



**REUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**E.L.C CASE NO. E001 OF 2021**

**THE SECRETARY GENERAL OF THE BAPTIST CONVENTION OF KENYA**

**JOSHUA RUTERE MUCHEKE (SUING FOR AND ON BEHALF OF THE**

**BAPTIST CONVENTION OF KENYA).....PLAINTIFF/APPLICANT**

**VERSUS**

**THE DIRECTOR GENERAL KENYA**

**URBAN ROADS AUTHORITY.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**HYPERTECK CONTRACTORS**

**& EQUIPMENT LIMITED.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**KENYA POWER & LIGHTING**

**COMPANY LIMITED.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**THE INSPECTOR GENERAL**

**OF POLICE.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**THE OCS CHUKA**

**POLICE STATION.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

**THE HONOURABLE**

**ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This application states that it has been brought to court under Section 3 and 3A of the Civil Procedure Act, Order 40 Rule 1 and Order 51 Rule 1 of the Civil Procedure Rules and Article 64 of the Constitution of Kenya. It seeks the following orders:

**1.THAT** this **Application** be certified urgent and be heard ex parte at the first instance and speedily thereafter.

**2.THAT** pending *inter parties* hearing and subsequent determination of this APPLICATION, a temporary injunction be issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, their agents, servants or anybody acting on their behest from entering, excavating or constructing a road on the plaintiff's land parcel no LR KARINGANI/NDAGANI/594.

**3.THAT** pending *inter parties* hearing and subsequent determination of the PLAINT, an injunction be issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendant, their agents, servants or anybody acting on their behest from entering, excavating or constructing a road on the plaintiff's land parcel no LR KARINGANI/NDAGANI/594

2. The application is supported by the affidavit of Joshua Rutere Mucheke sworn on **4<sup>th</sup> February, 2021** and has the following grounds:

- a. That the Plaintiff/Applicant is the acting Secretary General of the Baptist Convention of Kenya, a church registered under the Societies Act.
- b. That the plaintiff/Applicant is mandated to handle all legal matters pertaining the convention under the Constitution of the Baptist Convention of Kenya
- c. That the Baptist Convention of Kenya is the sole registered proprietor of land parcel no LR; KARINGANI/NDAGANI/594 which property is freehold and absolute.
- d. That the plaintiff has constructed the following developments on the land;
  - Baptist Convention in Kenya- Chuka Church
  - A private primary school
  - Commercial building with rental shops
- d. That on or around 7<sup>th</sup> February 2020 agents of the 1<sup>st</sup> defendant/respondent marked buildings in Chuka township that were ostensibly on a road reserve, for demolition to pave way for tarmacking of the “Moi Girls” road .
- e. That the commercial building belonging to the plaintiff/applicant and standing on land parcel no LR; KARINGANI/NDAGANI/594 WAS MARKED WITH A RED ‘X’ SIGN.
- f. That the plaintiff traveled to the regional offices of the 1<sup>st</sup> defendant in Meru town to inquire why part of its commercial building was painted with an X sign but was not given any audience.
- g. That on the morning of 4<sup>th</sup> April 2020 at 6am, officers of the 1<sup>st</sup> defendant demolished the Applicant’s commercial building standing on LR KARINGANI/NDAGANI/594 in Chuka town.
- h. That the said building had been constructed with all relevant statutory approvals and stood on Private Land.
- i. That a survey exercise conducted by the survey of Kenya under the Ministry of Lands and Physical planning established that the demolished building stood on LR KARINGANI/NDAGANI/594.
- j. That if the orders sought are not granted the plaintiff/applicant will stand to suffer irreparable loss which cannot be compensated by way of damages.
- k. No party stands to be prejudiced in the event the orders sought are granted.

3. On **15<sup>th</sup> February, 2021**, this court issued the following orders:

1. That the application is NOT certified urgent but will be heard on priority basis.
2. That the application be served upon all the Respondents within 7 days of today.
3. That a temporary injunction be and is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, their agents, servants or anybody acting on their behest from entering, excavating or constructing a road on the plaintiff’s parcel No. LR. KARINGANI/NDAGANI/594.
4. That interpartes hearing on 2<sup>nd</sup> March, 2021.

4. On **2<sup>nd</sup> March, 2021**, advocate Muthomi Gitari, representing the plaintiff and advocate Justin Kiongo, representing the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants asked the court to confirm the interim orders issued on **15<sup>th</sup> February, 2021** so that the parties can expedite the hearing of the main suit. In the circumstances, the said orders are hereby confirmed and this application is deemed heard and determined.

5. The following orders are issued:

- a. For avoidance of doubt, this application is deemed heard and determined with costs to be in the cause.
- b. The 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants are granted 30 days to file and exchange their defence/defences and to fully comply with order 11 of the Civil Procedure Rules.
- c. Orders issued today to be served upon the absent defendants by the plaintiff.

d. By **consent, directions** to fix a **hearing date** to be taken on **20.4.2021**.

**Delivered in open Court this 2<sup>nd</sup> day of March, 2021 in the presence of:**

CA: Ndegwa

Muthomi Gitari for the plaintiff

Kiongo for AG for 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants

**HON. JUSTICE Dr. P. M. NJOROGE,**

**ELC JUDGE.**