



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 68 OF 2020

REGISTERED TRUSTEES OF FOUNTAIN

GATE CHURCH.....PLAINTIFF

=VERSUS=

OLOSHO SECURITY SERVICES LIMITED.....1ST DEFENDANT

RUNDA GARDENS ESTATE ASSOCIATION.....2ND DEFENDANT

RULING

1. This is the Notice of Motion dated 4th May 2020 brought under Article 40 of the Constitution of Kenya, Section 1A and 1B of the Civil Procedure Act and Order 40 of the Civil Procedure Rules, Cap 21 Laws of Kenya and all other enabling provisions.

2. It seeks orders:-

(a) Spent.

(b) Spent.

(c) Spent

(d) The Honourable court be pleased to issue an interlocutory injunction restraining the respondents, whether by themselves, or their agents or employees from interfering with the quiet possession and enjoyment, use and access to the property LR. NO. 27397 situated along Kigwaru Gardens Drive, Runda gardens Estate in Nairobi County, pending the hearing and determination of this suit.

(e) That the costs of this application be provided for.

(f) That consequent upon such amendment the plaintiff be at liberty to file additional documents and witness statements.

3. The grounds are on the face of the application are set out in paragraphs (1) to (11).

4. The application is supported by the affidavit of James Mbugua, overseer of the Plaintiff's Church sworn on the 4th May of 2020.

5. This matter is related to **ELC 76 of 2020; Runda Gardens Estate Residents Association vs NEMA, Registered Trustees of Fountain Gate Church, & Nairobi City county**. These two files were being handled together.

6. I have considered the Notice of Motion, the affidavit in support and the annexures. I have considered the responses, the written submissions filed on behalf of the parties and the authorities cited. The issue for determination is:-

(i) Whether the plaintiff's/applicant's application meets the threshold for granting of temporary injunction.

(ii) Who should bear costs of the application?

7. At this juncture it is necessary to briefly examine the legal principles governing the applications of this nature. The Principles were laid down in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Ltd vs First American Bank of Kenya Limited & 2 Others [2003] KLR 125** the Court of Appeal set out what amounts to a prima facie case.

I am guided by the above authorities.

8. The plaintiff/applicant has annexed to the supporting affidavit approvals from the National Environment Management Authority and the Nairobi City County to put up a church on LR No 27397 along Kigwaru Gardens Drive, Runda area Westlands Sub county in Nairobi. The Plaintiff/applicant has also annexed a letter to show that it is the proprietor of the suit property.

9. I find that it deserves protection as it has established a prima facie case with probability of success at the trial.

10. In conclusion I find merit in this application and the same is allowed in the following terms:-

(a) That a temporary injunction is hereby issued restraining the defendants/respondents whether by themselves or their agents or employees from interfering with the quiet possession and enjoyment, use and access to the property known as LR NO 27397 situated along Kigwaru Gardens Drive Runda Gardens Estate in Nairobi County pending the hearing and determination of this suit.

(b) That costs do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 17TH DAY OF JUNE 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Kairu for the Plaintiff

Mr. Waiganjo for the Defendants

Phyllis – Court Assistant