



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 171 OF 2018

BISHOP GEOFREY MUTHECA GITAU

BISHOP ELI ROP SUING TRUSTEES OF

FULL GOSPEL CHURCHES OF KENYA.....PLAINTIFFS

=VERSUS=

HON.OKOTH OCHOLLA.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

REV STEPHEN MBOGO NJUE.....3RD DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 22nd October 2020 in which the 3rd Defendant/Applicant seeks that the orders of the court which were given on 22nd October 2019 be set aside. The Applicant contends that he was not served with the application which resulted in the said orders and that therefore his constitutional right to be heard was infringed.

2. The Applicant argues that the Respondents have used the orders obtained on 22nd October 2019 to construct a permanent perimeter fence which has encompassed plots belonging to the Applicant as well as the other church members. The Applicant contends that though the Respondents obtained the orders on 22nd October 2019, the orders were not served upon him until 15th October 2020.

3. Though the Respondents were served with the application, they neither filed grounds of opposition nor replying affidavit. The Application which resulted in the impugned orders was placed before me on 22nd October 2019 in chambers. Owing to the issues of vandalism of church properties which had no fence, I granted ex-parte orders allowing the Respondents to put up a temporary fence to secure the church properties pending hearing of the application. It is apparent that the Respondent misunderstood the ex-parte orders and proceeded as if the entire application had been allowed. There was no way such an application would have been determined ex-parte in the absence of the Applicant and the Respondents.

4. It is clear from the photographs annexed to the supporting affidavit that the Respondents are putting up a permanent wall. This is in clear breach of the order which allowed them to put up a temporary fence. I therefore find that the Applicant's application is well founded. I allow the same with the results that the orders of 22nd October 2019 are hereby set aside in their entirety. There shall be no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF MARCH 2021.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr. Ochich for the 3rd Defendant/Applicant

M/s Fatma for 2nd Defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE