOLLO
JUDGE

