



**County Government of Uasin Gishu v Trustees Eldoret Churches Urban Project Trust Fund
(Environment & Land Case E031 of 2023) [2024] KEELC 6413 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6413 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E031 OF 2023**

**EO OBAGA, J
OCTOBER 3, 2024**

BETWEEN

COUNTY GOVERNMENT OF UASIN GISHU PLAINTIFF

AND

**THE TRUSTEES ELDORET CHURCHES URBAN PROJECT TRUST
FUND DEFENDANT**

RULING

1. This is a ruling in respect of a Notice of motion dated 28.8.2024 in which the Defendant/Applicant seeks the following orders:-
 1. Spent.
 2. Spent
 3. Spent
 4. That the Plaintiff/Respondent, its servants, agents including the member of the County Assembly (M.C.A) Langas Ward, Uasin Gishu County one Francis Muya Mwangi, Jeniffer Wambui Maina, Collins Barasa Mangeni or any other persons whomsoever acting for the Plaintiff/Respondent or agents and/or follows of the M.C.A or members of the public from Langas Ward, Eldoret or any other persons acting on instructions be restrained by way of a permanent injunction, from trespassing onto, entering, disrupting the operations of Langas Racecourse Health Centre situate on L.R No. Eldoret Municipality/Block 14/1653 registered in the name of Eldoret Churches Urban Project Trust Fund Registered Trustee pending hearing an determination of this suit.
 5. Costs be provided for.



2. The Applicant contends that it is the registered owner of LR. No. Eldoret Municipality Block 14/1653 on which Langas Racecourse Health Centre is situate. The land was allotted to it by the National Land Commission (NLC) and is run using donations for the benefit of members of the public.
3. On or around 23.8.2024, the Applicant put up a notice calling upon members of the public to raise objections if any regarding its intention to put up a morgue within the Health Centre. It is after this notice that the member of County Assembly (M.C.A) for Langas Ward called upon the members of the public to come out and reclaim the Health Centre which according to the MCA belongs to the public.
4. The Applicant is apprehensive that the intended actions by the MCA calling for the public to march to the Health Centre will cause disruption to the Health Centre. It is on this basis that the Applicant is seeking for a permanent injunction restraining the Plaintiff/Respondent and/or its agents from interfering with the Applicant's Health Centre.
5. The Respondent who was served neither filed grounds of opposition nor replying affidavit and its counsel did not attend court during the hearing of the application arguing that the hearing notice was too short.
6. Though the application was not opposed, this court must be satisfied that the Applicant's application is grounded on law and that it has met the threshold for grant of an injunction.
7. To begin with, the Applicant has not filed a counter-claim which would have been the basis of asking for injunctive orders. The Applicant having not filed a counter-claim, there is no basis upon which it can seek for injunction against the Respondent. Besides this, the Applicant appears to base its application on mere apprehension of demonstrations without any evidence of the same.
8. In *Cresta Investments Limited v Gulf African Bank Limited & another* [2020] eKLR it was held as follows:-

“Moreover, an application for injunction under order 40 of the Civil Procedure Rules is predicated on a suit filed by the party seeking the injunction. An injunction without a substantive claim is a plea in vain and cannot lie in law or at all.”

9. In law, a counterclaim is a separate suit. The Applicant cannot ride on the back of the Respondent's suit as a basis for seeking injunctive order. The Applicant should have filed a counter-claim which would have been its basis for seeking an injunction. Even if it were possible for a defendant without a counter-claim to apply for injunction, a court cannot grant a permanent injunction at interlocutory stage. I therefore find that the Applicant's application is incompetent. The same is dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 3RD DAY OF OCTOBER, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Miyianda for Defendant/Applicant.

Court Assistant –Laban

E. O. OBAGA



JUDGE

3RD OCTOBER, 2024

