



Registered Trustees, Diocese of Mt. Kenya South & another v County Executive Committee Member Built, Environment & Urban Planning Nairobi City County & 6 others (Environment & Land Petition E023 of 2024) [2024] KEELC 13576 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13576 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E023 OF 2024
LN MBUGUA, J
DECEMBER 5, 2024**

BETWEEN

**REGISTERED TRUSTEES, DIOCESE OF MT. KENYA
SOUTH 1ST PETITIONER
ANGLICAN CHURCH OF KENYA, ST ANDREWS CHURCH, RUTHIMITU
PARISH, DIOCESE OF MT. KENYA SOUTH 2ND PETITIONER**

AND

**COUNTY EXECUTIVE COMMITTEE MEMBER BUILT, ENVIRONMENT &
URBAN PLANNING NAIROBI CITY COUNTY 1ST RESPONDENT
NAIROBI CITY COUNTY 2ND RESPONDENT
MEMBER OF COUNTY ASSEMBLY, UTHIRU/ RUTHIMITU
WARD 3RD RESPONDENT
COUNTY COMMISSIONER, NAIROBI CITY COUNTY 4TH RESPONDENT
THE LAND REGISTRAR NAIROBI DISTRICT LAND
REGISTRY 5TH RESPONDENT
THE DIRECTOR OF SURVEYS, KENYA 6TH RESPONDENT
THE ATTORNEY GENERAL 7TH RESPONDENT**

RULING

1. Before me is the Petitioner’s Notice of Motion application dated 3.4.2023 filed contemporaneously with the Petition seeking orders that;



- i. This honourable court be pleased to grant a Conservatory Order restraining the respondents by themselves, their servants, agents employees, persons acting under them and or police officers at their behest from harassing, intimidating, attacking, injuring arresting or otherwise limiting the fundamental freedoms of the Petitioners herein, their employees, servants or agents on the Suit Property in any way, including but not limited to evicting them from the Suit Property, pending the hearing and determination of this Petition.
 - ii. This honourable court be pleased to grant a Conservatory Order restraining the 1st, 2nd, 3rd, and 4th Respondents, their agents, servants, police officers at their behest or any other person acting under their instructions from evicting the Petitioner’s Church, Children’s home, Classes, dormitories and all developments on the suit property, pending the hearing and determination of this petition.
 - iii. This honourable court be pleased to grant a Conservatory Orders akin to inhibition restraining the Respondents, their agents, servants employees or anyone else acting under their instructions from entering, trespassing, building or otherwise interfering with the nature and character of subject matter of the petition, pending the hearing and determination of this petition.
2. The application is premised on the grounds on the face of the application and the supporting affidavits of Fredrick Kamau Gacheru and Beatrice Wanjiku Nganga. They contend that the 1st petitioner is the lawful registered owner of parcel Dagorretti / Ruthimitu/407, the suit property, where the 2nd Petitioner is hosted.
 3. However, the 1st to 4th respondents have been harassing the petitioners threatening to evict them, hence the need to have the conservatory orders issued.
 4. The 3rd respondent has opposed the application vide the replying affidavit of Mwangi Peter Maina dated 22.7.2024 and he identifies himself as the member of County Assembly Uthiru/Ruthimitu ward. He denies the allegations made against him by the petitioners.
 5. The replying affidavit filed by the 4th - 7th defendants relates to the petition and not the application.
 6. No other documents could be retrieved from the digital portal.
 7. Having considered all the issues raised herein, I find that none of the respondents are staking a claim on the suit property. Nevertheless, some of the prayers sought by the petitioners are not tenable as they impact on the question of jurisdiction. For instance, the petitioners pray for an order restraining the respondents from arresting them. That is however a matter in the realm of the criminal process, such that in the event of any offence being committed, this court would have no constitutional mandate to determine the cause of action to be undertaken. After all, the decision to charge squarely falls in the ambit of the Director of Public prosecution.
 8. All in all, I find that the befitting orders to give is the maintenance of status quo order. The Court of Appeal defined what ‘status quo’ means in the case of *Shimmers Plaza Limited vs. National Bank of Kenya Limited* [2015] eKLR as follows:

“Status quo” in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things”.
 9. In the end, the orders sought in the application dated 3.4.2024 are declined, instead, an order of maintenance of status quo is hereby issued. For avoidance of doubts, the status quo relates to both



the ground occupation as well as the registration status. The costs herein shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5th DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Court Assistant: Vena

